**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.

### 2AC T-Lorber

#### We meet--- even Harold Koh thinks we’re T

Corker and Koh 2011 (Senator Bob Corker, R-Tenn., and Harold Koh, former Legal Adviser of the Department of State, “HEARING BEFORE THE COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE,” LIBYA AND WAR POWERS, http://www.fas.org/irp/congress/2011\_hr/libya.pdf)

Senator CORKER. Well, I do not think we are really making any ¶ decisions than are different than what you are carrying out. So we ¶ are rushing to make ourselves irrelevant this afternoon by virtue ¶ of passing something out that basically says—you know what it ¶ says. ¶ So let me ask you this. The chairman mentioned that since no ¶ American is being shot, there are no hostilities. Of course, by that reasoning, we could drop a nuclear bomb on Tripoli and we would not be involved in hostilities. It just goes to the sort of preposterous argument that is being made. ¶ But I do think one of the issues of precedence that you are setting is that Predators now—and I do want to remind you the Justice Department of this administration has spent lots of time trying ¶ to deal with people’s rights as it relates to terrorism and that kind ¶ of thing. And yet, basically what you all are doing by arguing this ¶ narrow case is saying that any President of the United States, ¶ Republican or Democrat, can order Predator strikes in any country ¶ and that is not hostilities. And of course, we know what Predators ¶ do. I think you know what they do, and lots of times human beings ¶ are not alive after they finish their work. ¶ So basically what you are doing is arguing that a President can ¶ order Predator strikes in any place in the world by virtue of this ¶ narrow argument that you have taken and that is not hostilities ¶ and Congress plays no role in that. ¶ Mr. KOH. Senator, that is not what I am arguing. Obviously, if ¶ Predator strikes were at a particular level or if we were carpet ¶ bombing a country using Predators, that would create a dramatically different situation. But the scenario that I have described to ¶ Senator Casey is a very different one. Within the constraints of this ¶ particular mission without ground troops, the Predators are playing a particular role with regard to the elimination of certain kinds ¶ of assets of Qadhafi that are being used to kill his own civilians. ¶ Even the numbers that Senator Casey mentioned are not close to ¶ the kind of level that we would consider to be ones that would trigger the pullout provision. ¶ So I think the important thing—and the question that had been ¶ asked was are we presenting a limited position. Yes, because all ¶ four limitations are what bring it within the line of the statute. We ¶ do not say that any element at all by itself could not be expanded ¶ out of shape and require a reexamination under the War Powers ¶ Resolution. I gave the example of a U.N. Security Council situation, ¶ Desert Storm, that required approval because of the scale of the ¶ operation.

#### W/M--- counter force means that missileers are in the theater of conflict even if they aren’t boots on the ground

#### Counter interp--- introducing USAF into hostilities includes bombing, it’s a question of scale not kind of engagement--- consensus of topic experts vote aff

Holan 2011 (Angie Drobnic Holan and Louis Jacobson, June 22, 2011, “Are U.S. actions in Libya subject to the War Powers Resolution? A review of the evidence,” Politifact, http://www.politifact.com/truth-o-meter/article/2011/jun/22/are-us-actions-libya-subject-war-powers-resolution/)

When is dropping bombs on another country not considered "hostilities"? That question is at the heart of a debate about whether the War Powers Resolution requires President Barack Obama to keep Congress informed about U.S. military activities in Libya.¶ The Obama administration is claiming that actions in Libya aren't subject to the War Powers Resolution because they don't meet the definition of "hostilities." We wanted to fact-check this statement, but experts we spoke with -- even those who disagreed with the Obama administration -- told us this is a complicated case and perhaps not a checkable fact. Rather, it's a legal claim that will be settled by either the courts or the political process.¶ Still, we decided it would be useful to readers to lay out all the evidence we've gathered here. And we want to be clear: The Obama administration's argument violates our standards of common sense, and we didn't find one independent expert who whole-heartedly supported the claim that actions in Libya are not "hostilities."¶ Libya and the War Powers Resolution¶ U.S. involvement in Libya began on March 19, 2011, as part of a NATO mission to support rebels attempting to overthrow the long-serving authoritarian leader Muammar Gadhafi. Obama said Gadhafi was launching military actions that were causing civilian deaths and forcing ordinary Libyans to escape to neighboring countries, threatening a humanitarian crisis within Libya and instability for its neighbors, Egypt and Tunisia. The NATO coalition initiated a bombing campaign and set up a no-fly zone designed to restrain Gadhafi.¶ "Left unaddressed, the growing instability in Libya could ignite wider instability in the Middle East, with dangerous consequences to the national security interests of the United States," Obama said.¶ Under the War Powers Resolution, a president can initiate military action but must receive approval from Congress to continue the operation within 60 days. If approval is not granted and the president deems it an emergency, then an additional 30 days are granted for ending operations.¶ But since NATO action in Libya began, Obama has not sought or received approval from Congress. In fact, individual members of Congress have warned Obama that he can't continue military action unilaterally. That's what has caused the current face-off between the White House and Congress.¶ On paper, the War Powers Resolution seems clear-cut. But in practice, Congress and the White House have skirmished repeatedly over it.¶ While the Constitution (Article I, Section 8) assigns the right to declare war to Congress, the last time that actually happened was at the beginning of World War II, when Franklin D. Roosevelt was president. Since then, presidents have generally initiated military activities using their constitutionally granted powers as commander-in-chief without an official declaration of war to support their actions. In some cases, such as the wars in Iraq and Afghanistan, Congress has complied with a presidential request for specific approval, short of a formal declaration of war.¶ The War Powers Resolution, passed in the wake of the Vietnam War, was intended to stop presidents from fighting wars without input from Congress. However, presidents from both parties have regularly ignored it, and Congress has often been reluctant to assert itself. Some critics have suggested that the resolution has functioned so poorly that it should be scrapped. ¶ "It is ineffective at best and unconstitutional at worst. No president has recognized its constitutionality, and Congress has never pressed the issue. Nor has the Supreme Court ever ruled on its constitutionality. In fact, courts have largely shied away from refereeing war-powers disputes between the two political branches," wrote James Baker and Warren Christopher in 2008. The two former secretaries of state, one a Republican and one a Democrat, studied the issue for a year and then recommended that it be replaced.¶ But for now, the law remains in force. So, earlier this month, butting up against the 90-day mark since action in Libya began, the Obama administration released a report summarizing its actions in Libya. The administration did not claim that the War Powers Resolution was unconstitutional but argued instead that its actions in Libya didn't meet the definition of "hostilities," so the War Powers Resolution did not apply.¶ "U.S. military operations are distinct from the kind of 'hostilities' contemplated by the Resolution's 60-day termination provision," the report said. "U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by those factors."¶ The report also argued that NATO was leading the efforts in Libya and that U.S. strikes rely on remotely piloted drone planes for its attacks.¶ Members of Congress from both parties expressed skepticism.¶ "You know, the White House says there are no hostilities taking place," said U.S. House Speaker John Boehner, a Republican. "Yet we've got drone attacks underway. They're spending $10 million a day, part of an effort to drop bombs on Gadhafi's compounds. It just doesn't pass the straight-face test in my view, that we're not in the midst of hostilities."¶ Rep. Brad Sherman, D-Calif., also rejected the administration's argument. "The War Powers Act is the law of the land," Sherman told Glenn Greenwald, a liberal blogger with Salon. "It says if the president deploys forces, he's got to seek Congressional authorization or begin pulling out after 60 days. Too many presidents have simply ignored the law."¶ Sherman argued that "when you're flying Air Force bombers over enemy territory, you are engaged in combat."¶ What the law says¶ To research the administration's claim, we first turned to the law itself. The War Powers Resolution, passed in 1973, is not long; you can read it here. The resolution doesn't define "hostilities," but it does say that the president must go to Congress under three possible conditions if there is no formal declaration of war:¶ "In any case in which United States Armed Forces are introduced—¶ (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;¶ (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or¶ (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation."¶ By our reading, dropping bombs on a country would fall under the second point. We then turned to a range of experts on military affairs, international relations and the law to see what the consensus was.¶ What the experts say¶ Most of the experts we talked to said that what is happening in Libya does, in fact, constitute hostilities and that to claim otherwise -- as the White House is doing -- is false. ¶ "The U.S. has deployed manned and unmanned aircraft to fire missiles and drop bombs — the type of weapons only permissible for use in armed conflict hostilities," said Mary Ellen O'Connell, a University of Notre Dame law professor.¶ Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute, said that "this is akin to the argument that what we're doing isn't war but 'kinetic military action.' Now, the War Powers Act itself is problematic constitutionally, but you absolutely cannot say that what we’re doing in Libya isn’t 'hostilities,' in the lay or technical sense." And legal commentator Stuart Taylor Jr. said it's "not a close call, in my opinion. Our military has been dropping bombs and killing people in Libya over a period of several months."

#### USAF are the four branches

DOD Dictionary No Date http://www.dtic.mil/doctrine/dod\_dictionary/data/a/2554.html

United States Armed Forces

 (DOD) Used to denote collectively the Army, Marine Corps, Navy, Air Force, and Coast Guard. See also Armed Forces of the United States.

#### Includes nukes

Manuel 2012 (Victor Manuel, JD UC-SD, “Is the Second Amendment outdated?,” http://www.victortorreslaw.com/blog/is-the-second-amendment-outdated.html)

The Second Amendment to the Constitution prevents the government from infringing individual rights to keep and bear arms. As a part of the Bill of Rights, the Second Amendment.is apart of the bulwark of individual rights protections that the Framers felt necessary to include in the Constitution. But where did the right originate and what was its purpose?¶ As with most of our laws, their origin was in England. For many years prior to the American Revolution the English folk were in conflict with the King and Parliament. Part of the conflict was over attempts by the King to disarm his subjects and whether there should be a standing army during peacetime. These were times in which the most lethal weapons were muskets and canon.¶ Times have changed. Today, no one questions the need for the government to maintain a standing army for the common defense, even in peacetime. Today’s modern armed forces include nuclear weapons, cruise missiles and smart bomb technology. In the event that a tyrannical government overcomes the will of the people is it realistic to believe that groups of citizens will be able to use armed revolt with assault weapons and other legally available firearms to successfully defeat the government? The result of such thinking is playing out today in Syria. Fighting in the streets, mass civilian slaughers and untold human suffering.

#### Claims of WPA exceed uncontroversial self defense powers--- our authority is founded in the WPR

Lexis-Nexis Law School Study Outlines No Date

http://www.lexisnexis.com/lawschool/study/outlines/html/conlaw/conlaw06.htm

The Commander in Chief Clause (Art. II section 2) provides the basis for the President’s power to commit troops to battle.  The President’s power is clearest when the President acts to repel attack but Presidents have made more sweeping claims under it to dispatch military force.

#### Prefer our interp:

#### We’re the only topical nukes aff--- our interp excludes NFU because hostilities aren’t pre-existing--- “authority” limits out trivial affs

#### Best limit--- infinite small “troops” affs--- peacekeeping, SEAL teams --- they functionally overlimit--- lit about modern war is about weapons not soldiers

#### Predictability--- We’re what the WPR meant

Fisher 2011 (Louis Fisher, Scholar in Residence at the Constitution Project, previously he worked for four decades at the Library of Congress as Senior Specialist in Separation of Powers, June 28, 2011, Statement by Louis Fisher, ¶ The Constitution Project, ¶ Before the ¶ Senate Committee on Foreign Relations, ¶ “Libya and War Powers,” http://www.foreign.senate.gov/imo/media/doc/Fisher\_Testimony.pdf)

In response to a House resolution passed on June 3, the Obama administration on June 15 ¶ submitted a report to Congress. A section on legal analysis (p. 25) determined that the word ¶ “hostilities” in the War Powers Resolution should be interpreted to mean that hostilities do not ¶ exist with the U.S. military effort in Libya: “U.S. operations do not involve sustained fighting or ¶ active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a ¶ conflict characterized by those factors.” ¶ This interpretation ignores the political context for the War Powers Resolution. Part of ¶ the momentum behind passage of the statute concerned the decision by the Nixon administration ¶ to bomb Cambodia.17 The massive air campaign did not involve “sustained fighting or active ¶ exchanges of fire with hostile forces,” the presence of U.S. ground troops, or substantial U.S. ¶ casualties. However, it was understood that the bombing constituted hostilities.

#### Reasonability--- competing interps causes race to the bottom--- AND it’s written into the rez

CC 12 (October 26, 2012, “Special Programs - Centenary College Wiki,” wiki.centenarycollege.edu/index.php/Special\_Programs‎)

An “area of study” is defined as a field of study or a related cluster within one of the College's academic departments.

### Solvency

#### Your evidence doesn’t apply to our mechanism- circumvention happened before because rulings weren’t explicit restrictions

Bradely 2010 (Curtis is the William Van Alstyne Professor of Law, Professor of Public Policy Studies, and Senior Associate Dean for Faculty & Research at the Duke University School of Law, “CLEAR STATEMENT RULES AND¶ EXECUTIVE WAR POWERS”, http://www.harvard-jlpp.com/wp-content/uploads/2010/01/bradley.pdf)

The Court’s decision in Boumediene v. Bush4 might seem an¶ aberration in this regard, but it is not. Although the Court in¶ Boumediene did rely on the Constitution in holding that the detainees¶ at Guantanamo have a right to seek habeas corpus review¶ in U.S. courts, it did not impose any specific restrictions¶ on the executive’s detention, treatment, or trial of the detain‐ees.5 In other words, Boumediene was more about preserving a¶ role for the courts than about prohibiting the executive from¶ exercising statutorily conferred authority.

#### President believes he is constrained by Congress

Prakash 2012 (Saikrishna Prakash, professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN)

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) believes himself constrained by law. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s recognition of the various constraints we have listed, and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public.

#### Combining statutory and judicial restrictions effectively limits the executive

Hug 2012 (Aziz Z. Huq, Assistant Professor of Law, University of Chicago Law School, May 25, 2012, "Binding the Executive (by Law or by Politics)", www.law.uchicago.edu/files/file/400-ah-binding.pdf)

There is some merit to this story. But in my view it again understates the observed effect of positive legal constraints on executive discretion. Recent scholarship, for example, has documented congressional influence on the shape of military policy via framework statutes . This work suggests Congress influences executive actions during military engagements through hearings and legislative proposals. 75 Consistent with this account, two legal scholars have recently offered a revisionist history of constitutional war powers in which “ Congress has been an active participant in setting the terms of battle, ” in part because “ congressional willingness to enact [ ] laws has only increased ” over time. 76 In the last decade, Congress has often taken the initiative on national security, such as enacting new statutes on military commissions in 2006 and 2009. 77 Other recent landmark security reforms, such as a 2004 statute restr ucturing the intelligence community, 78 also had only lukewarm Oval Office support. 79 Measured against a baseline of threshold executive preferences then , Congress has achieved nontrivial successes in shaping national security policy and institutions through both legislated and nonlegislated actions even in the teeth of White House opposition. 80¶ The same point emerges more forcefully from a review of our “ fiscal constitution. ” 81 Article I, § 8 of the Constitution vests Congress with power to “ lay and collect Tax es ” and to “ borrow Money on the credit of the United States, ” while Article I, § 9 bars federal funds from being spent except “ in Consequence of Appropriations made by Law. ” 82 Congress has enacted several framework statutes to effectuate the “ powerful limitations ” implicit in these clauses. 83 The resulting law prevents the President from repudiating past policy commitments (as Skowronek suggests) as well as imposing barriers to novel executive initiatives that want for statutory authorization . 84¶ Three statutes merit attention here. First, the Miscellaneous Receipts Act of 1849 85 requires that all funds “ received from customs, from the sales of public lands, and from all miscellaneous sources, for the use of the United States, shall be paid . . . into the treasur y of the United States. ” 86 It ensures that the executive cannot establish off - balance - sheet revenue streams as a basis for independent policy making. Second, the Anti - Deficiency Act, 87 which was first enacted in 1870 and then amended in 190 6 , 88 had the effect of cementing the principle of congressional appropriations control. 89 With civil and criminal sanctions, it prohibits “ unfunded monetary liabilities beyond the amounts Congress has appropriated, ” and bars “ the borrowing of funds by federal a gencies . . . in anticipation of future appropriations. ” 90 Finally, the Congressional Budget and Impoundment Control Act of 1974 91 (Impoundment Act) channels presidential authority to decline to expend appropriated funds. 92 It responded to President Nixon ’ s e xpansive use of impoundment. 93 Congress had no trouble rejecting Nixon ’ s claims despite a long history of such impoundments. 94 While the Miscellaneous Receipts Act and the Anti - Deficiency Act appear to have succeeded, the Impoundment Act has a more mixed rec ord. While the Supreme Court endorsed legislative constraints on presidential impoundment, 95 President Gerald Ford increased impoundments through creative interpretations of the law. 96 But two decades later, Congress concluded the executive had too little di scretionary spending authority and expanded it by statute. 97 ¶ Moreover, statutory regulation of the purse furnishes a tool for judicial influence over the executive. Judicial action in turn magnifies congressional influence. A recent study of taxation litiga tion finds evidence that the federal courts interpret fiscal laws in a more pro - government fashion during military engagements supported by both Congress and the White House than in the course of unilateral executive military entanglements. 98 Although the r esulting effect is hard to quantify, the basic finding of the study suggests that fiscal statutes trench on executive discretion not only directly, but also indirectly via judicially created incentives to act only with legislative endorsement. 99¶ To be sure, a persistent difficulty in debates about congressional efficacy, and with some of the claims advanced in The Executive Unbound , is that it is unclear what baseline should be used to evaluate the outcomes of executive - congressional struggles. What counts, that is, as a “win” and for whom? What, for example, is an appropriate level of legislative control over expenditures? In the examples developed in this Part , I have underscored instances in which a law has been passed that a President disagrees with in substantial part, and where there are divergent legislative preferences reflected in the ultimate enactment. I do not mean to suggest, however, that there are not alternative ways of delineating a baseline for analysis. 100¶ In sum, there is strong evidence that law and lawmaking institutions have played a more robust role in delimiting the bounds of executive discretion over the federal sword and the federal purse than The Executive Unbound intimates. Congress in fact impedes presidential agendas. The White House in practice cannot use presidential administration as a perfect substitute. Legislation implementing congressional control of the purse is also a significant, if imperfect, tool of legislative influence on the ground. This is true even when Presidents influence the budgetary agenda 101 and agencies jawbone their legislative masters into new funding. 102 If Congress and statutory frameworks seem to have such nontrivial effects on the executive ’ s choice set , this at minimum i mplies that the conditions in which law matters are more extensive than The Executive Unbound suggests and that an account of executive discretion that omits law and legal institutions will be incomplete.

### 2AC Self-Restraint CP

#### Judicial checks are key--- otherwise nuke war is inevitable

Ratner 1984 (Michael Ratner, B.A., Brandeis University, 1966; J.D., Columbia Law School, 1970; Attorney, Center of Constitutional Rights, and David Cole, B.A., Yale University, 1980; J.D., Yale Law School, 1984, June 1, 1984, “The Force of Law: Judicial Enforcement of the War Powers Resolution,” Loyola of Los Angeles Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1434&context=llr)

Some have argued that an 18th century war powers clause cannot¶ guide us in the twentieth century.42 The Framers, they argue, cannot¶ have envisioned a world of nuclear arms, nor a world in which the¶ United States' interests would reach as far and wide as they do today.¶ Even were there merit to these arguments, which many people dispute,¶ they cannot justify violations of existing law. Those favoring executive¶ war-making should address themselves to amending the Constitution.¶ Moreover, today's circumstances underscore the necessity for strict adherence to the constitutional allocation of war powers. The prospect¶ and danger of nuclear war, certainly the overriding concern in foreign¶ policy today, only reaffirms the wisdom of "clogging rather than facilitating war." When the Framers wrote, the nation had an interest in¶ avoiding war because of its weakness vis-a-vis other nations. Today,¶ the entire world has an interest in avoiding war because of human¶ weakness in the face of the destructive force of nuclear weapons.43¶ Neither Congress nor the people should be forced to convince the¶ President not to infringe upon congressional war powers; the Constitution flatly forbids him to do so.44 But where the President, who is to¶ enforce the law, is breaking the law, and where the judiciary, which is to say what the law is, refuses to do so, we are left to the mercy of presidential prerogative. The law ceases to impose limits on executive action and executive power, freed of its constraints, shapes the world as it pleases. When the law that is slipping into obscurity is the Constitution, we have the makings of a constitutional crisis.

#### Self-restraint fails--- future presidents and crisis psychology

Healy 2009 (Gene Healy, The Cult of the Presidency: America’s Dangerous Devotion to Executive Power, 2009 p. 308-309)

Laudable as it is, though, presidential self-restraint is far from a robust or lasting solution to the imperial presidency. Executive orders can be overturned, and personnel can be changed – by future presidents, or by this president should political conditions change. The threat of terrorism is no longer as vivid in the public mind as it was a few years ago but all that could change quite rapidly. If a bomb goes off in a subway or terrorist carries out a shooting spree at a shopping mall, it will be very difficult for any president – particularly one with political opponents eager to paint him as “soft on terror” to resist pushing his authority beyond constitutional limits. Lasting restraint needs to come from external sources: the courts, the Congress, and the general public. The Supreme Court has lately shown greater willingness to check presidential power in foreign affairs. However, there’s little evidence that the public has moderated its demands for bold presidential action to solve all manner of problems. And Congress remains as pliable as ever.

#### President uses the Office of Legal Council to circumvent the CP--- courts key

Bejesky 2013 (Robert Bejesky, M.A. Political Science at Michigan, M.A. Applied Economics at Michigan, LL.M. International Law at Georgetown, “Dubitable Security Threats and Low Intensity Interventions as the Achilles' Heel of War Powers,” Mississippi College Law Review, lexis)

In tracing the involvement of the Supreme Court during the shift of war powers over the past half-century, the judiciary's role has been quite docile even though it plays a critical role as the official interpreter of the Constitution and can be a decision-maker to resolve disputes between the political branches. U.S. courts have affirmed the consensus view of congressional dominance in war powers and have never migrated from it. Moreover, in accepting certiorari and deciding cases, courts have affirmed that the Framers intended the judiciary to have a meaningful role in adjudicating separation of powers altercations involving foreign and military affairs. 450 The Court regularly accepted certiorari of war powers questions for nearly 190 years, but it became hesitant to examine the scope of the Commander-in-Chief authority 451 on political question, standing, ripeness, and mootness grounds after dozens of cases challenged presidential power over the Vietnam War. 452¶ The Court denied certiorari to draftees who challenged the constitutionality of the Vietnam War and the Gulf of Tonkin Resolution. 453 Perhaps most disconcerting about the Court's failure to address the claims is [\*63] that Congress repealed the Gulf of Tonkin Resolution after the war, 454 which would seem to merit challenges if one construes that there was a lack of authority when government officials drafted citizens, deployed troops to Vietnam, and waged war with an eventual revoke of authority. Commentators have vociferously argued that the Court should have addressed Vietnam War questions. 455 In a statement to Congress as the Vietnam War was ending, Senator Fulbright remarked: "Insofar as the consent of this body is said to derive from the Gulf of Tonkin Resolution, it can only be said that the resolution, like any other contract based on misrepresentation, in my opinion is null and void." 456 Justice Douglas maintained that "the question of an unconstitutional war is neither academic nor 'political.' " 457¶ The new precedent favoring abstention on cases involving use of force has continued. In the 1980s, members of Congress challenged President Reagan's limited use of the military in undeclared conflicts, but courts dismissed the cases as political questions. 458 In 1990, fifty-four members of Congress filed a case against President Bush for troop buildups in the Persian Gulf prior to the 1991 Gulf War, but the court dismissed the case as unripe. 459 The court assuredly did not reject authority to hear the case but noted that the judiciary should be used to decide the case or controversy on the constitutional provision "if the Congress decides that United States forces should not be employed in foreign hostilities, and if the Executive does not of its own volition abandon participation in such hostilities." 460 Congress enacted the Authorization for Use of Military Force Against Iraq Resolution months later. 461 Petitioners challenged President Clinton's airstrikes in Kosovo, but the court refused to hear the case. 462 Based on the ripeness doctrine, the federal court dismissed a suit brought by military families and members of Congress against George Bush in 2003 to enjoin military force against Iraq. 463¶ [\*64] It is possible for the judiciary to assist in "setting precedent right" and to ensure that Congress discharges constitutional responsibilities by either accepting or rejecting a proposed military action. 464 However, if there is no impasse and the court system does not address an issue or disputes are settled by political branch negotiation, the Court precedent that affirms the original understanding of constitutional war powers may be neglected when there are novel factual scenarios involving military action. With ambiguity, the Attorney General's Office of Legal Council ("OLC") and White House council could liberally construe precedent and potentially amplify the president's authority vis-a-vis Congress. 465 If the Executive abides by the legal advice and implements a controversially assertive action, Congress does not annul the action or fails to punish, reprimand, or officially denounce a presidential transgression, and the judiciary cashiers the issue, the situation may impart apparent precedent countenancing presidential expansionism even if Congress is in accord with the action. Without congressional assent, a future presidential action may be illegitimate or unconstitutional when premised on faulty precedent, and proponents of expanding presidential power may simply ignore faulty premises. These have been the dynamics of the judiciary's role in the separation of powers question over the past forty years, and this circumstance was abundantly clear during the Bush Administration.¶ Objective understandings of war powers were lost when hand-selected legal advisers provided sweeping, unreserved, and blatantly biased opinions. The Bush Administration "relied upon lawyers to pen justifications for controversial government activities" that derogated the law. 466 For example, just two weeks after 9/11, OLC advisor John Yoo furnished a legal memo contending that the President possessed "'independent and plenary' authority to 'use military force abroad.'" 467 Former OLC attorney Bruce Fein explains:¶ ¶ OLC's customary role was to provide neutral legal advice to other agencies or Congress on constitutional issues ... It seems OLC is now acting as retained counsel to agencies to present [the] best defense of their actions from the perspective of an advocate, not as an impartial lawyer. 468

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#### Conditionality is a voting issue--- skews the 2AC, most important speech for aff offense--- can’t read best offense, kills strategic thinking and best policy option

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#### Links to politics\*

Goldsmith 2010 (Jack Goldsmith, Henry L. Shattuck Professor at Harvard Law School, where he teaches and writes about national security law, presidential power, cybersecurity, international law, internet law, foreign relations law, and conflict of laws, former Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003, member of the Hoover Institution Task Force on National Security and Law, November 16, 2010, “The Virtues and Vices of Presidential Restraint,” Lawfare Blog, http://www.lawfareblog.com/2010/11/the-virtues-and-vices-of-presidential-restraint/)

I think there is something to this. In part in reaction to the excesses of the Bush years and in part because of genuine ideological and intellectual commitment, Obama and his team came to office indisposed towards a robust conception of presidential power. This attitude extends, of course, to the Obama administration’s approach to counterterrorism. Even as it has embraced much of the Bush counterterrorism program, it has done so with open regret, and has emphasized its self-restraint. One sees this, for example, in the administration’s refusal to work with Congress on new detention authorities for fear that Congress might give it more power than it wants; in its apologetic assertion of a perfectly appropriate state secret claim in al-Aulaqi case; in its shyness about relying on or discussing Article II powers for targeting terrorist threats; in its arguments for narrower military powers than courts are inclined to give it; in its acquiescence, despite helpful Article II authorities to the contrary, in Congress’s unprecedented restrictions on the President’s power to transfer enemy prisoners; and more.¶ There are benefits and costs to this approach. On the benefit side, the President has developed a deserved reputation for restraint and commitment to the rule of law. This is good in itself, and serves him well symbolically at home and abroad. It also gives him the credibility and trust to carry forth with little controversy many of the counterterrorism tactics that under the less self-restrained Bush administration were deeply controversial. Such credibility and trust, among other things, inform the extent to which courts defer to and approve wartime presidential actions. I have no doubt that trust of the administration is one reason why the D.C. Circuit declined to extend habeas corpus review to Bagram, for example.¶ But there are downsides as well. One downside is a slow diminution of unasserted presidential authority, and a related emboldening of Congress to regulate traditional presidential prerogatives. Another downside is that the administration’s reputation for restraint has become tied to public worries about whether it is tough enough on terrorism. These worries underly the bipartisan push-back on certain counterterrorism decisions – such as trying terrorists in civilian courts – that under Bush brought little controversy. A final downside is the political risk this approach entails if and when there is a successful attack on the homeland. For if there is another attack, and if in the crystal-clear perspective of hindsight it can be traced to a refusal to exercise presidential powers that were reasonably available, the political consequences will be devastating.

### 2AC Amendment CP--- Court Capital NB

#### Perm do both--- shields the link to the net benefit

#### Amendment CPs are a voting issue--- not real world: fiats multiple cooperative actions by multiple actors, not a real world policy option or opportunity cost--- bad model of decisionmaking--- trades off with substantive topic education

Baker 2010

[Director of the Con Law Center at Drake, 10 Widener J. Pub. L. 1]

There is a reason that there have been only 27 amendments over more than 200 years: Constitutional amendments must have the sustained and one-sided support of great majorities in the Congress and across the states. Very few issues ever garner such importance and support.

#### Doesn’t solve deference--- undermines judicial review

Sullivan 1996 (Kathy Sullivan, professor of law at Stanford, “CONSTITUTIONAL CONSTANCY: WHY CONGRESS SHOULD CURE ITSELF OF AMENDMENT FEVER,” lexis)

How have we managed to survive over two hundred years of social and technological change with only twenty-seven constitutional amendments? The answer is that we have granted broad interpretive latitude to the Supreme Court. Narrow construction would necessitate more frequent resort to formal constitutional amendments. Broad construction eliminates the need. Thus, the Court has determined that eighteenth century restrictions on searches of our "papers and effects" apply to our twentieth century telephone calls, and that the command of equal protection forbids racially segregated schools even though such segregation was known to the Fourteenth Amendment's framers. Neither of these decisions - Katz v. United States and Brown v. Board of Education - required a constitutional amendment. Nor did the Court's "switch in time that saved nine" during the New Deal. In the early twentieth century, the Court struck down much federal economic legislation as exceeding Congress's power and invading the province of the states. Under President Roosevelt's threat to expand and pack the Court, the Court desisted, and started to defer to all legislation bearing some plausible relationship to interstate commerce. Some scholars have called the Court's decision to defer to national economic legislation revolutionary enough to count as an informal constitutional amendment, but most view it as within the broad contours of reasonable interpretive practice. Increasing the frequency of constitutional amendment would undermine the respect and legitimacy the Court now enjoys in this interpretive role. This danger is especially acute in the case of proposed constitutional amendments that would literally overturn Supreme Court decisions, such as amendments that would declare a fetus a person with a right to life, permit punishment of flag-burning, or authorize school prayer. Such amendments suggest that if you don't like a Court decision, you mobilize to overturn it. Justice Jackson once quipped that the Court's word is not final because it is infallible, but is infallible because it is final. That finality, though, has many salutary social benefits. For example, it allows us to treat abortion clinic bombers as terrorists rather than protesters. If every controversial Supreme Court decision resulted in plebiscitary overruling in the form of a constitutional amend- [\*703] ment, surely the finality of its word would be undermined, and with it the social benefits of peaceful conflict resolution. The fact that we have amended the Constitution only four times in order to overrule the Supreme Court is worth remembering.

#### Only the court solves launch authority--- amendments are meaningless

Strauss 2001 (David A. Strauss, law professor at U Chicago, “Do Constitutional Amendments Matter?,” CHICAGO PUBLIC LAW AND LEGAL THEORY WORKING PAPER NO., 05http://www.law.uchicago.edu/files/files/05.%20Strauss.Amendments1.pdf)

One final implication is the most practical of all. If amendments are in fact a sidelight, then it will usually be a mistake for people concerned about an issue to try to address it by amending the Constitution. Their resources are generally better spent on legislation, litigation, or private-sector activities. It is true that the effort to obtain a constitutional amendment may serve very effectively as a rallying point for political activity. A constitutional amendment may be an especially powerful symbol, and it may be worthwhile for a group to seek an amendment for just that reason. But in this respect constitutional amendments are comparable to congressional resolutions, presidential proclamations, or declarations of national holidays. If they bring about change, they do so because of their symbolic value, not because of their operative legal effect. The claim that constitutional amendments under Article V are not a principal means of constitutional change is a claim about the relationship between supermajoritarian amendments and fundamental, constitutional change. It should not be confused with the very different claim that judicial decisions cannot make significant changes without help from Congress or the President; n25 and it certainly should not be confused with a global skepticism about the efficacy of political activity generally. The point is that changes of constitutional magnitude - changes in the small-"c" constitution - are not brought about by discrete, supermajoritarian political acts like Article V amendments. It may also be true that such fundamental change is always the product of an evolutionary process and cannot be brought about by any discrete political act - by a single statute, judicial decision, or executive action, or (at the state level) by a constitutional amendment, whether adopted by majoritarian referendum or by some other means. What is true of Article V amendments may be equally true of these other acts: either they will ratify (while possibly contributing to) changes that have already taken place, or they will be ineffective until society catches up with the aspirations of the statute or decision. Alternatively, it may be that majoritarian acts (or judicial decisions), precisely because they do not require that the ground be prepared so thoroughly, can force the pace of change in a way that supermajoritarian acts cannot. A coalition sufficient to enact legislation might be assembled - or a judicial decision rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), might be an important factor in bringing about more comprehensive change. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place. Whatever one thinks of these broader speculations, however, they certainly do not entail a general skepticism about whether political activity matters at all. On the contrary, legislation and judicial decisions - as well as activity in the private realm that may not even be explicitly political - can accumulate to bring about fundamental and lasting changes that are then, sometimes, ratified in a textual amendment. Sustained political and nonpolitical activity of that kind is precisely what does bring about changes of constitutional magnitude. My claim is that such changes seldom come about, in a mature democracy, as the result of a formal amendment adopted by a supermajority.

#### Conditionality is a voting issue--- skews the 2AC, most important speech for aff offense--- can’t read best offense, kills strategic thinking and best policy option

#### CP links to court capital--- People will think it’s necessary bc the court isn’t doing it’s job, wrecks capital--- ONLY perm solves\*\*\*

Sullivan 1999 (Kathleen M. Sullivan, professor at the Stanford Law School and name partner at Quinn Emanuel Urquhart & Sullivan, “WHAT’S WRONG WITH CONSTITUTIONAL AMENDMENTS?,” http://constitutionproject.org/manage/file/32.pdf)

A third danger lurking in constitutional amendments is that of mutiny against the authority of the Supreme Court. We have lasted¶ two centuries with only twenty-seven amendments because the¶ Supreme Court has been given enough interpretive latitude to adapt¶ the basic charter to changing times. Our high court enjoys a respect and legitimacy uncommon elsewhere in the world. That legitimacy issalutary, for it enables the Court to settle or at least defuse society’s most ideologically charged disputes. Contemporary constitutional revisionists, however, suggest that¶ if you dislike a Supreme Court decision, mobilize to overturn it. If the¶ Court holds that free speech rights protect flag burners, just write a¶ flag-burning exception into the First Amendment. If the Court limits¶ student prayer in public schools, rewrite the establishment clause to¶ replace neutrality toward religion with equal rights for religious access instead. Such amendment proposals no doubt reflect the revisionists’¶ frustration that court packing turns out to be harder than it seems—¶ Presidents Reagan and Bush, as it turned out, appointed more moderate than conservative justices. But undermining the authority of the¶ institution itself is an unwise response to such disappointments. In any event, it is illusory to think that an amendment will somehow eliminate judicial discretion. Most constitutional amendment¶ proposals are, like the original document, written in general and¶ open-ended terms. Thus, they necessarily defer hard questions to ultimate resolution by the courts. Does the balanced budget amendment¶ give the president impoundment power? Congress settled this matter¶ by statute with President Nixon, but the amendment would reopen¶ the question. Does splattering mustard on your Fourth of July flag¶ napkin amount to flag desecration? A committee of senators got¶ nowhere trying to write language that would guarantee against such¶ an absurd result. Would unisex bathrooms have been mandated if¶ the Equal Rights Amendment had ever passed? Advocates on both¶ sides debated the issue fiercely, but only the Supreme Court would¶ ever have decided for sure.

#### Constitutional amendment costs tons of capital

Kachimba 2011 (Larry Kachimba, writer for Op Ed News, August 25, 2011, “Five reasons why a constitutional amendment is the wrong way to get money out of politics,” http://www.opednews.com/articles/Five-reasons-why-a-constit-by-Larry-Kachimba-110825-578.html)

3. Attempting a constitutional amendment is wasteful of scarce political capital because it would be many times more difficult and time-consuming than would enactment of a comprehensive law.¶ The constitutional amendment proposal diverts political capital to an impossible task.¶ A constitutional amendment process is far more difficult and time consuming than getting a single comprehensive law through Congress. In order to battle corporations and oligarchs to get an amendment passed it would be necessary to first get 2/3d's of the members of each house of Congress to vote against Congress' usual paymasters, and then also elect a majority of legislators in 38 states who would resist the growing temptations of political money. Money can be expected to battle any such amendment designed to take away its power at every stage of this process.

### 2AC Debt Ceiling

#### No impact

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

#### No impact to debt ceiling it’s exaggerated

Fisher Investments 2012 (Fisher Investments, independent investment adviser serving both individual and institutional investors, December 10, 2012, “Debt Ceiling Worries Are Overblown: Opinion,” www.thestreet.com/story/11787447/1/debt-ceiling-worries-are-overblown-opinion.html)

The debt ceiling debate seems to have returned from the dead. But as our boss Ken Fisher has said, what many folks miss is that the debt ceiling is a purely political (and arbitrary) machination. And it's one that members of Congress aren't terribly motivated to fix, so it's unlikely to kick the bucket anytime soon.¶ For context, Congress used to have to approve debt issuance, but during World War I, lawmakers feared such a mundane task might slow potential war funding. Hence, they created the debt ceiling in 1917 to (try to) take themselves out of the picture.¶ Noble enough! But the limit was arbitrary and didn't account for debt's tendency to grow in sympathy with the broader economy. Hence, over time and as the country grew, our debt rose as well, butting up against Congress's arbitrary ceiling.¶ Congress mostly rubber-stamped debt ceiling increases until the mid-1950s, when lawmakers began using the debt ceiling as a political tool to leverage concessions from a president and/or the opposing party by threatening a government shutdown and a potential debt default.¶ This political gamesmanship has occurred over and over. Often the deliberations go down to the wire (or even a bit beyond) before a new ceiling is established. In fact, the debt ceiling has been lifted 91 times in the last 40 years. No politician wants to be tainted with causing the U.S. to default. Yet, at the same time, neither party wants to give up this potential battering ram. Hence, we likely will continue to have debt ceilings, debt ceiling debates and half-hearted "solutions" for "solving" the debt ceiling dilemma.¶ One such solution we've heard in recent years is minting a $1 trillion platinum coin, as explained in a post at AEIdeas, the public policy blog of the American Enterprise Institute.¶ At CNN, Jack M. Balkin wrote, "some commentators have suggested that the Treasury create two $1 trillion coins, deposit them in its account in the Federal Reserve and write checks on the proceeds."¶ That is ... one ... (theoretical) option. Yet we'd hasten to add it's entirely unnecessary and likely comes with unintended costs of its own. There is, after all, no such thing as a free lunch.¶ But beyond that, this theoretical $1 trillion platinum coin (and why must we use platinum, by the way?) is merely another arbitrary measure on top of the already arbitrary debt ceiling -- a Band-Aid on top of a Band-Aid.¶ Imagine for a moment that the Treasury does authorize creating and stashing a $1 trillion coin at the Fed. Failing a congressional debt ceiling lift, the government would issue new checks against the coin ad nausem until ... it reached the $1 trillion limit. But then perhaps Treasury would add another $1 trillion coin, and so forth and so on.¶ This merely would create a temporary bypass to the debt ceiling that likely would need to be revisited as the economy continues growing (as it always has, in fits and starts). Make no mistake: We're not fans of ever-increasing relative debt (mostly because we prefer smaller government relative to the private sector). But the absolute amount of debt pretty much has always grown and likely will continue to do so. (The government never repaid all the WW II-related borrowings after the war ended, yet a slower debt growth rate combined with economic growth reduced the size of debt relative to GDP).¶ We just think a debt ceiling serves little purpose outside of creating a periodic opportunity for political posturing. And remember, since 1921, Congress has been required to develop and pass a budget that ultimately determines what the nation spends in a given fiscal year. The Treasury merely issues debt to cover differences between government expenses and revenue.¶ Our bet is pols fold like they have 11 times in the last decade and find compromises to raise the debt ceiling again. But we'd be remiss if we didn't address the economic consequences if the government doesn't lift the ceiling before borrowings hit the $16.4 trillion debt ceiling as projected in February 2013. Those consequences, at least in the near term, aren't catastrophic.¶ The government need only delay some nonessential spending or shut down some services, such as national parks or passport issuance. At only 1.4% of GDP (as of 2011), debt service costs are tiny and likely easily paid by revenues (only 9.9% of total tax revenue in 2011, according to the White House Office of Management and Budget.) So the likelihood of default is also exceedingly low. And of course, it's probably also likely that the government finds some extra cash in the sofa cushions or a $20 bill in the laundry, buying further time for Congress to find resolution.¶ The debt ceiling is so arbitrary and so lacking in real, economic impact that you just don't need to spend the time conjuring schemes like trillion-dollar coins, Fed vaults and check writing. Given time, politicians are highly likely to do what they've nearly always done: Politick to the last moment, then raise the debt ceiling.

**Obama’s PC is low and decreasing**

**Steinhauser, 9/26/13 –** CNN Political Editor (Paul, “Obama's support slips; controversies, sluggish economy cited” <http://www.cnn.com/2013/09/26/politics/cnn-poll-of-polls-obama/?hpt=po_c2>)

As he battles with congressional Republicans over the budget and the debt ceiling, and as a key component of his health care law kicks in, new polling suggests that President Barack Obama's standing among Americans continues to **deteriorate**.

The president's approval rating stands at 45%, according to a CNN average of four national polls conducted over the past week and a half. And a CNN Poll of Polls compiled and released Thursday also indicates that Obama's disapproval rating at 49%.

In the afterglow of his re-election and second inauguration, the percentage of those approving of Obama's job performance hovered in the low 50s as the year began, according to CNN Poll of Poll averages.

But his numbers slipped to the upper 40s by spring and now have edged down to the mid 40s. At the same time, his disapproval numbers have edged up from the low 40s to right around the 50% mark.

Anxiety and skepticism over the Affordable Care Act, better known as Obamacare, continuing concerns over the sluggish economy, and a drop in the president's approval on foreign policy -- once his ace in the hole -- all appear to be contributing to the slide of Obama's general approval rating.

"Not a precipitous drop, but more like a continued erosion in the president's numbers," says CNN Chief Political Correspondent Candy Crowley. "The Boston Marathon bombings, Edward Snowden's 'big brother' revelations, the 'non-coup' in Egypt, the 'now we bomb, now we don't' policy in Syria, an economic recovery that remains disappointing, the uncertainty of how/what will change under the new health care system, shall I go on?"

"It all adds up to an awful lot of uncertainty and unfairly or not, uncertainty tends to breed lower poll numbers for the guy in charge," added Crowley, anchor of CNN's "State of the Union."

Besides being the main indicator of a president's standing with the public, a presidential approval rating is a **good gauge of his clout in dealing with Congress**.

The drop in his numbers comes as the president pushes back against attempts by congressional Republicans to use deadlines to keep the federal government funded and to extend the nation's debt ceiling to try and defund the health care law.

A slew of national polls conducted this month indicate that a majority doesn't support shutting down the government in order to defund Obamacare.

But if the fight shifts to the debt ceiling, public opinion appears to **turn against** the president, who reiterated on Thursday that he will not negotiate with the GOP in Congress over extending the debt ceiling.

**FERC thumps**

**Dixon 10/1** (Darius Dixon, Politico, “Obama FERC nominee Ron Binz withdraws amid coal pushback”, <http://www.politico.com/story/2013/10/ron-binz-ferc-nominee-withdraws-name-97623.html>, October 1, 2013)

President Barack Obama’s nominee to lead the Federal Energy Regulatory Commission abandoned his quest Tuesday, complaining that the fight over his **confirmation had become a “blood sport”** for partisan attacks and opponents backed by the coal industry. The collapse of Ron Binz’s nomination to lead the little-known agency **was a stunning setback for Obama**, who had succeeded in winning Senate confirmations for far more controversial nominees at Environmental Protection Agency, the Pentagon and the Labor Department. Continue Reading The consultant and career energy regulator had won over supporters from the green energy world — some of whom took the unusual step of hiring a public relations firm to advance his cause. But Binz said he couldn’t overcome a **furious opposition campaign** in which his record was “spun and respun” to make him appear biased against fossil fuels. “The caricature that they created had nothing to do with who I am and nothing to do with what I might’ve brought to FERC. It was just a blood sport,” Binz told POLITICO in his first extensive interview since Obama nominated him in June. “I came to Washington with this 35-year career behind me only to encounter a fictional Ron Binz, a fictional character that I didn’t recognize and I would never even support,” he added. Conservative and libertarian groups celebrated Binz’s withdrawal **as a setback for Obama’s** climate **agenda**, while his supporters lamented that partisan bickering had defeated a qualified candidate.

**The GOP won’t blink – conservative media pressure, the base, and Obama hatred**

**Tobin, 10/1/13** - Jonathan S. Tobin is Senior Online Editor of Commentary magazine with responsibility for managing the editorial content of the website as well as serving as chief politics blogger (“Must Republicans Blink on the Shutdown?” <http://www.commentarymagazine.com/2013/10/01/must-republicans-blink-on-the-shutdown/>)

There’s no question that Democrats are in a stronger position today, at least as far as public opinion is concerned. But the expectation that the GOP must give in and do so quickly may be **mistaken**. As I noted last night, after having gone this far in order to make a point about their unwillingness to go along with ObamaCare, for Boehner to cave in quickly would only worsen his party’s situation. Having taken a stand on points they believe are eminently defensible—applying ObamaCare to Congress and the staff of the White House and a demand to delay the penalties attached to the health-care bill’s personal mandate—and with the president declaring he won’t negotiate and with an even more important deadline looming in three weeks about raising the debt ceiling, the GOP may not have as much incentive to surrender as their opponents think.

Let me specify that the decision to call the president’s bluff on the shutdown was unwise. There was never a chance the Democrats would agree to defund ObamaCare and no game plan that would give the Republicans a viable exit strategy from such a standoff, let alone a way to win it. But having gotten into this position, it must be conceded that the widespread belief that they will be forced to wave the white flag within days is based on a set of expectations that aren’t necessarily valid.

As the Washington Examiner wisely noted this morning, the comparisons to the disastrous 1995 shutdown need to be re-examined. As much as Senator John McCain may be right when he said that he had seen this movie before, the circumstances are slightly different. Unlike in 1995, mainstream liberal media pressure on Republicans is now offset by not only Fox News but also conservative talk radio, a medium that is placing pressure on the GOP to stand firm, not to give in. The conservative base that helped goad the Republicans into this fix is equally unwilling to see them weasel their way out of it, at least not without a fight.

Just as important is the nature of their antagonist. In 1995, Republicans were faced with a Democratic president who made a career out of successfully pretending to be a centrist. President Obama may have run in 2008 as a post-partisan candidate, but he dropped that act a long time ago and is a far more polarizing figure. When the president told NPR this morning that he “will not negotiate” with Republicans, that was what his liberal base wanted to hear. But it is not a stand that is likely to increase pressure on the GOP. To the contrary, the more Obama dares them to dig in their heels, the more likely it is that conservatives will do just that.

All along, critics of the shutdown strategy have assumed that simply because there was no clear exit strategy the consequences of a shutdown would be enough to pressure Republicans to blink once the Democrats refused to budge. But the problem with that critique is that while Senator Ted Cruz and others were blowing smoke when they said Obama would cave, there may not be sufficient leverage on the other side that would cause Boehner to blink.

Indeed, the longer this goes on, the more likely it may be that Republicans start to think time is on their side rather than against them. President Obama has been hoping for this shutdown for two years but only because he, like so many others, assumed it would not last long. As the days pass with Senate Democrats refusing to go into a conference with House Republicans and Obama drawing a line in the sand, pressure may start to build on him to give a little. The financial markets are not collapsing today because of the belief the shutdown will be brief. Once that changes, the economic impact will change with it.

#### Plan is a huge win--- nuke posture key legacy issue

**Goldberg 2013** (Mark Leon Goldberg, June 19, 2013, “With an Eye To Legacy, President Obama Proposes New Nuclear Arms Reductions,” http://www.undispatch.com/with-an-eye-to-legacy-president-obama-proposes-new-nuclear-arms-reductions#sthash.OMDQbJwK.dpuf)

**It was clear from the outset of his presidency that nuclear non proliferation and disarmament was going to be a key legacy issue for Barack Obama.** In April 2009, on **his first trip to Europe as President, Obama outlined an ambitious re-posturing of America’s nuclear arsenal.** His Prague speech declared as US policy a commitment to a nuclear weapons free world. Since then, the machines of the American foreign policy and defense bureaucracy has been taking steps to fulfill that vision in a process known as the “Nuclear Posture Review.”¶ There has been a great deal of action on that front.¶ In his first visit to the United Nations as President, Obama chaired a Security Council meeting on nuclear disarmament–the first time a sitting American president presided over the Security Council. In 2010, the United States and Russia formally entered into an agreement over nuclear arms reductions, known as the New START Treaty. And also in 2010, the USA kicked off a biannual international summit on nuclear security.¶ Standing before the Brandenburg Gate in Berlin, President Obama built on those policies in new and important ways. The headline grabber: he proposed a further one third reduction in nuclear arms above what was agreed to in New START. Beyond that, he is directing the defense establishment to pro-actively reduce the role that nuclear weapons play in America’s defense strategies.¶ Via the White House the new guidance:¶ directs DOD to strengthen non-nuclear capabilities and reduce the role of nuclear weapons in deterring non-nuclear attacks.¶ directs DOD to examine and reduce the role of launch under attack in contingency planning, recognizing that the potential for a surprise, disarming nuclear attack is exceedingly remote. While the United States will retain a launch under attack capability, DOD will focus planning on the more likely 21st century contingencies.¶ codifies an alternative approach to hedging against technical or geopolitical risk, which will lead to more effective management of the nuclear weapons stockpile.¶ The premise of this policy is that America’s greatest threats are not of the kind that can be mitigated through traditional nuclear deterrence, and the USA is safer in the long run when there are fewer nuclear weapons around.¶ This makes sense, but **the fact that we are having this conversation 25 years after the end of the cold war goes to show just how deeply embedded old school nuclear weapons thinking is in America’s foreign policy establishment. Obama is** challenging those ideas **and premises in a way that future historians will likely regard as a turning point for global nuclear security. This is clearly a legacy issue for the President.** But more importantly, it one step toward a safer, nuclear free world.

#### Winners win

Green 2010 (David Michael Green, professor of political science at Hofstra University, “The Do-Nothing 44th President” June 11, google)

Moreover, there is a continuously evolving and reciprocal relationship between presidential boldness and achievement. In the same way that nothing breeds success like success, nothing sets the president up for achieving his or her next goal better than succeeding dramatically on the last go around. This is absolutely a matter of perception, and you can see it best in the way that Congress and especially the Washington press corps fawn over bold and intimidating presidents like Reagan and George W. Bush. The political teams surrounding these presidents understood the psychology of power all too well. They knew that by simultaneously creating a steamroller effect and feigning a clubby atmosphere for Congress and the press, they could leave such hapless hangers-on with only one remaining way to pretend to preserve their dignities. By jumping on board the freight train, they could be given the illusion of being next to power, of being part of the winning team. And so, with virtually the sole exception of the now retired Helen Thomas, this is precisely what they did.

#### Court involvement allows Obama to blame the Court

Rosenberg 1991 (Gerald Rosenberg, assistant professor of political science at the University of Chicago, The Hollow Hope, p. 34)

Finally, court orders can simply provide a shield or cover for administrators fearful of political reactions. This is particularly helpful for elected officials who can implement required reforms and protest against them at the same time. This pattern is often seen in the school desegregation area. Writing in 1967, one author noted that “a court order is useful in that it leaves the official no choice and a perfect excuse” (Note 1967, 361). While the history of court ordered desegregation unfortunately shows that officials often had many choices other than implementing court orders, a review of school desegregation cases did find that “many school boards pursue from the outset a course designed to shift the entire political burden of desegregation on the courts” (Kalodner 1978, 3). This was also the case in the Alabama mental health litigation where “the mental health administrators wanted [Judge] Johnson to take all the political heat associated with specific orders while they enjoyed the benefits of his action” (Cooper 1988, 186). Thus Condition IV: Courts may effectively produce significant social reform by providing leverage, or a shield, cover, or excuse, for persons crucial to implementation who are willing to act.

#### Plan’s announced in June

Reuters 2013 (Jewish Daily, June 21, 2013, “Supreme Tension as Big Cases Loom for Top Court,” http://forward.com/articles/179046/supreme-tension-as-big-cases-loom-for-top-court/?p=all#ixzz2cuIQ3iXH)

Despite the mystery over how the nine justices will decide the big cases, there is no real mystery about the delay. Late June at the Supreme Court is crunch time, as the justices - not unlike college students finishing term papers late into the night - push up against their self-imposed, end-of-June deadline.¶ In 2003, the last time the justices had college affirmative action and gay rights together on the docket, decisions came on June 23 and June 26, respectively. Last year, their decision on the constitutionality of the 2010 healthcare law signed by President Barack Obama came on the last day, June 28, before the justices recessed for the summer.¶ Justice Ruth Bader Ginsburg has called June “flood season.”

#### The DA isn’t intrinsic- our interp is supported by theory- congress considers issues serially

Edwards 2000 [Distinguished Professor of Political Science, director of the Center for Presidential Studies, Texas A&M University (George C. III, March. “Building Coalitions.” Presidential Studies Quarterly, Vol. 30, Iss. 1.)]

Besides not considering the full range of available views, members of Congress are not generally in a position to make trade-offs between policies. Because of its decentralization, Congress usually considers policies serially, that is, without reference to other policies. Without an integrating mechanism, members have few means by which to set and enforce priorities and to emphasize the policies with which the president is most concerned. This latter point is especially true when the opposition party controls Congress.

#### Political capital theory is bankrupt

Dickinson2009 (Matthew Dickinson, professor of political science at Middlebury College and taught at Harvard University, where he also received his Ph.D., “Sotomayor, Obama and Presidential Power” May, google)

What is of more interest to me, however, is what her selection reveals about the basis of presidential power. Political scientists, like baseball writers evaluating hitters, have devised numerous means of measuring a president’s influence in Congress. I will devote a separate post to discussing these, but in brief, they often center on the creation of legislative “box scores” designed to measure how many times a president’s preferred piece of legislation, or nominee to the executive branch or the courts, is approved by Congress. That is, how many pieces of legislation that the president supports actually pass Congress? How often do members of Congress vote with the president’s preferences? How often is a president’s policy position supported by roll call outcomes? These measures, however, are a misleading gauge of presidential power – they are a better indicator of congressional power. This is because how members of Congress vote on a nominee or legislative item is rarely influenced by anything a president does. Although journalists (and political scientists) often focus on the legislative “endgame” to gauge presidential influence – will the President swing enough votes to get his preferred legislation enacted? – this mistakes an outcome with actual evidence of presidential influence. Once we control for other factors – a member of Congress’ ideological and partisan leanings, the political leanings of her constituency, whether she’s up for reelection or not – we can usually predict how she will vote without needing to know much of anything about what the president wants. (I am ignoring the importance of a president’s veto power for the moment.) Despite the much publicized and celebrated instances of presidential arm-twisting during the legislative endgame, then, most legislative outcomes don’t depend on presidential lobbying. But this is not to say that presidents lack influence. Instead, the primary means by which presidents influence what Congress does is through their ability to determine the alternatives from which Congress must choose. That is, presidential power is largely an exercise in agenda-setting – not arm-twisting. And we see this in the Sotomayer nomination. Barring a major scandal, she will almost certainly be confirmed to the Supreme Court whether Obama spends the confirmation hearings calling every Senator or instead spends the next few weeks ignoring the Senate debate in order to play Halo III on his Xbox. That is, how senators decide to vote on Sotomayor will have almost nothing to do with Obama’s lobbying from here on in (or lack thereof). His real influence has already occurred, in the decision to present Sotomayor as his nominee.

### 2AC ! Defense--- EPA BAD

#### Energy price shocks don’t cause war – prefer our studies

Samuel Bazzi (Department of Economics at University of California San Diego) and Christopher Blattman (assistant professor of political science and economics at Yale University) November 2011 “Economic Shocks and Conflict: The (Absence of?) Evidence from Commodity Prices” <http://www.chrisblattman.com/documents/research/2011.EconomicShocksAndConflict.pdf?9d7bd4>

VI. Discussion and conclusions A. Implications for our theories of political instability and conflict The state is not a prize?—Warlord politics and the state prize logic lie at the center of the most influential models of conflict, state development, and political transitions in economics and political science. Yet we see no evidence for this idea in economic shocks, even when looking at the friendliest cases: fragile and unconstrained states dominated by extractive commodity revenues. Indeed, we see the opposite correlation: if anything, higher rents from commodity prices weakly 22 lower the risk and length of conflict. Perhaps shocks are the wrong test. Stocks of resources could matter more than price shocks (especially if shocks are transitory). But combined with emerging evidence that war onset is no more likely even with rapid increases in known oil reserves (Humphreys 2005; Cotet and Tsui 2010) we regard the state prize logic of war with skepticism.17 Our main political economy models may need a new engine. Naturally, an absence of evidence cannot be taken for evidence of absence. Many of our conflict onset and ending results include sizeable positive and negative effects.18 Even so, commodity price shocks are highly influential in income and should provide a rich source of identifiable variation in instability. It is difficult to find a better-measured, more abundant, and plausibly exogenous independent variable than price volatility. Moreover, other time-varying variables, like rainfall and foreign aid, exhibit robust correlations with conflict in spite of suffering similar empirical drawbacks and generally smaller sample sizes (Miguel et al. 2004; Nielsen et al. 2011). Thus we take the absence of evidence seriously. Do resource revenues drive state capacity?—State prize models assume that rising revenues raise the value of the capturing the state, but have ignored or downplayed the effect of revenues on self-defense. We saw that a growing empirical political science literature takes just such a revenue-centered approach, illustrating that resource boom times permit both payoffs and repression, and that stocks of lootable or extractive resources can bring political order and stability. This countervailing effect is most likely with transitory shocks, as current revenues are affected while long term value is not. Our findings are partly consistent with this state capacity effect. For example, conflict intensity is most sensitive to changes in the extractive commodities rather than the annual agricultural crops that affect household incomes more directly. The relationship only holds for conflict intensity, however, and is somewhat fragile. We do not see a large, consistent or robust decline in conflict or coup risk when prices fall. A reasonable interpretation is that the state prize and state capacity effects are either small or tend to cancel one another out. Opportunity cost: Victory by default?—Finally, the inverse relationship between prices and war intensity is consistent with opportunity cost accounts, but not exclusively so. As we noted above, the relationship between intensity and extractive commodity prices is more consistent with the state capacity view. Moreover, we shouldn’t mistake an inverse relation between individual aggression and incomes as evidence for the opportunity cost mechanism. The same correlation is consistent with psychological theories of stress and aggression (Berkowitz 1993) and sociological and political theories of relative deprivation and anomie (Merton 1938; Gurr 1971). Microempirical work will be needed to distinguish between these mechanisms. Other reasons for a null result.—Ultimately, however, the fact that commodity price shocks have no discernible effect on new conflict onsets, but some effect on ongoing conflict, suggests that political stability might be less sensitive to income or temporary shocks than generally believed. One possibility is that successfully mounting an insurgency is no easy task. It comes with considerable risk, costs, and coordination challenges. Another possibility is that the counterfactual is still conflict onset. In poor and fragile nations, income shocks of one type or another are ubiquitous. If a nation is so fragile that a change in prices could lead to war, then other shocks may trigger war even in the absence of a price shock. The same argument has been made in debunking the myth that price shocks led to fiscal collapse and low growth in developing nations in the 1980s.19 B. A general problem of publication bias? More generally, these findings should heighten our concern with publication bias in the conflict literature. Our results run against a number of published results on commodity shocks and conflict, mainly because of select samples, misspecification, and sensitivity to model assumptions, and, most importantly, alternative measures of instability. Across the social and hard sciences, there is a concern that the majority of published research findings are false (e.g. Gerber et al. 2001). Ioannidis (2005) demonstrates that a published finding is less likely to be true when there is a greater number and lesser pre-selection of tested relationships; there is greater flexibility in designs, definitions, outcomes, and models; and when more teams are involved in the chase of statistical significance. The cross-national study of conflict is an extreme case of all these. Most worryingly, almost no paper looks at alternative dependent variables or publishes systematic robustness checks. Hegre and Sambanis (2006) have shown that the majority of published conflict results are fragile, though they focus on timeinvariant regressors and not the time-varying shocks that have grown in popularity. We are also concerned there is a “file drawer problem” (Rosenthal 1979). Consider this decision rule: scholars that discover robust results that fit a theoretical intuition pursue the results; but if results are not robust the scholar (or referees) worry about problems with the data or empirical strategy, and identify additional work to be done. If further analysis produces a robust result, it is published. If not, back to the file drawer. In the aggregate, the consequences are dire: a lower threshold of evidence for initially significant results than ambiguous ones.20

#### No impact

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

**UQ O/W Link--- Their card says it will be based on ideological support of corporations**

Bill **Blum 9/5**/13, Former judge and death penalty defense attorney, http://www.truthdig.com/report/item/supreme\_court\_preview\_a\_storm\_is\_on\_the\_horizon\_20130905/?ln

Environmental Protection (Environmental Protection Agency v. EME Homer City Generation) At the request of the Obama administration, the American Lung Association and environmental groups, the court has agreed to take up a federal appellate ruling that had invalidated the Environmental Protection Agency’s Cross-State Air Pollution rule, which sought to enforce the Clean Air Act by setting much-needed limits on nitrogen oxides and sulfur dioxide emissions from coal-fired power plants in 28 eastern states. **Although some observers see the court’s decision to hear the EME case as a sign of support for the EPA, the Roberts court has a dismal record on environmental protection, aligning itself time and again on the side of corporate interests** **and polluters**. In 2008, in Exxon v. Baker, the court voted 5-3 to reduce the punitive damages awarded to the victims of the Valdez oil spill from $2.5 billion to $500 million, a mere pittance of the oil giant’s annual profits, leaving more than 30,000 people whose livelihoods and community were destroyed by the disaster with a sum completely inadequate to make up for their losses. Last term, **the court continued its beneficence toward big business**, ruling unanimously that farmers could not use Monsanto’s patented genetically altered soybeans to create new seeds without paying the company a hefty fee. **Expect more of the same going forward, this time on behalf of coal companies**.

#### This DA is incoherent--- lots of other controversial cases coming up--- make them provide a specific piece of spillover evidence

Slattery 9/17 (Elizabeth Slattery, September 17, 2013, “Preview of Next Supreme Court Term,” The Foundry, http://blog.heritage.org/2013/09/17/preview-of-next-supreme-court-term/)

Monday, October 7, marks the beginning of the Supreme Court’s next term. The last term included a number of high-profile cases involving voting rights, same-sex marriage, drug-sniffing dogs, and racial preferences in college admissions. So what is on deck for this next term?¶ There are a number of cases already lined up. Some of the potentially big cases are:¶ McCutcheon v. Federal Election Commission: Are aggregate limits on contributions to federal candidates, political action committees, and party committees constitutional?¶ McCullen v. Coakley: Can a state ban pro-life speech outside abortion clinics while allowing pro-abortion speech?¶ Town of Greece v. Galloway: Does a town violate the Establishment Clause by opening its board meetings with a prayer?¶ Schuette v. Coalition to Defend Affirmative Action: May states limit the use of racial preferences by amending their constitutions?¶ Bond v. United States: What is the scope of the Treaty Power? Can the President, the Senate, and a foreign country conspire to expand the powers of the federal government through treaties?¶ National Labor Relations Board v. Noel Canning: Who decides when Congress is in “recess” for the purpose of making presidential appointments: the President or the Senate?

#### The plan is DC District Court

Madhani 2011 (Aamer Madhani, June 15, 2011, “Lawmakers Sue Obama and Gates Over Libya,” National Journal, http://www.nationaljournal.com/nationalsecurity/lawmakers-sue-obama-and-gates-over-libya-20110615)

A bipartisan group of lawmakers has filed a federal lawsuit against President Obama and Defense Secretary Robert Gates, asking a court to prevent the administration from using U.S. funds for military action in Libya.¶ The lead plaintiffs, Rep. Dennis Kucinich, D-Ohio, and Rep. Walter Jones, R-N.C., filed the lawsuit at U.S. District Court in Washington on Wednesday afternoon, as the White House prepared to deliver a report to Congress to address a June 3 House resolution calling for Obama to answer what his ultimate goals are in Libya and why he hadn’t sought congressional authorization for U.S. troop involvement.¶ The White House did not address specific concerns raised in the lawsuit but noted that the administration is moving to do so.¶ "I would simply say that the report that we will be sending out to Congress later today answers a lot of questions that members have, continues a process of consultation that has been broad and deep and consistent," said White House Press Secretary Jay Carney.¶ From the onset of the Libya mission, the White House has underscored that U.S. involvement would be limited, and noted that American forces contribution has centered on providing NATO command with intelligence capabilities and refueling of aircraft enforcing a no-fly zone.¶ In addition to Kucinich and Jones, the plaintiffs are Democratic Reps. Michael Capuano of Massachusetts and John Conyers of Michigan; and Republican Reps. Roscoe Bartlett of Maryland, Dan Burton of Indiana, Howard Coble of North Carolina, John Duncan of Tennessee, Tim Johnson of Illinois, and Ron Paul of Texas.¶ "For too long, the Constitution has been put on the back shelf for so long when it comes to the issue of war," Jones said in an interview with National Journal. "I’m sure the drafters of the Constitution would be with us. For too long the Congress has stood in the stands and not been on the field when it comes to the issue of the war."¶ Among the arguments made in the 36-page lawsuit, the lawmakers contend that the president violated the law by going to war in Libya without a declaration of war from Congress as required by the War Powers Resolution. They also argue that the administration is violating the North Atlantic Treaty, which “allows only for military actions in defense of a member state” and requires that any U.S. involvement in a NATO action occur only in “accordance with [the] respective constitutional processes” of the United States.

#### It’s normal means and shields Supreme Court involvement

Tobias 1993 (Carl Tobias, Professor of Law, University of Montana, September 1993, “The D.C. Circuit as a National Court,” University of Miami Law Review, Lexis)

Many aspects of the D.C. Circuit's caseload warrant reliance on nationwide pools. The court's docket, although not unique, differs significantly from the caseloads of the remaining circuit courts. Most appeals to the D.C. Circuit are national in several respects, particularly in terms of where the suits originate and the impact of the court's decisions. Much of this is attributable to the District of Columbia's position as the seat of the federal government.¶ In some statutes, Congress has specifically authorized individuals, who claim that the United States has harmed them anywhere in the country, to sue the government in Washington, D.C. 87 In other statutes, principally social legislation such as environmental measures, Congress requires persons challenging certain administrative decisions to appeal directly from the agency to the D.C. Circuit. 88 In the District of Columbia, parties also institute actions involving disputes between the three branches of the federal government and between those branches and state and local governments.¶ This federal inter-branch litigation includes bitter fights between the Congress and the Executive over raw political power, high principle, and questions of the respective branches' authority to act, especially in areas that trench on one another's power. Additional cases implicate disagreements over the country's most cherished symbols and sacred institutions, such as the flag, religion, delicate issues of national security, the authority to dispatch troops into international combat, and even the prosecution of high-ranking public officials. 89¶ Nearly three-quarters of the D.C. Circuit's docket comprise exceedingly complex suits which seek review of federal administrative agency action. Many of these "cases arise under new statutory or regulatory regimes," have multiple issues or parties, present novel questions and [\*175] innovative arguments, and are extremely complicated. 90 A number of the actions involve cutting-edge issues of science, technology, economics, and ethics. Some of the lawsuits implicate difficult public policy choices about allocating scarce societal resources that Congress lacks either the substantive expertise or the political will to resolve. 91¶ Thus, most of the D.C. Circuit's caseload contrasts markedly with the dockets of other appeals courts. Many of the D.C. Circuit's suits bear little relationship to the geographic area where the court is situated and certain of the cases involve constitutional issues. These lawsuits, particularly those that seek review of federal administrative agency determinations, affect millions of Americans and have national and international ramifications.

#### Normal means is end-of-term announcement--- solves the link

Mondak 1992 (Jeffery J. Mondak, assistant professor of political science @ the University of Pittsburgh. “Institutional legitimacy, policy legitimacy, and the Supreme Court.” American Politics Quarterly, Vol. 20, No. 4, Lexis)

The process described by the political capital hypothesis acts as expected in the laboratory, and the logic of the link between institutional and policy legitimacy has thus gained strong empirical corroboration. However, the dynamic's pervasiveness defies precise estimation due to the limitations of available public opinion data. Still, the results reported here are provocative. First, this view of legitimation may apply to institutions beyond the Supreme Court. Consequently, efforts to use this theory in the study of other institutions may yield evidence supportive of a general process. A second concern is how the Court responds to its institutional limits. Specifically, strategy within the Court can be considered from the context of legitimacy. For example, what tactics may the Court employ to reduce the erosion of political capital? By releasing controversial rulings at the end of a term, for instance, the Court may afford itself a healing period, a time to repair damaged credibility prior to the next round of efforts at conferring policy legitimacy. This suggests a third issue, the manner in which institutional approval is replenished. Does institutional support return to some equilibrium once dispute surrounding a particular ruling fades, or must the Court release popular edicts to offset the effects of its controversial actions?

#### Controversial decisions boost capital

Ginsburg, 2009 (Tom Ginsburg, professor of law, the University of Chicago Law School, 9 Chi. J. Int'l L. 499, Winter, lexis)

In a recent contribution, David Law argues that courts can, counterintuitively, enhance their power by making unpopular or risky decisions--so long as the decisions generate compliance. 56 The key is to think of the court as interested in developing a reputation for generating effective focal points, in the form of decisions that are complied with. As the court is [\*513] successful in issuing such decisions, people will adjust their expectations of others' responses to future decisions, generating a potential cascade of compliance. Furthermore, from the perspective of an audience member evaluating the probability of compliance in a future case, it is surely more impressive that the court has generated compliance in an unpopular case than in a popular one. A risky and unpopular decision actually shores up the court's long-term reputation for generating focal points. 57

### PQD DA

#### 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.

#### They have standing/political question doctrine isn’t a problem/ripeness

LeMar 2003 (Andrew D. LeMar, JD Indiana U School of Law, “War Powers: What Are They Good for?: Congressional Disapproval of the President's Military Actions and the Merits of a Congressional Suit Against the President,” Indiana Law Journal, Volume 78, Issue 3, http://ilj.law.indiana.edu/articles/78/78\_3\_LeMar.pdf)

With impeachment an unlikely option in this hypothetical situation, Congress must¶ turn to the judiciary in order to regain the war-making powers that Presidents have¶ taken from it over the past six decades. The erosion of congressional war powers has¶ gone on long enough, and not even the War Powers Resolution has been able to stop it.¶ There is a framework in place for Congress to launch a successful suit against the¶ President, if necessary. Dellums and Campbell both have their shortcomings; however,¶ those shortcomings will not prevent future Congresses from asserting their¶ constitutional war powers in court, and enjoining the President from disregarding¶ Congress's law. Dellums shows that this claim would be ripe for judicial review, and¶ Campbell provides a basis for congressional standing and the justiciability of the¶ claim. All of this analysis points to Congress regaining its constitutional war-making¶ powers with the help of a federal court and enjoining the President from further¶ military action.

**No risk of great power conflict in Central Asia: incentives to de-escalate and stable balance of power**

Zhao **Huasheng**, director of the Center for Russia and Central Asia Studies at Fudan University, February **2005**, CEF Quarterly, http://www.silkroadstudies.org/new/docs/CEF/CEF\_Quarterly\_Winter\_2005.doc.pdf, p. 31

**China, Russia, and the United States will not go to open confrontation** for several reasons. Generally speaking, the relations of the three powers in Central Asia depend on their general relations. In other words, if their general relations sour, their relations in Central Asia will go tense or intensify. Otherwise, **if their general relations are good, their relations in Central Asia will not be hostile** and openly confrontational. Conversely, in spite of the tripartite configuration among the three powers, especially the confrontation between Russia and the United States, **like two tigers gazing at each other** in their military bases in Tajikistan and Kyrgyzstan, **none of the three powers wants to undermine bilateral relations on** the parochial issue of **Central Asia. The coexistence of the three powers** in Central Asia **restrains their open confrontation** as well. **None of the three powers intends to ally with one against the other.** Or, none is pleased to see a united front formed by two against one. At the same time, none wants to see Central Asia to be monopolized by one power. Therefore, the game played by three powers is good for the balance of power and not for open confrontation in any forms.

#### Circumvention

#### Legitimacy--- anwered on solvency