### 1AC PQD Adv

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

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

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

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

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

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

#### This is key to avert executive groupthink

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

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

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

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

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

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

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

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

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

Ignatius 2013 (David Ignatius, February 22, 2013, “Out: Team of rivals. In: Obama’s guys.,” Washington Post, http://www.washingtonpost.com/opinions/david-ignatius-in-obamas-new-cabinet-rivals-out-loyalists-in/2013/02/22/13f2f27e-7c73-11e2-82e8-61a46c2cde3d\_story.html)

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

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

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

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

### 1AC/2AC PQD Adv--- Asia Pivot Groupthink Impact

#### Groupthink causes failure of the Asia pivot

Tsai 2013 (Sabrina Tsai, Research Fellow at Project 2049 Institute, September 2013, “Obama’s Second Term in the Asia-Pacific Region: Reflecting on the Past, Looking to the Future,” Project 2049, http://project2049.net/documents/Tsai\_Obama\_Second\_Term\_in\_Asia\_Pacific\_Region.pdf)

What effect will these personnel changes in Obama’s foreign policy team have on the ¶ U.S. Asia policy? It remains unclear. However, it is speculated that by assembling a team ¶ where all the top players are going in the same direction and have notably close relations ¶ with the President, there could be a tendency for groupthink.86 Some speculate that there is a potential for a more “centralized” policymaking process dominated by the ¶ White House, with fewer strong dissenting voices and less debate injected into the ¶ policymaking process compared to the first four years of Obama’s presidency.87 One ¶ other effect – a widely speculated one – could be reduced emphasis on the ¶ “rebalancing,” which some circles have criticized for being more symbolic than ¶ substantive. ¶ Not only are leadership changes within the Obama Administration important for the ¶ future of Asia policy, but also other new vectors for the region are at play as Obama’s ¶ second term was met by a wave of regional leadership changes. Former-Japanese Prime ¶ Minister Shinzo Abe resumed office in December 2012, having held the position ¶ previously from 2006 to 2007; China’s 18th Party Congress in 2012 brought in the fifth ¶ generation of new leaders, with Xi Jinping as the General Secretary of the Chinese ¶ Communist Party; Park Geun-hye was inaugurated as South Korea’s first female ¶ president in February 2013; Kim Jong-un succeeded his father as the supreme leader of ¶ North Korea after Kim Jong-il’s death in November 2011. The leadership changes in ¶ Northeast Asia present a new security environment for the Obama Administration to ¶ make sense of and maneuver carefully.¶ Conclusion¶ The Obama Administration’s second-term objectives in the Asia-Pacific, though largely ¶ the same in rhetoric, can only be truly measured by the level of commitment ¶ demonstrated by officials and the allocation of limited resources. The “rebalance” to ¶ Asia has faced some setbacks with the flurry of personnel changes and the lack of an ¶ obvious point-person for Asia within the Administration. With the original strong ¶ proponents of the “rebalance” to Asia, Hillary Clinton and Kurt Campbell, now out of ¶ office, and the results of new leadership in greater Asia beg the question of U.S. ¶ credibility in maintaining its strategic emphasis in the Asia-Pacific. In the coming years, ¶ the strategic goals of maintaining close ties with alliance partners, managing China’s ¶ rise and contingencies on the Korean peninsula, ensuring free and safe trade for ¶ American transnational business interests, and injecting liberal ideologies such as civil ¶ liberties into societies in transition will likely remain as some of the top priorities of the ¶ Administration for Asia. The challenge will be how the officials in Obama’s second term ¶ carry out these objectives.

#### Solves Asia wars

Barno and Bensahel 2012 (David Barno, Lieutenant General, Center for a New American Security Senior Advisor and Senior Fellow, Nora Bensahel, Ph.D., CNAS Deputy Director of Studies and Senior Fellow, 1/6/12, You Can't Have It All, www.cnas.org/node/7641)

The pivot to the Asia-Pacific is essential because the region stands poised to become the centerpiece of the 21st-century global economy. By 2015, East Asian countries are expected to surpass North America and the eurozone to become the world's largest trading bloc. Market opportunities will only increase as the region swells by an additional 175 million people by 2030. As America's economic interests in the Asia-Pacific grow, its diplomatic and military presence should grow to defend against potential threats to those interests.¶ From the perspective of the United States and its Asian allies, China and North Korea represent the most serious military threats to regional security. China's military modernization continues to progress, and its foreign policy toward its neighbors has become increasingly aggressive over the past two years. Meanwhile, the death of Kim Jong Il means that nuclear-armed North Korea has begun a leadership transition that could lead to greater military aggressiveness as his son Kim Jong Un seeks to consolidate his power and demonstrate control. In light of these potential dangers, several Asian nations have asked the United States to strengthen its diplomatic and military presence in the region so it can remain the ultimate guarantor of peace and security. A bolstered U.S. presence will reassure allies who worry about American decline by clearly conveying an unwavering commitment to Asian security.

#### Asia conflict likely and goes nuclear war

Landy 2000 (Jonathan Landy, National Security expert at Knight Ridder, March 10, 2000, Lexis)

Few if any experts think China and Taiwan, North Korea and South Korea, or India and Pakistan are spoiling to fight. But even a minor miscalculation by any of them could destabilize Asia, jolt the global economy and even start a nuclear war. India, Pakistan and China all have nuclear weapons, and North Korea may have a few, too. Asia lacks the kinds of organizations, negotiations and diplomatic relationships that helped keep an uneasy peace for five decades in Cold War Europe. “Nowhere else on Earth are the stakes as high and relationships so fragile,” said Bates Gill, director of northeast Asian policy studies at the Brookings Institution, a Washington think tank. “We see the convergence of great power interest overlaid with lingering confrontations with no institutionalized security mechanism in place. There are elements for potential disaster.” In an effort to cool the region’s tempers, President Clinton, Defense Secretary William S. Cohen and National Security Adviser Samuel R. Berger all will hopscotch Asia’s capitals this month. For America, the stakes could hardly be higher. There are 100,000 U.S. troops in Asia committed to defending Taiwan, Japan and South Korea, and the United States would instantly become embroiled if Beijing moved against Taiwan or North Korea attacked South Korea. While Washington has no defense commitments to either India or Pakistan, a conflict between the two could end the global taboo against using nuclear weapons and demolish the already shaky international nonproliferation regime. In addition, globalization has made a stable Asia \_ with its massive markets, cheap labor, exports and resources \_ indispensable to the U.S. economy. Numerous U.S. firms and millions of American jobs depend on trade with Asia that totaled $600 billion last year, according to the Commerce Department.

### 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.

#### 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.

#### 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.

#### Nukes education outweighs--- 1AC Willis ev says “bomb power” is the root of ALL OTHER executive war powers authority--- not a role or mission so it’s unique

#### 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.

### PQD

**Agreement aren’t going to solve warming**

**Walsh 2011** [Bryan Walsh Nov. 29, 2011 “Another Year, Another U.N. Climate-Change Summit: Expect Big Talk in Durban, and Few Results” http://content.time.com/time/health/article/0,8599,2100430,00.html]

But here's one prediction I can make without leaving my office: **there will be no comprehensive international climate deal hammered out at Durban, just as there wasn't one at Cancún** last year **or Copenhagen** the year before. And **there almost certainly won't be one by 2015** — a goal the Europeans have set — or maybe by 2020, as the U.S. has grudgingly targeted. **The dream of a single global climate deal is likely to remain unfulfilled** — and the sooner we accept that fact, the sooner we can start focusing our energy on more effective ways to fight climate change.¶ The reality is that **international climate negotiations have remained stuck on the same issues for over 15 years**, going back to the original negotiations over the Kyoto Protocol, which was supposed to reduce carbon output by signatory countries by an average of 5.2% below 1990 levels. **Back then** — to sketch out the different sides broadly — **Europeans were pushing hard for comprehensive carbon cuts, major developing countries mostly just wanted to ensure that they wouldn't be required to do anything, and the U.S. was skeptical** **about the whole process**. In the end — thank in part to some last-minute negotiations by then Vice President Al Gore — the Kyoto Protocol was signed, mandating carbon cuts by 2012 among developed nations while setting up climate aid for developing ones.

### 2AC PIC

#### Perm do both

#### Perm do the CP--- restrict isn’t absolute

Google Dictionary

re·strict

riˈstrikt/Submit

verb

1.

put a limit on; keep under control.

"some roads may have to be closed at peak times to restrict the number of visitors"

#### Kills cooperation post-attack

Levi 2008

There is one important distinction: following such a terrorist attack, the United States may have an interest in obtaining North Korean co- operation in stopping any further attacks that are already under way using other weapons or materials that have previously been deliberate- ly transferred. Compelling North Korean cooperation will require re- taliation that is strong enough to maintain U.S. credibility but that is restrained enough to leave open the possibility of additional action if North Korean leaders do not cooperate in preventing further attacks. This would weigh against regime change as an appropriate response to a terrorist attack that used North Korean nuclear weapons or mate- rials—that approach would leave North Korean leaders with no moti- vation to cooperate further. It suggests that retaliation be strong but limited.

#### Whole plan key--- middle ground fails

Levi 2008

One might argue that states could be prodded even more to share information about thefts if the United States and others threatened consequences for failing to do so. Walking this line, though, would be prohibitively difficult, and could easily become counterproductive. Take Pakistan as an example. The United States would need a credible capability to attribute materials to Pakistan and a credible prospect of some significant punishment following attribution. It would, however, be extremely difficult to determine whether capable Pakistani officials had advance warning of a leak. At the same time, any threat would dis- courage Pakistan from providing access to nuclear facilities as part of cooperative security programs; would make it extremely difficult to elicit Pakistani cooperation in the aftermath of an attack, in order to prevent further strikes; and would dissuade Pakistan from contribut- ing to a nuclear signature database (though this particular prospect is likely remote in the near future.) The potential value of distinguishing this one case—state failure to notify others of a theft—is outweighed by the damage it would cause to broader security and attribution efforts.

#### Negligence doctrine fails

Levi 2008

Threatening retaliation against countries like Russia and Pakistan in response to terrorist attacks stemming from lax security practices is unwise. It undercuts efforts to work cooperatively with those states to improve their nuclear security; dissuades those states from informing others if they discover that their nuclear weapons or materials are ever stolen, thus undermining any efforts to recover them; and makes it difficult to work with those states in the aftermath of an attack to pre- vent further detonations. At the same time, U.S. threats are likely to do little to actually encourage many critical states to take nuclear terror- ism more seriously—Russia and Pakistan, in particular, face terrorist threats of their own, and the prospect of nuclear attacks on Moscow or Islamabad by Chechen separatists or Islamist radicals is surely greater motivation for strengthened nuclear security than the possibility that, following an attack on Washington, the United States might somehow retaliate. (To the extent that retaliatory threats are military in nature, they will also often be incredible; it is implausible, for example, that the United States would retaliate militarily against Russia. On the other hand, more plausible threats, such as economic or political ones, are far weaker.) Adapting deterrence to cases of lax security is likely to increase, rather than decrease, the nuclear terrorist threat. The United States should, in most cases, emphasize cooperation instead while ex- plicitly ruling out retribution.

#### NK gives them nukes anyway---- post dates the negligence doctrine so it’s legit

Kane 2012 (Samuel Kane, Research Associate at Global Solutions, Summer 2012, “Preventing Nuclear Terrorism: Nuclear Security, the Nonproliferation Regime, and the Threat of Terrorist Nukes,” Global Solutions, http://globalsolutions.org/files/public/documents/Sam-Kane-Preventing-Nuclear-Terrorism.pdf)

The threat of North Korean nuclear weapons falling into terrorist hands ¶ manifests itself primarily in the possibility that North Korea could, directly or ¶ indirectly, give nuclear weapons or materials to terrorist groups. Several of North ¶ Korea’s past actions demonstrate its general disregard for international ¶ nonproliferation norms. For instance, a 2010 UN report asserted that the regime ¶ was using a variety of illicit means to export nuclear technology to Iran and Syria, thus circumventing the UN sanctions that had been levied against it.53 In addition, ¶ North Korea was an active participant in AQ Khan’s nuclear proliferation network,¶ 54¶ and allegedly paid more than $3 million to senior members of the Pakistani military ¶ for access to nuclear knowledge and equipment.55 Such examples paint a picture of a ¶ regime not beholden to traditional norms that restrain governments from acts of ¶ nuclear proliferation. ¶ Moreover, North Korea’s diplomatic isolation on the world stage, coupled ¶ with the bleak state of its economy, puts the regime in a situation in which it may ¶ feel that it has nothing to lose by spreading nuclear materials, technology, and ¶ know-howto other states, or even a terrorist group. As one expert told the Council ¶ on Foreign Relations, in a 2010 interview also referenced in Section 1,“North Korea ¶ would sell just about anything to anyone.”¶ 56Though that expert was also quick to ¶ assert that no evidence has yet been presented that indicates that North Korea has ¶ sold nuclear assets to non-state actors, the regime’s past actions do not exactly ¶ assuage fears that such an event lies within the realm of possibility.

### 2AC Other CP

#### The commitment to calculated ambiguity undermines U.S. credibility-failure to respond with nukes would collapse deterrence

Fisher 2007 (Uri Fisher, PhD candidate in the Department of Political Science at the University of Colorado, February 2007, “Deterrence Terrorism and American Values, Homeland Security Affairs,” http://www.hsaj.org/?fullarticle=3.1.4)

Currently, the U.S. maintains a position of “calculated ambiguity” on how it will respond to a CBRN attack on its soil or against its interests abroad. The doctrine of calculated ambiguity garnered support when the Bush administration purportedly deterred Saddam Hussein from using biological or chemical weapons against U.S. forces during the first Gulf War in 1991. Secretary of State James Baker delivered a note to Iraq’s Foreign minister Tariq Aziz that cautioned Hussein that any use of these weapons could result in U.S. nuclear reprisals. The unclassified version of the 2002 National Security Presidential Directive (NSPD) 17 declares that the U.S. will reserve the right to respond with “overwhelming force” and keep open “all of its options” to a CBRN attack on the U.S., its interests, or its allies. In 2003, The Washington Times reported that the classified version of NSPD 17 made the willingness of the U.S. to respond with nuclear weapons to a CBRN attack more explicit. 14 Nevertheless, the U.S. is deliberately vague about its plans to respond to a CBRN attack. The strategic rationale for maintaining this ambiguity is to keep open a broad range of response options and approach potential events on a case-by-case basis. The vagueness of U.S. reprisal plans, however, does not support deterrence. The credibility of U.S. threats to retaliate suffers as a result of this ambiguity. While the use of language such as “overwhelming force” connotes a severe retaliation, this lack of clarity is not the best way to solidify the belief among terrorist-supporting regimes that their behavior puts them at severe risk. As one author notes, “Frequently, the bigger and more indiscriminate the threat, the less believable it is in the eyes of the target audience.” 15¶ In order to establish a deterrent mechanism that will dissuade rogue states from supporting terrorist organizations, the U.S. must develop a strong declaratory policy that clearly communicates a threat of punishment for those states that provide CBRN materials to terrorists. Strategies for dealing with rogue states assisting terrorist organizations that are severe and target assets of value to the regime will best reinforce deterrent mechanisms. As Ian Lesser argues, for deterrence to be viable against rogue regimes, the threat of retaliation for supporting or sheltering terrorist organizations must be both “massive” and “personal to the leadership.” 16 The U.S. policy of calculated ambiguity reinforces many of the internationally held stereotypes of the U.S. that negatively affect its ability to establish a credible deterrent threat. By avoiding direct language, the U.S. appears irresolute, noncommittal, and perhaps overly sensitive to public opinion.

#### And, a failure to follow through would make multiple deterrence failure inevitable- bluffing outweighs resolve

Sartori 2005 (Anne Sartori, Associate Professor of Political Science and Managerial Economics and Decision Sciences at Northwestern University, 2005, “Deterrence by diplomacy,” Princeton UP, pp. 105-109)

If my reputational argument is correct, the specification that I used¶ earlier is correct, and one that includes these two reputations variables¶ is not quite appropriate, because it includes two proxy variables for the¶ same concept—the defender’s reputation for honccty.3 Nevertheless, one might expect both reputations variables to have negative effects on deterrence failure, since they both are measures of reputations for honesty. One¶ also might expect both reputations variables to have positive effects on the¶ defender’s decision to defend if deterrence fails, since a defender is more¶ likely to follow through on its threats when it has a reputation for honesty.¶ I estimate the effects of these variables in a multivariate model as¶ described earlier, correcting for nonrandom selection and including the¶ natural ln of the balance of forces in the equation. ¶ Both of these reputational variables have the effects implied by my theory, as table 4.12 shows.¶ In the table, the second column shows the implication of deterrence theory’s reputational argument, the third column shows the implication of¶ my argument, and the fourth shows the estimated effect. (All results are¶ corrected for selection bias, though the table does not show the selection¶ estimates.) As the table shows, the challenger is less likely to attack a¶ defender with either kind of reputation for honesty than a defender with¶ a reputation for bluffing. A defender with either kind of reputation for¶ honesty is more likely to follow through on its threats, as is predicted by¶ lily theory—and not by deterrence theory’s reputational argument.¶ These findings show that reputations for honesty—as distinct from rep¶ utations for resolve—affect the course of international disputes. If reputations for honesty did not matter, one would not expect the “rep (honesty¶ minus resolve)” variable to have a negative effect on deterrence failure. II¶ anything. the reputations for resolve argument suggests that this variable ¶ should have a positive effect on deterrence failure; its posited effect on¶ the effect on the defender’s decision to light if deterrence fails is tindear¶ Ilw findings do nor show that reputations for resolve—as distinct from¶ reputations for honesty—have an independent effect. The effects of the¶ variable rcp honesty/resolve” can be explained by either theory because¶ the ‘Rep resolve” variable captures situations that could lead to a repu¶ tartan for resolve and could lead to a reputation for honesty. Moreover,¶ one of the implications of the reputations for resolve” argument is contradicted by the data: a challenger is less likely to attack a defender if the,¶ defender recently has acquiesced or had no dispute. Thus, the findings suggest either that both types of reputations affect the course of international disputes or that only reputations for honesty have an effect.¶ Some readers might argue that the variable “Rep (honesty itiinu¶ resolve)” does capture some instances of reputations for resolve, 4IiI¶ rrary to my earlier argument. That is, a defender that has no dispute in¶ the present period already is more likely to have a reputation for resolve¶ it may have no dispute because challengers hesitate to threaten a stat.¶ that they consider resolute. While there are not enough cases to break¶ the reputational variable down further, I have lonc one more check: I have¶ operationalized reputations for honesty in such a way that a defender sali¶ have a repLltati(m for honesty if it used dipmlomacy. If honesty in a previous¶ dispute when it was a challenger, lii this opetatuinaluiatuin, a state thai¶ is, at present, a defender has more ot a reputation for honesty if it was¶ a potential challenger in its previous dispute and it chose not to threaten¶ the use of force. This behavior does flot indicate that the state is a res¶ olute type. The results that ¡ discuss here are robust to this alternative¶ specification.¶ My robustness checks suggest that the defender’s reputation for honesty¶ matters, whether or flot a reputation for resolve also does so. However,¶ the results do not constitute definitive proof for at least two reasons. First,¶ when I do include both in the same equation, the estimate of the effect¶ of a reputation for honesty that comes from acquiescence or not having a¶ dispute on the defender’s decision to follow through on its threats is small¶ and imprecise. The estimate suggests that the effect is positive, hut does¶ not show with much certainty that there is no effect. The estimare of the¶ effect on the challenger’s decision, however, is large and precise. Second,¶ as I mentioned earlier, it is nor really appropriate to test my theory using¶ two proxy variables for reputations for honesty, rather than one variable¶ that measures these reputations.¶ In sum, reputations for honesty and reputations for resolve arc over¶ lapping concepts and are therefore difficult to distinguish empirically.¶ Nevertheless, the data suggest that my measure of reputations for hon¶ esty is capturing something different from deterrence theory’s concept of¶ reputations For resolve.¶ This work is not intended as a definitive test of the importance of repura.¶ lions for resolve. As T argued in chapter .3, it is theoretically quite possible¶ that states do acquire both types of reputations. More work remains ro¶ be done ro empirically evaluate the importance of reputations for resolve.¶ The implications of the model that I discuss at the beginning of the chapter¶ arc borne our by the data, when I analyze the data in a number of different¶ ways. The defender is more likely to succeed in deterring an attack, and¶ more likely ro follow through il deterrence fails, when it has a reputation¶ for honesty. This result is quite robust to alternative specifications and is¶ unlikely to he produced by two leading alternative explanations.¶ Ci INCLUSION¶ The empirical analyses in this chapter reveal two facts: when a state has a¶ reputation for honesty, it is substantially more likely to attain deterrence¶ success; when it has a reputation for bluffing, it is substantially more¶ likely to hack down if its threats fails to deter an attack. The second fact¶ explains the first. Defenders’ deterrent threats are more likely to succeed¶ (challengers arc less likely to attack alter hearing them) when they have¶ reputations for honesty precisely because defenders with reputations for honesty are more likely to mean what they say. Thus, as I suggested¶ earlier, a reputation for honesty helps the defender communicate that¶ it is willing to fight, but this ability comes at a cost: the defender must¶ actually be willing to fight more often if deterrence Fails in order to obtain¶ this greater credibility.¶ Earlier in this text, I argued that diplomacy often works because of¶ the existence of reputations for bluffing and for honesty in the international system. States often use their diplomacy honestly in order Ic) avoid¶ reputations for bluffing. Because so much of diplomacy is honest, states¶ often believe each others diplomacy so diplomacy can be an effective¶ tool of state.¶ The empirical analyses in this chapter corroborate that states’ decisions¶ about escalating international disputes are influenced heavily by whether¶ or not the defender recently has been seen as using its diplomacy hon¶ estly. This evidence suggests that the explanation of diplomacy this book¶ provides is a useful otie: diplomacy works, in part, because it is valuable;¶ slates have an incentive to use it honestly today in order to preserve their¶ ability to use it in the future.

### 2AC Deference

#### Deference makes irrational lashout more likely

Kellman 1989 (Barry Kellman, Professor of Law at Depaul University, December 1998, “Judicial Abdication of Military Tort Accountability: But Who is to Guard the Guards Themselves?,” Duke Law Journal, lexis)

In this era of thermonuclear weapons, America must uphold its historical commitment to be a nation of law. Our strength grows from the¶ resolve to subject military force to constitutional authority. Especially in¶ these times when weapons proliferation can lead to nuclear winter, when¶ weapons production can cause cancer, when soldiers die unnecessarily in¶ the name of readiness: those who control military force must be held¶ accountable under law. As the Supreme Court recognized a generation¶ ago,¶ the Founders envisioned the army as a necessary institution, but one¶ dangerous to liberty if not confined within its essential bounds. Their¶ fears were rooted in history. They knew that ancient republics had¶ been overthrown by their military leaders.¶ ... We cannot close our eyes to the fact that today the peoples of¶ many nations are ruled by the military.¶ We should not break faith with this Nation's tradition of keeping¶ military power subservient to civilian authority, a tradition which we¶ believe is firmly embodied in the Constitution.'¶ Our fears may be rooted in more recent history. During the decade¶ of history's largest peacetime military expansion (1979-1989), more than¶ 17,000 service personnel were killed in training accidents. 2 In the same¶ period, virtually every facility in the nuclear bomb complex has been revealed to be contaminated with radioactive and poisonous materials; the¶ clean-up costs are projected to exceed $100 billion.3 Headlines of fatal BIB bomber crashes, 4 the downing of an Iranian passenger plane,5 the¶ Navy's frequent accidents6 including the fatal crash of a fighter plane¶ into a Georgia apartment complex,7 remind Americans that a tragic¶ price is paid to support the military establishment. Other commentaries¶ may distinguish between the specific losses that might have been preventable and those which were the random consequence of what is undeniably a dangerous military program. This Article can only repeat the¶ questions of the parents of those who have died: "Is the military accountable to anyone? Why is it allowed to keep making the same mistakes? How many more lives must be lost to senseless accidents?"8¶ This Article describes a judicial concession of the law's domain,¶ ironically impelled by concerns for "national security." In three recent¶ controversies involving weapons testing, the judiciary has disallowed tort¶ accountability for serious and unwarranted injuries. In United States v.¶ Stanley, 9 the Supreme Court ruled that an Army sergeant, unknowingly¶ drugged with LSD by the Central Intelligence Agency, could not pursue¶ a claim for deprivation of his constitutional rights. In Allen v. United¶ States, 10 civilian victims of atmospheric atomic testing were denied a¶ right of tort recovery against the government officials who managed and¶ performed the tests. Finally, in Boyle v. United Technologies, 1 the¶ Supreme Court ruled that private weapons manufacturers enjoy immunity from product liability actions alleging design defects. A critical¶ analysis of these decisions reveals that the judiciary, notably the Rehnquist Court, has abdicated its responsibility to review civil matters involving the military security establishment. Standing at the vanguard of "national security" law,13 these three¶ decisions elevate the task of preparing for war to a level beyond legal accountability. They suggest that determinations of both the ends and¶ the means of national security are inherently above the law and hence¶ unreviewable regardless of the legal rights transgressed by these determinations. This conclusion signals a dangerous abdication of judicial responsibility. The very underpinnings of constitutional governance are¶ threatened by those who contend that the rule of law weakens the execution of military policy. Their argument-that because our adversaries¶ are not restricted by our Constitution, we should become more like our¶ adversaries to secure ourselves-cannot be sustained if our tradition of¶ adherence to the rule of law is to be maintained. To the contrary, the¶ judiciary must be willing to demand adherence to legal principles by assessing responsibility for weapons decisions. This Article posits that judicial abdication in this field is not compelled and certainly is not¶ desirable. The legal system can provide a useful check against dangerous¶ military action, more so than these three opinions would suggest. The¶ judiciary must rigorously scrutinize military decisions if our 18th century¶ dream of a nation founded in musket smoke is to remain recognizable in¶ a millennium ushered in under the mushroom cloud of thermonuclear¶ holocaust.¶ History shows that serious consequences ensue when the judiciary¶ defers excessively to military authorities. Perhaps the most celebrated¶ precedent for the deference to military discretion reflected in these recent¶ decisions is the Supreme Court's 1944 decision in Korematsu v. United States. 14 Korematsu involved the conviction of an American citizen of¶ Japanese descent for violating a wartime exclusion order against all persons of Japanese ancestry. That order, issued after Japan's attack on¶ Pearl Harbor, declared that "the successful prosecution of the war requires every possible protection against espionage and against sabotage to¶ national-defense material, national-defense premises, and national-defense utilities." 15 Justice Hugo Black's opinion for the Court, upholding¶ the exclusion order and Korematsu's conviction, stressed the hardships¶ occasioned by war and held that "the power to protect must be commensurate with the threatened danger."16¶ Justice Murphy's dissent from this shameful abdication of responsibility presaged the thesis of this Article:¶ In dealing with matters relating to the prosecution and progress of a¶ war, we must accord great respect and consideration to the judgments¶ of the military authorities who are on the scene and who have full¶ knowledge of the military facts. The scope of their discretion must, as¶ a matter of necessity and common sense, be wide. And their judgments ought not to be overruled lightly by those whose training and¶ duties ill-equip them to deal intelligently with matters so vital to the¶ physical security of the nation.¶ At the same time, however, it is essential that there be definite¶ limits to military discretion, especially where martial law has not been¶ declared. Individuals must not be left impoverished of their constitutional rights on a plea of military necessity that has neither substance¶ nor support. Thus, like other claims conflicting with the asserted constitutional rights of the individual, the military claim must subject itself to the judicial process of having its reasonableness determined and¶ its conflicts with other interests reconciled. "What are the allowable¶ limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions

#### Aff key to legitimacy

Knowles 2009 (Robert Knowles, Acting Assistant Professor, New York University School of Law, 41 Ariz. St. L.J. 87 American Hegemony and the Foreign Affairs Constitution)

First, the "hybrid" hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America's security and prosperity, than the alternatives. If the United States were to withdraw from its global leadership role, no other nation would be capable of taking its place. 378 The result would be radical instability and a greater risk of major war. 379 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that American hegemony is unusually stable and durable. 380 As noted above, other nations have many incentives to continue to tolerate the current order. 381 And although other nations or groups of nations - China, the European Union, and India are often mentioned - may eventually overtake the United States in certain areas, such as manufacturing, the U.S. will remain dominant in most measures of capability for decades. According to 2007 estimates, the U.S. economy was projected to be twice the size of China's in 2025. 382 The U.S. accounted for half of the world's military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors. 383 Predictions of American decline are not new, and they have thus far proved premature. 384 [\*148] Third, the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy. 385 All three IR frameworks for describing predominant states - although unipolarity less than hegemony or empire - suggest that legitimacy is crucial to the stability and durability of the system. Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control. 386 Legitimacy as a method of maintaining predominance is far more efficient. The hegemonic model generally values courts' institutional competences more than the anarchic realist model. The courts' strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are important for realizing the functional constitutional goal of effective U.S. foreign policy. This means that courts' treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this "domestication" reduces uncertainty. The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap. And the dilemma caused by the need to weigh different functional considerations - liberty, accountability, and effectiveness - against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes. The domestic deference doctrines - such as Chevron and Skidmore - are hardly models of clarity, but they are applied and discussed by the courts much more often than foreign affairs deference doctrines, and can be usefully applied to foreign affairs cases as well. 387 The domestic deference doctrines are a recognition that legal interpretation often depends on politics, just as it does in the international realm. 388 Most of the same functional rationales - expertise, accountability, flexibility, and uniformity - that are advanced in support of exceptional foreign affairs deference also undergird Chevron. Accordingly, Chevron deference provides considerable latitude for the executive branch to change its interpretation of the law to adjust to foreign policy requirements. Once courts determine that a statute is ambiguous, the reasonableness threshold is [\*149] easy for the agency to meet; that is why Chevron is "strong medicine." 389 At the same time, Chevron's limited application ensures that agency interpretations result from a full and fair process. Without such process, the courts should look skeptically on altered interpretations of the law. Returning to domestic deference standards as a baseline clarifies the ways in which foreign affairs are truly "special." The best response to the special nature of foreign affairs matters does not lie simply in adopting domestic deference on steroids. Instead, accurate analysis must also take into account the ways in which the constitutional separation of powers already accommodates the uniqueness of foreign affairs. Many of the differences between domestic and foreign affairs play out not in legal doctrine, but in the relationship between the President and Congress. Under the hegemonic model, courts would still wind up deferring to executive branch interpretations much more often in foreign affairs matters because Congress is more likely to delegate law-making to the executive branch in those areas. 390 Nonetheless, foreign relations remain special, and courts must treat them differently in one important respect. In the twenty-first century, speed matters, and the executive branch alone possesses the ability to articulate and implement foreign policy quickly. Even non-realists will acknowledge that the international realm is much more susceptible to crisis and emergency than the domestic realm. But speed remains more important even to non-crisis foreign affairs cases. 391 It is true that the stable nature of American hegemony will prevent truly destabilizing events from happening without great changes in the geopolitical situation - the sort that occur over decades. The United States will not, for some time, face the same sorts of existential threats as in the past. 392 Nonetheless, in foreign affairs matters, it is only the executive branch that has the capacity successfully to conduct [\*150] treaty negotiations, for example, which depend on adjusting positions quickly. The need for speed is particularly acute in crises. Threats from transnational terrorist groups and loose nuclear weapons are among the most serious problems facing the United States today. The United States maintains a "quasi-monopoly on the international use of force," 393 but the rapid pace of change and improvements in weapons technology mean that the executive branch must respond to emergencies long before the courts have an opportunity to weigh in. Even if a court was able to respond quickly enough, it is not clear that we would want courts to adjudicate foreign affairs.

#### Outweighs flexibility

Knowles 2009 (Robert Knowles, Acting Assistant Professor, New York University School of Law, 41 Ariz. St. L.J. 87 American Hegemony and the Foreign Affairs Constitution)

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability.421 G. John Ikenberry analogizes America's hegemonic position to that of a “giant corporation” seeking foreign investors: “The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and accountability.”422 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make “abrupt or aggressive moves toward other states.”423¶ The Bush Administration’s detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch.424 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law.425 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions.426 It declared all detainees at Guantánamo to be “enemy combatants” without establishing a regularized process for making an individual determination for each detainee.427 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections.428¶ In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s—a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage.429 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability.430 America’s military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.

### 2AC DA--- Court Stripping

#### The DA is laughable--- the plan is a ruling in favor of Congress in a WPR lawsuit AGAINST the president--- no pay decreases

#### No court stripping

Gibson 2012 (James L. Gibson, Sidney W. Souers Professor of Government, Department of Political Science, Professor of African and African American Studies, Director, Program on Citizenship and Democratic Values Weidenbaum Center on the Economy, Government, and Public Policy, Washington University in STL, February 27, 2012, Countermajoritarian Conference, University of Texas Law School, pdf)

Political scientists and legal scholars continue to be obsessed with the so-called countermajoritarian dilemma created by the United States Supreme Court’s lack of accountability, particularly when coupled with its immense policy-making powers. Especially when the Supreme Court makes decisions that seem to fly in the face of public preferences—as in Kelo v. New London1 and Citizens United v. Federal Election Commission2—concerns about the function of the institution within American democracy sharpen. Indeed, some seem to believe that by making policies opposed by the majority of the American people the Court undermines its fundamental legitimacy, its most valuable political capital.¶ The underlying assumption of these worries about the Supreme Court’s legitimacy is that dissatisfaction with the Court’s decisions leads to the withdrawal, or at least diminution, of support for the institution. So when the Court decides a high profile case like Citizens United in a widely unpopular direction, it is logical to assume that the Court’s legitimacy suffers. Again, the assumption is that legitimacy flows from pleasing decisions, but it is undermined by displeasing decisions.¶ At least some empirical evidence directly contradicts this assumption. In what is perhaps the most salient and politically significant decision of the last few decades, the Supreme Court’s decision in Bush v. Gore3 effectively awarded the presidency to George W. Bush. One might have expected that this decision would undermine the Court’s legitimacy, at least with Democrats and probably with African-Americans as well. Yet several empirical research projects have indicated that, if anything, the Court’s legitimacy was boosted by this decision, even among Democrats and African-Americans.4 Bush v. Gore had great potential to chip away at the Court’s legitimacy—it was a deeply divided 5-4 decision; divided by the justices’ partisanships as well; it extended the Court’s authority into an area of law in which the Court had generally deferred to the states; the decision was severely criticized by some, with many in the legal academy describing the decision as a “self-inflicted wound”;5 and, of course, it was a decision of immense political importance. If Bush v. Gore did not subtract from the Court’s institutional legitimacy, it is difficult to imagine less momentous decisions undermining judicial legitimacy.¶ Political scientists have been studying the legitimacy of the Supreme Court for decades¶ now, and several well-established empirical findings have emerged. The findings relevant to the countermajoritarian dilemma can be summarized in a series of nutshells:¶ ● The Supreme Court is the most legitimate political institution within the contemporary United States. Numerous studies have shown that the American mass public extends great legitimacy to the Court; typically, Congress is depicted as being dramatically less legitimate than the Supreme Court. Indeed, some have gone so far as to describe the Supreme Court as “bullet- proof,” and therefore able to get away with just about any ruling, no matter how unpopular. And indeed, the United States Supreme Court may be one of the most legitimate high courts in the world.¶ ● The degree of legitimacy of political institutions is extremely consequential. For better or for worse, the decisions of legitimate institutions tend to “stick”—to draw the acquiescence of citizens, even those citizens who disagree with the institution’s policy decisions. No political institution could succeed were it dependent upon always pleasing its constituents with its policy decisions. For courts—tasked with a countermajoritarian function in the American political system—displeasing the majority is a regular occurrence. The Supreme Court’s current level of legitimacy contributes mightily to making the Court truly the court of last resort on the policy issues it decides.¶ ● Some threats to the legitimacy of the Supreme Court do exist. Some members of Congress routinely introduce “court-curbing” legislation, often focusing on the Court’s soft underbelly, its dependence on Congress for its case jurisdiction. Yet such efforts typically draw the support of only the most radical members of Congress and legislation of this ilk is rarely even brought to the floor for debate. Generally, with the possible exception of the failure to raise the salaries of federal judges, few serious threats to the institutional integrity of the Supreme Court have surfaced. And there is no evidence that such proposals by gadflies have any degree of support among the American people.¶ ● This is not, of course, to say that the Court’s decisions are pleasing to all, or that they are always pleasing. Many of the rulings of the Court are unpopular with its constituents, as for instance in the Court’s ruling in Kelo on takings and its decision on campaign finance in Citizens United. The puzzle, however, is that dissatisfaction with the policy decisions has not morphed into threats to the legitimacy of the institution itself. One lesson from the research on institutional legitimacy is that policy dissatisfaction with the Court’s rulings does not necessarily or even ordinarily translate into threats to the legitimacy of the institution.¶ ● More generally, it appears that the Supreme Court does not suffer from the partisan and ideological polarization that characterizes so much of contemporary American politics. Democrats and Republicans love the Supreme Court at roughly equal levels, as do liberals and conservatives. Partisan and ideological differences do indeed characterize policy positions on many issues, but faith in and loyalty to the Supreme Court seems to be distributed across the ideological and partisan boards.¶ ● Moreover, despite a relatively turbulent period in American politics, support for the Supreme Court has been obdurate. Very small peaks and valleys can be found, although they are both quite shallow, and they are not necessarily as might be expected (e.g., the Court’s ruling in Bush v. Gore actually elevated popular support for the institution). Even strong ideological divisions on the Court seem not to have subtracted from the institution’s legitimacy. Some wonder whether anything the Court might do would imperil its basic support among the American people.

#### Even super controversial decisions don’t impact capital

Gibson 2011 (James L. Gibson, Sidney W. Souers Professor of Government, Department of Political Science; Professor of African and African¶ American Studies; and Director, Program on Citizenship and Democratic¶ Values, Weidenbaum Center on the Economy, Government, and Public¶ Policy, all at Washington University in St. Louis, Gregory A. Caldeira, Distinguished University Professor, Dreher Chair¶ in Political Communications and Policy Thinking, and Professor of Law,¶ Ohio State University, “Has Legal Realism Damaged the Legitimacy¶ of the U.S. Supreme Court?,” Law and Society Review, Volume 45, Number 1, http://www.utexas.edu/law/journals/tlr/sources/Volume%2091/Issue%201/Thompson/Thompson.fn108.Gibson.Legal\_Realism.pdf)

The Supreme Court is a widely legitimate institution. Gibson,¶ Caldeira, and Baird (1998) have established this conclusion in¶ comparative perspective, and it has been reconﬁrmed with additional data since then (e.g., Gibson 2007a). The Supreme Court is¶ not unique in its store of legitimacy of the German Federal Constitutional Court (FCC) enjoys just as much legitimacy but few courts in the world have accumulated more institutional support than the Supreme Court.9 That support is resistant to change. Even highly controversial decisions such as Bush v. Gore (2000) seem not to detract from the¶ support people extend to the Court.10 Indeed, the title of a recent paper asks the question: ‘‘Is the Supreme Court Bulletproof ?’’¶ (Farganis 2008). Extant research suggests few avenues through which the legitimacy of the Supreme Court might be threatened.