# 1AC

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

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

**Nuclear terror is inevitable**

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

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

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

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

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

**Undetected entry through ports is highly likely**

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

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

**Detonation is easy**

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

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

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

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

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

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

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

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

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

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

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

**Russia nuke war causes extinction**

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

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

**Pakistan collapse causes global nuclear war**

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

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

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

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

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

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

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

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

**Nuclear terrorists cannot be deterred**

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

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

### 1AC PQD Adv

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

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

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

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

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

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

#### This is key to avert executive groupthink

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# 2AC

### 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.

### T

#### W/M--- USFJ = part of the USFG, no resolutional basis for this T arg

#### Counter interp: USFG = Four branches--- army field guide

#### Aff ground--- we’d always lose to lower courts CP

#### No neg ground loss--- no right to process ground, effect of USFG action is significant so DA links are locked in---

#### It’s a normal means question

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

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

### 2AC Self-Restraint CP

#### Perm do both

#### Perm the president should increase judicial restrictions on nuke war powers

--

#### Object fiat is a voter--- lit doesn’t assume the CP is an option, durable self-restraint isn’t real world--- neg can write their text to dodge solvency args--- distorting the lit disincentivizes research--- reduces the aff to bad process advantages that can’t outweigh politics and aren’t the core controversy

#### Counter-interp: neg gets courts/congress CPs and non-self-restraint executive CPs

**--**

#### Solves neither advantage:

#### Deference- Court is still deferential to the president, it’s a question of the power he has not how he uses it

#### Launch authority- even if the CP decreases the president’s authority it doesn’t increase Congress’s--- 1AC Hemesath evidence says that’s key to certainty and prevent overreach

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

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

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

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

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

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

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

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

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

--

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

--

#### Links to politics\*

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

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

#### And, a failure to follow through with threatened retaliation would make multiple deterrence failures and collapse of leadership inevitable- bluffing outweighs resolve-best multivariate studies prove

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 .u¶ 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.

#### Aff clarifies deterrence calculations--- solves the bluff

Ullman 1972 (Richard Ullman, July 1972, Professor of International Relations @ Princeton University, Foreign Affairs, Vol. 50 Issue 4, “NO FIRST USE OF NUCLEAR WEAPONS,” Ebsco)

An alternative to a fiat "no-first-use" declaration, at least for the United States, might come through congressional legislation stipulating that the President, as Commander in Chief of the armed forces, may not initiate the use of nuclear weapons without receiving prior congressional authorization. Congress now has before it so-called War Powers legislation stipulating that in the absence of a formal declaration of war the President may not engage the armed forces in military operations for more than 30 days without specific congressional authorization. This draft legislation is premised upon the assumption that the "collective judgment" of Congress and the President should apply to the “initiation" and the "continuation" of hostilities. Senator Fulhright, Congressman Dellums, and others (including the Federation of American Scientists, one of the most active lobbying groups in the arms-control area) have pointed out that just as Congress should be concerned to limit the power of the President to sustain hostilities without its approval, so it should also limit his power to escalate them across the threshold from conventional to nuclear weapons. They are seeking to amend the War Powers legislation to that effect."In many respects the effects of this proposed legislation would be similar to those of an orthodox commitment to "no first use."Nuclear threats would be inappropriate. Force deployments might reflect the assumption that the United States would not initiate the use of nuclear weapons. Just as in the case of a "no first-use" commitment, U.S. ability to respond to a nuclear attack, and therefore the efficacy of the U.S. nuclear deterrent, would be undiminished. The granting of congressional authorization, should it take place, would be equivalent to a formal announcement rescinding a prior "no-first-use" commitment, unilateral or multilateral. Such authorization (or the rescinding of a prior “no-first-use" commitment) would, in fact, constitute in itself an important diplomatic instrument. It would convey to an adversary the seriousness with which Washington viewed a threat, and its willingness to risk nuclear war in response. In this respect congressional authorization (or the public rescinding of "no first use") would be akin to the "demonstration use" which figures in some war-fighting scenarios, when one party to a conflict explodes a nuclear weapon in a manner which inflicts no damage but nevertheless conveys resolve.

### 2AC Flex NB

#### Ambiguity slows executive decisionmaking

Cronogue 2012 (Graham Cronogue, JD Candidate, Duke University School of Law, “A New AUMF,” 22 Duke J. Comp. & Int'l L. 377, Lexis)

Even during a state of war, a congressional authorization for conflict that clearly sets out the acceptable targets and means would further legitimate the President’s actions and help guide his decision making during this new form of warfare. Under Justice Jackson’s framework from Youngstown, presidential authority is at its height when the Executive is acting pursuant to an implicit or explicit congressional authorization.74 In this zone, the President can act quickly and decisively because he knows the full extent of his power.75 In contrast, the constitutionality of presidential action merely supported by a president’s inherent authority exists in the “zone of twilight.”76 Without a congressional grant of power, the President’s war actions are often of questionable constitutionality because Congress has not specifically delegated any of its own war powers to the executive.77¶ This problem forces the President to make complex judgments regarding the extent and scope of his inherent authority. The resulting uncertainty creates unwelcome issues of constitutionality that might hinder the President’s ability to prosecute this conflict effectively. In time- sensitive and dangerous situations, where the President needs to make split- second decisions that could fundamentally impact American lives and safety, he should not have to guess at the scope of his authority. Instead, Congress should provide a clear, unambiguous grant of power, which would mitigate many questions of authorization. Allowing the President to understand the extent of his authority will enable him to act quickly, decisively but also constitutionally.

#### Obama sucks already

Barnes 2013 (Fred Barnes, commentator and member of the board of trustees and senior fellow of The Fund for American Studies, 9/16, “Hesitation, Delay, and Unreliability”, The Weekly Standard 19.2, http://www.weeklystandard. com/articles/hesitation-delay-and-unreliability\_752788.html)

War presidents don’t quibble. They don’t leak. They don’t go AWOL. They aren’t dispirited or downbeat. They aren’t ambivalent about the mission. And most important of all, war presidents are never irresolute. These are a few of the rules for presidents before, during, and after the country goes to war. On Syria, President Obama disregards all of them. This should mean one of two things. Either Obama is a poor war president, at least in the current pre-war stage, or he’s an altogether different kind of war president.¶ In his World War II memoirs, Winston Churchill offered this lesson: “In war, resolution; in defeat, defiance; in victory, magnanimity; in peace, good will.” Being resolute—that is, steadfast and determined—comes first. It is normally regarded as a critical component of success.¶ Obama and resolve don’t seem to mix. As the death toll in the Syrian civil war mounted, he opposed American intervention. Then, in an offhand remark a year ago, he said his policy would change if the Assad regime crossed a “red line” and used chemical weapons. Still, he ignored unsubstantiated reports of gas attacks that Secretary of State John Kerry said numbered in the “teens.” He decided to act only when American intelligence confirmed an estimated 1,400 people had been killed in a gas attack by the Syrian military on August 21.¶ A bombing assault was planned for Labor Day weekend to “deter” further use of chemical weapons and “degrade” Assad’s arsenal. But Obama abruptly jettisoned that plan and announced he would seek the approval of Congress. An attack, if there is to be one, could be postponed for weeks, jeopardizing what’s known as “peak” military readiness.¶ Earlier, in June, the White House announced it would send small arms and munitions to the Syrian rebels. By early September, however, no weapons had reached the rebels.¶ So hesitation, delay, and unreliability are the hallmarks of Obama’s approach to Syria, for now. This amounts to presidential “fecklessness,” says Steven F. Hayward, author of Greatness: Reagan, Churchill, and the Making of Extraordinary Leaders. “A strong war leader needs one quality above others,” he says, “a ruthlessness to see it through, coupled with a touch of legerdemain to keep our enemies off balance and fearful of what the United States might do.”¶ Obama certainly lacks that “touch” of cunning. There’s a gulf between his mission and his military. His goal is the removal of Assad as Syrian leader —in other words, regime change. But Obama insists a bombing attack in Syria would be solely to stop further use of chemical weapons. He’s publicly ruled out a wider assault aimed at regime change or deployment of ground troops.

### 2AC K

#### Role of the ballot is to evaluate effects of the plan- other interps arbitrarily exclude 9 min of aff offense- judge should choose justifications that best test plan desirability- debate dialectic sufficient filter for knowledge production and epistemology- prefer specific warrants over vague buzzwords- existence is a prerequisite to value

**Our fear of nuclear war is inevitable and the only thing preventing it from occurring**

**Harvard Nuclear Study Group 1983** “Living with nuclear weapons” p. 5

Why not abolish nuclear weapons? Why not cleanse this small plane tof these deadly poisons? Because we cannot. Mankind’s nuclear innocents, once lost, cannot be regained. The discovery of nuclear weapons, like the discovery of fire itself, lies behind us on the trajectory of history: it cannot be undone. Even if all nuclear arsenals were destroyed, the knowledge of how to reinvent them would remain and could be put ot use in any of a dozen or more nations. The atomic fire cannot be extinguished. The fear of its use will remain part of the human psyche for the rest of human history. This fear is realistic and must not be forgotten. It can prevent complacency and produce prudence. It is almost certain that such fears have served as the major restrain against the use of nuclear weapons since 1945. American and Soviet leaders, even in the midst of confrontation, have been careful not to use the weapons at their command. Indeed, they have seen to it that American and Soviet troops have not met in direct combat for fear that fighting might escalate to nuclear war. The longer this situation continues, the more firmly the tradition of non-use is established.

**Revealing the horrors of nuclear war makes nuclear use unthinkable.**

**Lee 1996** (Steven P., teaches philosophy at Hobart and William Smith Colleges. He writes on issues in social, moral, and political philosophy, especially on matters of morality and war, “Morality, Prudence, and Nuclear Weapons, March 1, pg. 327)

**The prospects for the delegitimation of nuclear weapons depend on** **the clarity of the crystal ball – that is, on** the **keenness and the immediacy with which the horrors of nuclear war are present in the minds of those who make decisions** **about military matters**. **When the vision is sharp**, the mental connection between a possible act of aggression, whether nuclear or nonnuclear, **and the potential** **for societal destruction, is clear**, and when that connection is clear, **the aggression will likely be unthinkable.** When each side believes that this connection is clear and strong for the other, it comes to expect nonaggression from the other, and this allows its own in-clination against aggression to become habitual. **The problem is that time clouds the crystal ball and an expectation that nuclear weapons would not be used by the other side in response to non-nuclear aggression clouds it further, and this weakens the con-nection. To promote the habits, one must counteract this obscuration. One way to do this is constantly to remind people in general**, and leaders in particular, of the horrors of nuclear war. Leaders must be continually scared straight. **There must be an ongoing educational campaign to keep the potential destructiveness of nuclear war ever-present in their minds.** Those engaged in this campaign should not be deterred by critics who claim that the danger of nuclear war is something everyone knows about already and that talking about it succeeds only in frightening people.

#### “Structural violence” is reductive and inevitable

Boulding 1977 (Kenneth E. Boulding, economist, educator, peace activist, poet, religious mystic, devoted Quaker, systems scientist, and interdisciplinary philosopher, “Twelve Friendly Quarrels with Johan Galtung,” Journal of Peace Research, Vol. 14, No. 1, JSTOR)

Finally, we come to the great Galtung metaphors of 'structural violence' 'and 'positive peace'. They are metaphors rather than models, and for that very reason are suspect. Metaphors always imply models and meta- phors have much more persuasive power than models do, for models tend to be the preserve of the specialist. But when a metaphor implies a bad model it can be very dangerous, for it is both persuasive and wrong. The metaphor of structural violence I would argue falls right into this category. The metaphor is that poverty, deprivation, ill health, low expectations of life, a condi- tion in which more than half the human race lives, is 'like' a thug beating up the victim and 'taking his money away from him in the street, or it is 'like' a conqueror stealing the land of the people and reducing them to slavery. The implication is that poverty and its associated ills are the fault of the thug or the conqueror and the solution is to do away with thugs and conquerors. While there is some truth in the metaphor, in the modern world at least there is not very much. Violence, whether of the streets and the home, or of the guerilla, of the police, or of the armed forces, is a very different phenomenon from poverty. The processes which create and sustain poverty are not at all like the processes which create and sustain violence, although like everything else in 'the world, everything is somewhat related to every- thing else.¶ There is a very real problem of the struc- tures which lead to violence, but unfortunately Galitung's metaphor of structural violence as he has used it has diverted atten- tion from this problem. Violence in the behavioral sense, that is, somebody actually doing damage to somebody else and trying to make them worse off, is a 'threshold' phenomenon, rather like the boiling over of a pot. The temperature under a pot can rise for a long time without its boiling over, but at some 'threshold boiling over will take place. The study of the structures which underlie violence are a very important and much neglected part of peace research and indeed of social science in general. Thresh- old phenomena like violence are difficult to study because they represent 'breaks' in the system rather than uniformities. Violence, whether between persons or organizations, occurs when the 'strain' on a system is too great for its 'strength'. The metaphor here is that violence is like what happens when we break a piece of chalk. Strength and strain, however, especially in social systems, are so interwoven historically that it is very difficult to separate them.¶ The diminution of violence involves two¶ possible strategies, or a mixture of the two;¶ one is the increase in the strength of the sys-¶ tem, 'the other is the diminution of the strain.¶ The strength of systems involves habit, culture, taboos, and sanctions, all these 'things which enable a system to stand increasing¶ strain without breaking down into violence. The strains on the system 'are largely dy- namic in character, such as arms races, mu- tually stimulated hostility, changes in rela- tive economic position or political power, which are often hard to identify. Conflicts of interest 'are only part 'of the strain on a sys-¶ tem, and not always the most important part. It is very hard for people ito know their interests, and misperceptions of 'interest take place mainly through the dynamic processes, not through the structural ones. It is only perceptions of interest which affect people's behavior, not the 'real' interests, whatever these may be, and the gap between perception and reality can be very large and re- sistant to change.¶ However, what Galitung calls structural violence (which has been defined 'byone un- kind commenltatoras anything that Galitung doesn't like) was originally defined as any unnecessarily low expectation of life, on that assumption that anybody who dies before the allotted span has been killed, however unintentionally and unknowingly, by some- body else. The concept has been expanded to include all 'theproblems of poverty, desti- tution, deprivation, and misery. These are enormouslyreal and are a very high priority for research and action, but they belong to systems which are only peripherally related to 'the structures whi'ch produce violence. This is not rto say that the cultures of vio- lence and the cultures of poverty are not sometimes related, though not all poverty cultures are cultures of violence, and cer- tainly not all cultures of violence are pover- ty cultures. But the dynamicslof poverty and the success or failure to rise out of it are of a complexity far beyond anything which the metaphor of structural violence can offer. While the metaphor of structural violence performed a service in calling attention to a problem, it may have done a disservice in preventing us from finding the answer.

#### Structural violence makes the perfect the enemy of the good—Preventing war is a good thing

Coady 2007 (C.A.J, Australian philosopher with an international reputation for his research in both epistemology and political and applied philosophy, Morality and Political Violence, pg. 28, 2007, Cambridge University Press)

First, let us look briefly at the formulation of his definition, which has some rather curious features. It seems to follow from it that a young child is engaged in violence if its expression of its needs and desires is such that it makes its mother and/or father very tired, even if it is not in any ordinary sense “a violent child” or engaged in violent actions. Furthermore, I will be engaged in violence if, at your request, I give you a sleeping pill that will reduce your actual somatic and mental realisations well below their potential, at least for some hours. Certainly some emendation is called for, and it may be possible to produce a version of the definition that will meet these difficulties (the changing of “influenced” to “influenced against their will” might do the job, but at the cost of making it impossible to act violently toward someone at their request, and that doesn’t seem to be impossible, just unusual). I shall not dwell on this, however, because I want rather to assess Galtung’s reason for seeking to extend the concept of violence in the way he does. His statement of the justification of his definition is as follows: “However, it will soon be clear why we are rejecting the narrow concept of violence according to which violence is somatic incapacitation, or deprivation of health, alone (with killing as the extreme form), at the hands of an actor who intends this to be the consequence. If this were all violence is about, and peace is seen as its negation, then too little is rejected when peace is held up as an ideal. Highly unacceptable social orders would still be compatible with peace. Hence an extended concept of violence is indispensable but the concept should be a logical extension, not merely a list of undesirables.”16 So, for Galtung, the significance of his definition of violence lies in the fact that if violence is undesirable and peace desirable, then if we draw a very wide bow in defining violence we will find that the ideal of peace will commit us to quite a lot. Now it seems to me that this justification of the value of his definition is either muddled or mischievous (and just possibly both). If the suggestion is that peace cannot be a worthy social ideal or goal of action unless it is the total ideal, then the suggestion is surely absurd. A multiplicity of compatible but non-inclusive ideals seems as worthy of human pursuit as a single comprehensive goal, and, furthermore, it seems a more honest way to characterize social realities. Galtung finds it somehow shocking that highly unacceptable social orders would still be compatible with peace, but only the total ideal assumption makes this even surprising. It is surely just an example of the twin facts that since social realities are complex, social ideals and ills do not form an undifferentiated whole (at least not in the perceptions of most men and women), and that social causation is such that some ideals are achievable in relative independence from others. Prosperity, freedom, peace, and equality, for instance, are different ideals requiring different characterisations and justifications, and although it could be hoped that they are compatible in the sense that there is no absurdity in supposing that a society could exhibit a high degree of realization of all four, concrete circumstances may well demand a trade-off amongst them–the toleration, for example, of a lesser degree of freedom in order to achieve peace, or of less general prosperity in the interests of greater equality.

#### Human life is inherently valuable

Penner 2005 Melinda Penner (Director of Operations – STR, Stand To Reason) 2005 “End of Life Ethics: A Primer”, Stand to Reason, http://www.str.org/site/News2?page=NewsArticle&id=5223

Intrinsic value is very different. Things with intrinsic value are valued for their own sake. They don’t have to achieve any other goal to be valuable. They are goods in themselves. Beauty, pleasure, and virtue are likely examples. Family and friendship are examples. Something that’s intrinsically valuable might also be instrumentally valuable, but even if it loses its instrumental value, its intrinsic value remains. Intrinsic value is what people mean when they use the phrase "the sanctity of life." Now when someone argues that someone doesn’t have "quality of life" they are arguing that life is only valuable as long as it obtains something else with quality, and when it can’t accomplish this, it’s not worth anything anymore. It's only instrumentally valuable. The problem with this view is that it is entirely subjective and changeable with regards to what might give value to life. Value becomes a completely personal matter, and, as we all know, our personal interests change over time. There is no grounding for objective human value and human rights if it’s not intrinsic value. Our legal system is built on the notion that humans have intrinsic value. The Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that each person is endowed by his Creator with certain unalienable rights...." If human beings only have instrumental value, then slavery can be justified because there is nothing objectively valuable that requires our respect. There is nothing other than intrinsic value that can ground the unalienable equal rights we recognize because there is nothing about all human beings that is universal and equal. Intrinsic human value is what binds our social contract of rights. So if human life is intrinsically valuable, then it remains valuable even when our capacities are limited. Human life is valuable even with tremendous limitations. Human life remains valuable because its value is not derived from being able to talk, or walk, or feed yourself, or even reason at a certain level. Human beings don’t have value only in virtue of states of being (e.g., happiness) they can experience. The "quality of life" view is a poison pill because once we swallow it, we’re led down a logical slippery slope. The exact same principle can be used to take the life of human beings in all kinds of limited conditions because I wouldn't want to live that way. Would you want to live the life of a baby with Down’s Syndrome? No? Then kill her. Would you want to live the life of an infant with cerebral palsy? No? Then kill him. Would you want to live the life of a baby born with a cleft lip? No? Then kill her. (In fact, they did.) Once we accept this principle, it justifies killing every infant born with a condition that we deem a life we don’t want to live. There’s no reason not to kill every handicapped person who can’t speak for himself — because I wouldn’t want to live that way. This, in fact, is what has happened in Holland with the Groningen Protocol. Dutch doctors euthanize severely ill newborns and their society has accepted it.

### Heg DA

#### No link uq--- Hamdan, Rasul, etc. all thump but don’t solve the aff bc they didn’t rule on SOP--- specifically Boumediene thumps

Stras 2008 (David Stras, JD, Associate Justice of MN Supreme Court, "The Decline of the Political Question Doctrine," http://balkin.blogspot.com/2008/12/decline-of-political-question-doctrine.html)

Not surprisingly, the Court has limited the application of the political question doctrine to thorny areas that are at the intersection of law and public policy, such as Congress's ability to regulate its own internal processes and matters of foreign affairs. With respect to the latter category, the Court has long declined to interfere with sensitive questions of foreign policy, holding at various points in history that such questions of when a war begins and ends and whether to recognize a foreign government and grant diplomatic immunity to its officials are all nonjusticiable political questions. In fact, some scholars have recognized that the area of foreign affairs was the last bastion where the political question doctrine had "real bite." The question I pose is what is left of the political question doctrine after Boumediene v. Bush?¶ The answer, I believe, is not very much. As an initial matter, a majority of the Court has only employed the political question doctrine twice since 1964 (the year Baker v. Carr was decided) to dismiss a case, though various Justices have endorsed its use in a variety of contexts (e.g., treaty interpretation, political gerrymandering cases, etc.). Second, in Boumediene, the Court quickly dismissed the Government's argument that questions of sovereignty are matters for the political branches to conclusively decide. As the Court stated, "our cases do not hold it is improper for us to inquire into the objective degree of control the Nation asserts over foreign territory . . . . When we have stated that sovereignty is a political question, we have referred not to sovereignty in the general, colloquial sense, meaning the exercise of dominion or power, but sovereignty in the narrow, legal sense of the term, meaning a claim of right." The Court went on to conclude essentially that questions of de jure sovereignty (or a claim of right) are matters for the political branches to decide, but that questions of de facto sovereignty (or practical control over a territory) can be examined by the judicial branch.¶ Given that de jure sovereignty is the clearer purely legal question and that one of the lynchpins of the political question doctrine is the presence or absence of judicially manageable standards, I find the Court's abbreviated discussion of the political question doctrine quite significant, even astonishing. Questions of de facto sovereignty tend to be difficult to determine because of competing indicia of control and, as a result, judicially manageable standards seem to be fairly elusive. (However, I would freely admit that the United States' near-total control of Guantanamo Bay made the question of de facto sovereignty by the United States in Boumediene pretty clear.)

#### Aff strikes a flexible balance of judicial checks--- essential to American legitimacy which is key to sustaining hegemony

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.

#### Legitimacy outweighs flexibility in a hegemonic system

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.

#### Independently, deference to the military makes extinction inevitable

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 credibility of US nuke arsenal

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 explosion of the first atomic weapon over Hiroshima in 1945 is often referred to as the closing event of the Second World War as well as the opening move in the Cold War. 3 Accordingly, the constitutional implications of using atomic, and then nuclear, weapons have been considered only in the context of the Cold War--a period of highly charged international tensions and unprecedented military build-up. 4 The dangers of the Cold War required the President [\*2474] of the United States to maintain effective control of offensive nuclear triggers in order to present a credible and immediate counter-threat to Soviet aggressions. 5 Thus, although not explicitly authorized by any congressional declaration of war, the Executive's near total control of nuclear weapons was countenanced because of its constitutional duty 6 and practical responsibility to maintain stability during the Cold War. 7¶ But now, with the end of the Cold War and the advent of a new era in foreign relations, the constitutional justifications for unlimited presidential power to launch an offensive nuclear attack without congressional consultation should be reexamined for legal defects. 8 The Cold War provided a justification--an excuse grounded in the preeminence of national security--for the allowance of such a concentration of nuclear authority in the hands of the President. 9 However, the Cold War is now over. The Framers' intentions may be reconsidered in light of a return to normalcy. Unfortunately, such examination reveals the potential for harmful uncertainty.¶ This uncertainty stems from the dispute between the President and Congress regarding the war powers and, particularly, nuclear war powers. Both branches claim plausible bases for a stake in war powers authority: Congress is the sole branch constitutionally authorized to declare a war; the President is Commander in Chief and possesses the mechanisms required to put a nuclear strike in motion. 10 Assuming a conflict of opinion between the branches during the contemplation of an offensive nuclear strike, the uncertainty of constitutional authority in such a unique and momentous scenario portends severe consequences ranging from suspicions of illegitimacy to a full-blown constitutional crisis. 11

#### No primacy now

Gertz 2013 (Bill Gertz, June 20, 2013, “Obama Directs New Limits on Pentagon Nuclear Weapons Use,” Washington Free Beacon, http://freebeacon.com/obama-directs-new-limits-on-pentagon-nuclear-weapons-use/)

President Barack Obama this week ordered new limits on the use of U.S. nuclear weapons and called for sharp warhead cuts in a speech in Berlin aimed at what he called achieving “peace with justice.”¶ “Peace with justice means pursuing the security of a world without nuclear weapons, no matter how distant that dream may be,” Obama said on the eastern Berlin side of the Brandenburg Gate.¶ “And so as president, I’ve strengthened our efforts to stop the spread of nuclear weapons and reduce the number and role of America’s nuclear weapons.”¶ Obama announced that, after reviewing U.S. nuclear doctrine, “I’ve determined that we can ensure the security of America and our allies and maintain a strong and credible strategic deterrent while reducing our deployed strategic nuclear weapons by up to one-third.”¶ It was not clear from the speech whether the president planned to cut the deployed warhead arsenal from the 2010 New START arms treaty level of 1,550 to around 1,000 unilaterally or with another arms pact with Moscow.¶ Obama said he intended to seek “negotiated cuts” with Russia but appeared to leave open a unilateral one-third warhead arsenal reduction by the United States.

#### No impact--- minimum deterrence solves

Nichols 2013 (Tom Nichols, professor of national security affairs at the U.S. Naval War College and a professor of government at the Harvard Extension School, March 14, 2013, “Time To Change America’s Atomic Arsenal,” The Diplomat, http://thediplomat.com/2013/03/14/time-to-change-americas-atomic-arsenal/?all=true)

This is largely the product of a long spell of inertia in American strategic planning. The Cold War mission of deterring another nuclear superpower by preparing for global nuclear combat, insofar as that idea ever made sense, is now a part of history and should be left behind. The new mission for U.S. nuclear weapons for at least for the next two decades, if not longer, should be one of minimum deterrence, meaning the prevention of a major nuclear attack on America with a small nuclear force — perhaps as low as 300 strategic weapons — targeted only for retaliation for the attempted destruction of the United States and nothing else.¶ This is not a radical proposal: some American military and civilian leaders gravitated to the idea of a minimum deterrent as early as the 1950s. Unfortunately, the rapid construction of nuclear arsenals during the Cold War overwhelmed any such possibility as both superpowers rushed to develop large nuclear forces divided among bombers, submarines, and land-based intercontinental ballistic missiles.¶ Advocates of this traditional “triad” argue that this force helped to win the Cold War. They are only partially correct; the more we find out about the Cold War, the more the evidence points to a more refined conclusion. U.S. and Soviet leaders, as it turns out, weren’t deterred by the massive use of nuclear weapons: they were deterred by the thought of almost any use of nuclear weapons. If the objective is to deter an attack on the United States, then a triad of thousands of strategic weapons is, literally, overkill. During the Cold War, we fell into the trap of devising strategies to serve weapons systems, rather than the other way around. To think about tomorrow’s nuclear force, we need to abandon the tradition of simply remolding our existing nuclear deterrent into smaller versions of itself every few years. The strategic deterrent should do one thing, and one thing only: prevent the nuclear destruction of the United States by a peer like China or Russia.¶ What about the rogues, who can inflict great harm but not existential destruction on the U.S. or its allies? The mission of deterring WMD attacks from rogue states is not, and in reality has never been, a nuclear mission. After the Cold War, we are no longer confronting a fellow nuclear Goliath; instead, we now face a coterie of smaller Davids, each armed with various kinds of weapons of mass destruction. Threats of brute nuclear force against these smaller nations are not only useless, they are immoral. Policy wonks and armchair generals speak casually about nuclear retaliation against countries like North Korea or Iran, but the fact of the matter is that no responsible democracy like the United States would drop nuclear weapons in the crowded regions of East Asia or the Middle East any more than it would order its police to clear a street riot with a bazooka. Moreover, keeping the full panoply of nuclear forces only serves to undermine political efforts to restrain rogues like Iran and North Korea.¶ Whether the United States will choose to maintain conventional forces that can deliver a violent reckoning to rogue states, and thus to deter their leaders, is a separate question. It is a mission that the U.S. and its allies have already proven they can execute, as deposed autocrats like Slobodan Milosevic and Saddam Hussein could attest if they were still alive. The successful hunt for Osama Bin Laden likewise should confirm that a U.S. promise to exact justice, no matter how long it takes, should not be treated lightly.¶ Where strategic nuclear weapons are concerned, however, it is time to end the incoherence that has plagued debates about the U.S. deterrent since the end of the Cold War.

#### Factors other than hegemony are decreasing violence

Friedman et. Al 2013 [Benjamin H. Friedman is a Research Fellow in Defense and Homeland Security Studies at the Cato Institute.¶ Brendan Rittenhouse Green is the Stanley Kaplan Postdoctoral Fellow in Political Science and Leadership Studies at Williams College.¶ Justin Logan is Director of Foreign Policy Studies at the Cato Institute. International Security Volume 38, Number 2, Fall 2013 “Debating American Engagement: The Future of U.S. Grand Strategy” Project Muse]

An array of research, some of which Brooks et al. cite, indicates that factors other than U.S. power are diminishing interstate war and security competition.2 These factors combine to make the costs of military aggression very high, and its benefits low.3¶ A major reason for peace is that conquest has grown more costly. Nuclear weapons make it nearly suicidal in some cases.4 Asia, the region where future great power competition is most likely, has a “geography of peace”: its maritime and mountainous regions are formidable barriers to conflict.5 [End Page 184]¶ Conquest also yields lower economic returns than in the past. Post-industrial economies that rely heavily on human capital and information are more difficult to exploit.6 Communications and transport technologies aid nationalism and other identity politics that make foreigners harder to manage. The lowering of trade barriers limits the returns from their forcible opening.7¶ Although states are slow learners, they increasingly appreciate these trends. That should not surprise structural realists. Through two world wars, the international system “selected against” hyperaggressive states and demonstrated even to victors the costs of major war. Others adapt to the changed calculus of military aggression through socialization.8

# 1AR

nada