# 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

### PQD

#### 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.)

#### 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 Executive CP

#### Perm do both

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#### Exec fiat is a voter---avoids SOP controversy by fiating away Obama’s behavior in the squo---no comparative lit means the neg wins every debate

Hansen 2012 (Victor Hansen, Professor of Law, New England Law, New England Law Review, Vol. 46, pp. 27-36, 2011, “Predator Drone Attacks”, February 22, 2012, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2009313>)

Any checks on the President’s use of drone attacks must come domestically. In the domestic arena the two options are either the courts or Congress. As discussed above, the courts are institutionally unsuited and incapable of providing appropriate oversight. Congress is the branch with the constitutional authority, historical precedent, and institutional capacity to exercise meaningful and effective oversight of the President’s actions.

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

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#### Solves neither advantage:

#### PQD- Court is still deferential to the president, doesn’t clarify that WPR suits like the aff are SOP questions NOT political questions

#### Negligence- Squo is zone of twilight--- Hemesath ev says interbranch conflict b/t the executive and congress causes crisis of legitimacy of our nuke deterrent--- court is the key arbiter bc it’s the only external authority

#### Independently that legitimacy crisis makes the negligence doctrine a bluff--- makes deterrence breakdowns and escalation inev

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 key to solve--- it looks like a situational NFU

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.

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

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

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

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

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

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

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

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

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

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

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#### Links to politics\*

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

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

#### Makes the court backlash inevitable

### 2AC Iran DA

#### No deal—UN failures, Iranian resistance

Martin, 11-12 (Patrick Martin, The Globe and Mail (Canada) INTERNATIONAL NEWS; MIDDLE EAST; Pg. A11 “Kerry says Tehran walked out of talks; Iran's insistence that it has inalienable right to enrich nuclear material on its own soil is believed to be deal breaker” Lexis)

When the five permanent members of the UN Security Council plus Germany (the P5+1) failed to reach an interim agreement with Iran on the weekend to rein in its uranium enrichment program, many observers blamed France for making some last-minute demands. Others credited Israel with persuading some of the negotiators to back away from what the Jewish state called a bad deal. However, neither party was responsible, said U.S. Secretary of State John Kerry. It was Iran itself that walked away from the offer. "The P5+1 was unified on Saturday when we presented our proposal to the Iranians," said Mr. Kerry, "But Iran couldn't take it." While it has not been revealed exactly what constituted a deal breaker for Tehran, it appears to have revolved around Iran's insistence that it has an inalienable right to enrich uranium on its own soil. No nation has an "existing right to enrich," Mr. Kerry said Monday in Abu Dhabi, where he was assuring worried Gulf allies that Iran was not being given a free ride to develop nuclear weapons.

#### Saudi Arabia already hates the deal so there’s no reason why they wouldn’t prolif bc of it

#### No impact to Iranian prolif---they’ll be cautious and moderate

Kenneth Waltz 12, senior research scholar @ Saltzman, Poly Sci Prof @ Columbia, September/October 2012, “Iran and the Bomb – Waltz Replies,” Foreign Affairs, Vol. 91, No. 5, p. 157-162

In arguing that a nuclear-armed Iran would represent an unacceptable threat to the United States and its allies, Colin Kahl rejects my contention that states tend to become more cautious once they obtain nuclear weapons and claims that I minimize the potential threat of an emboldened Islamic Republic. He accuses me of misreading history and suggests that I overestimate the stability produced by nuclear deterrence. In fact, it is Kahl who misunderstands the historical record and who fails to grasp the ramifications of nuclear deterrence.¶ In Kahl's view, new nuclear states do not necessarily behave as status quo powers and can instead be highly revisionist. Seeking a precedent, he highlights the fact that the Soviet Union encouraged North Korea to launch a potentially risky invasion of South Korea in 1950, shortly after the Soviets had tested their first nuclear bomb. But Kahl neglects to explain the context of that decision. Some time before, U.S. Secretary of State Dean Acheson had publicly identified the United States' security commitments in Asia; defending South Korea was not among them. The United States had also signaled its lack of interest in protecting the South Koreans by declining to arm them with enough weapons to repel a Soviet-backed invasion by the North. The Soviet Union therefore had good reason to assume that the United States would not respond if the North Koreans attacked. In light of these facts, it is difficult to see Stalin's encouragement of the invasion as an example of bold, revisionist behavior. Contrary to Kahl's claims, the beginning of the Korean War hardly supplies evidence of Soviet nuclear adventurism, and therefore it should not be understood as a cautionary tale when considering the potential impact that possessing a nuclear arsenal would have on Iranian behavior.¶ Kahl seems to accept that nuclear weapons create stability -- or a form of stability, at least. But he notes -- as do most scholars of nuclear matters, myself included -- that nuclear stability permits lower-level violence. Taking advantage of the protection that their atomic arsenals provide, nuclear-armed states can feel freer to make minor incursions, deploy terrorism, and engage in generally annoying behavior. But the question is how significant these disruptive behaviors are compared with the peace and stability that nuclear weapons produce.¶ Kahl points to the example of Pakistan, whose nuclear weapons have probably increased its willingness to wage a low-intensity fight against India, which makes the subcontinent more prone to crises. As Kahl correctly argues, Pakistan's increased appetite for risk probably played a role in precipitating the so-called Kargil War between India and Pakistan in 1999. But the Kargil War was the fourth war fought by the two countries, and it paled in comparison to the three wars they fought before they both developed nuclear weapons. In fact, the Kargil conflict was a war only according to social scientists, who oddly define "war" as any conflict that results in 1,000 or more battlefield deaths. By historical standards, that casualty rate constitutes little more than a skirmish. Far from proving that new nuclear states are not swayed by the logic of deterrence, the Kargil War supports the proposition that nuclear weapons prevent minor conflicts from becoming major wars. Indeed, nuclear weapons are the only peace-promoting weapons that the world has ever known, and there is no reason to believe that things would be different if Iran acquired such arms.¶ Kahl also frets that a nuclear-armed Iran would step up its support for terrorist groups. Terrorism is tragic for those whose lives it destroys and unnerving for countries that suffer from it. But the number of annual fatalities from international terrorism is vanishingly small compared with the casualties wrought by major wars. Of course, like Kahl, I would not welcome increased Iranian support for Hezbollah or an increased supply of more potent Iranian arms to Palestinian militants. And I, too, hope for a peaceful resolution of the Israeli-Palestinian conflict and the disputes between Israel and its neighbors. But the last several decades have not offered much reason to believe those goals can be easily attained, and I would rather see the possibility of major war reduced through nuclear stability, even if the price is an increase in disruptive activities and low-level conflict.¶ Just a few months ago in these pages, Kahl eloquently expressed his opposition to a proposed preventive strike on suspected Iranian nuclear facilities, warning that it could spark a regional war ("Not Time to Attack Iran," March/April 2012). I agree. But Kahl and I differ on what the United States can achieve in its showdown with the Islamic Republic. Kahl appears to believe that it is possible for the United States to forgo risky military action and still prevent Iran from obtaining nuclear weapons through a combination of sanctions and diplomacy. I strongly doubt that. Short of using military force, it is difficult to imagine how Iran could be prevented from acquiring nuclear weapons if it is determined to do so. That outcome would produce a lamentable possible increase in terrorism and lower-level conflict. But the many benefits of regional stability would far outweigh the costs.

#### Obama weak now

**Forbes 9/1**

<http://www.forbes.com/sites/dougschoen/2013/09/01/weak-on-syria-weak-in-the-world/>

Put another way, the President made it clear a year ago that there was a red line that the Syrians should not cross. All evidence suggests that they have surely crossed it and instead of striking, the President lectures the American people, and indeed the world, on American democracy.¶ Indeed, just this morning, a Syrian state state-run newspaper called Obama’s decision to seek Congressional approval before taking military action “the start of the historic American retreat.” It doesn’t get clearer than that.¶ This is not a president who shies away from using his executive power. He has altered ObamaCare, pushed his gun control agenda to strengthen national background checks, delayed the deportation of illegal immigrants when Congress wouldn’t agree amongst many other examples. But he has now suddenly decided that before he takes action, action that is within his purview, he is going to seek Congressional approval that is almost impossible to predict as to whether it will be granted or not.¶ If Obama really wanted to go ahead he would have brought congress back into session immediately and not waited more than 10 days thereby giving the Syrians time to plan for an attack – should one ultimately come. And even then, Obama has made it clear any such attack will be limited in nature and scope and will not involve regime change.¶ It follows that the message **Obama’s speech** yesterday sends is a muddled one at best.¶ It **said to the mullahs** in Iran and their Supreme Leader Ali Khamenei **that they can continue to pursue their nuclear program** by enriching uranium and refining **plutonium without having to fear that they will be precipitously attacked by the US.¶** **And to** Russia’s President **Putin**, who has been an unbendable ally of Assad, providing him with arms and anti-aircraft weaponry, **Obama has shown that the balance of power in the Middle East has almost certainly shifted away from the US.** This is all the more alarming as Putin said just yesterday that the idea that the Syrian regime used chemical weapons is “absolute nonsense.”¶ What’s more, **with a totally incoherent American policy on Egypt wherein it is unclear who and what we support, the US’s approach to the Syria further paints a bleak picture of American power and potency.** Indeed, with our only real achievement in the region being the recent appearance of convincing the Arabs and Israelis to come to the peace table, **an image of American uncertainty is radiating across the globe.¶** And although this would be a serious accomplishment if progress is made, our inaction on Syria signals to Israel, one of our strongest allies, that we are not willing to stick our neck out for them, their safety and way of life.¶ To our allies around the world who have said that if we do not stand firm we will send the wrong message to the Syrians, Obama offered not much of a response other than to tell them, in so many words, that they may well have to go it alone.¶ **The US has not been sending clear messages**. And though it may be apparent to me that the President’s move was calculated to force responsibility on a reluctant Congress and to play to 80% of the American people who have said in polls that they are against intervention in Syria, that does not mean that the US is offering anything but a confused image of our mission in the world to both our allies and foes.¶ Thus, in the short term **the President** may have managed to escape from the political quandary he faces. But in the longer term, America **looks weaker, feckless and more uncertain**.¶ President **Obama** **has**, if nothing else, **compounded the view of a weak leader heading an unsure nation. This is an image we can ill afford to project.**

#### Healthcare thumps

JAKE SHERMAN and BURGESS EVERETT | 11/11/13, Politico, Congress seems to be done legislating for the year, <http://www.politico.com/story/2013/11/congress-2013-done-legislating-99703.html#ixzz2kdzgh8yk>, jj

It’s just mid-November, but it’s quickly becoming a reality: Washington could be mostly done making laws for the year. If it isn’t evident by looking at the thin congressional calendar, top sources in both chambers are downright grim that the final eight weeks in 2013 will produce any legislative breakthroughs, like a broad budget agreement or an immigration deal. House Republicans say they will step up their oversight of the Obama administration in their final 15 days of session in 2013. The slow, plagued and flawed Obamacare rollout has given the GOP the fodder of its dreams, as at least three committees are digging into the issue, issuing subpoenas and holding committee hearings. Meanwhile, a few hundred paces on the other side of the Capitol dome, the Senate is full of motion, working on passing a slew of bills that the House has little appetite for taking up. House GOP aides are already branding the increase in activity as an attempt to distract Americans from Obamacare’s problems. In short, if there are hopes of sending President Barack Obama the comprehensive immigration bill so many have lobbied for, or the Employee Non-Discrimination Act before 2014, they’re likely to be dashed. It would be a fitting end to 2013, a year devoid of the landmark legislation that both parties say the nation needs. Both privately and publicly, top D.C. leaders are voicing skepticism about anything happening this year. In a recent meeting with his Republican leadership colleagues, Speaker John Boehner (R-Ohio) joked that the House shouldn’t even remain in session in December. As the schedule stands now, the House anticipates being in session eight days next month, after working seven days in November. Majority Whip Kevin McCarthy of California, the No. 3 House Republican, told activists last week that there isn’t enough time to complete immigration reform this year.

**TPP thumps**

**Bradner 11-13** (Hill tea party’s next target: Barack Obama’s trade agenda By ERIC BRADNER | 11/13/13 5:03 AM EST http://www.politico.com/story/2013/11/capitol-hill-tea-party-republicans-barack-obama-trade-agenda-99757.html)

**Tea party** Republicans insist they’re in favor of free trade. They just **don’t want to place** a key **trade negotiating power in** President Barack **Obama’s hands.** The deep suspicion of **giving the president authority to fast-track trade pacts** through Congress without amendments — which Republicans have traditionally supported — **is** just **the latest rift between the** Big Business-aligned **mainstream GOP and the** party’s more populist **tea party** wing, **which** dislikes the legislative mechanisms that make trade deals work and **is loath to hand Obama another victory.** Already, some of **the movement’s luminaries are** spoiling **for the fight.** “We don’t have a lot of reason to trust this administration,” said former Rep. Allen West (R-Fla.), one of the most outspoken tea party critics of Obama’s trade agenda. **“There’s** just **a reason to wonder what is really going on behind the doors** there, especially when there is no congressional oversight.**”** **Similar rumbles are coming from** members of **Congress**. GOP Reps. Michele **Bachmann** of Minnesota and Walter **Jones** of North Carolina **released a letter signed by** 22 **House Republicans** on Tuesday **condemning fast-track** authority as a measure that allows Obama to “unilaterally write legislation making the pacts’ terms U.S. federal law.” Rep. Darrell **Issa** of California, meanwhile, **has complained** **about** the Obama administration’s **“secretive, closed-door negotiating process”** on the deals that fast-track authority would prevent Congress from amending. Outside Congress, **tea party** movement **leaders are delivering a similar message**. Judson **Phillips**, the head of Tea Party Nation, **has** railed against Obama’s trade agenda. So have Bruce **Fein**, an adviser to Sen. Rand **Paul** (R-Ky.), and Phyllis **Schlafly**, founder of the conservative advocacy group Eagle Forum. If Obama has fast-track authority, “the House cedes to the president its constitutional power to write legislation that regulates commerce with foreign nations,” Schlafly said in a recent email to supporters. **“**We’ve never had **a president who so arrogantly grabs and uses such unlawful power.”**

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

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

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

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

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

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

### 2AC Law 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

#### Perm do both

#### Perm do the plan as a rejection of militarism in the ND--- don’t know what else a pacifist would do

#### Militarism is inevitable bc of rationality--- terrorists want to kill us

#### Calls to address specific security threats are key to solve those problems without succumbing to the pratfalls of the Bush Doctrine

Nicholson and Schaffer 2011 Kailyn Nicholson and Anna Schaffer - Henry M. Jackson School of International Studies - 3/10/2011, The Future of U.S. Democracy Promotion: Strategies for a Sustainable Fourth Wave of Democratization, https://digital.lib.washington.edu/dspace/bitstream/handle/1773/16487/Task%20Force%20C%202011%20Web.pdf?sequence=1

Democracy Promotion in Rhetoric The current administration has attempted to steer clear of unrealistic rhetoric in favor of a more pragmatic doctrine. This resolution appears to reflect the Obama administration‘s efforts to disassociate from the Bush-era rhetoric that provoked such global criticism. Post 9/11, the Bush administration was seen to sway between a preemptive realism that sought to unilaterally maintain America‘s position of power in the world and a lofty Wilsonian rhetoric that espoused spreading democratic ideals to all corners of the globe. Especially under Bush‘s Freedom Agenda, supporting democracy and the promotion of freedom was embraced as a foreign policy goal. The Freedom Agenda incorporated or helped to justify the global war on terror and Iraqi invasion. Increasingly weak evidence to support initial justifications for intervention eventually gave way to the language of democracy promotion as a more appealing rhetoric. And, Iraq became the centerpiece of this agenda executed in the name of promoting democratic values and supporting human rights. In his second inaugural address in 2005, former President Bush stated, So it is the policy of the U.S. to seek and support the growth of democratic movements and institutions in every nation and culture, with the ultimate goal of ending tyranny in our world…We will encourage reform in other governments by making clear that success in our relations will require decent treatment of their own people. America‘s belief in human dignity will guide our principles (Bush 2005) In claiming that the long-term goal of the U.S. was to end ‗tyranny in our world,‘ Bush set unrealistic and idealized expectations for the results of democracy promotion. Much of the justifications by the Bush administration for democracy promotion asserted the moral grounds for democracy. In a speech at the 2008 World Economic Forum in Sharm el-Sheikh Egypt, former President Bush pronounced: Some say any state that holds an election is a democracy. But true democracy requires vigorous political parties allowed to engage in free and lively debate. True democracy requires the establishment of civic institutions that ensure an election‘s legitimacy and hold leaders accountable. And true democracy requires competitive elections in which opposition candidates are allowed to campaign without fear or intimidation. Too often in the Middle East, politics has consisted of one leader and the opposition in jail. America is deeply concerned about the plight of political prisoners in this region, as well as democratic activists who are intimidated or repressed, newspapers and civil society organizations that are shut down, and dissidents whose voices are stifled. The time has come for nations across the Middle East to abandon these practices, and treat their people with dignity and the respect they deserve (Bush 2008) Here, former President Bush professed to stand behind democratic forces in all states. The fact that this speech took place three years after the 2005 Egyptian presidential election, where one candidate, Ayman Nour, was imprisoned, highlights a thread of hypocrisy in Bush‘s lofty rhetoric. Alternatively, the Obama administration adopted a more realistic rhetoric that gave recognition to other national interests, including security interests and threats to U.S. security. In response to the discourse and policies of the previous administration President Obama stated: Indeed, one of the lessons of our effort in Iraq is that American influence around the world is not a function of military force alone. We must use all elements of our power -- including our diplomacy, our economic strength, and the power of America's example -- to secure our interests and stand by our allies. And we must project a vision of the future that's based not just on our fears, but also on our hopes -- a vision that recognizes the real dangers that exist around the world (Obama 2010) Indeed, Obama‘s rhetoric implies a much more pragmatic approach than that of the previous administration. Here, Obama stated the need for balancing various U.S. interests and real-world threats, while also acknowledging tensions. One critique of Obama states, ―If there is an Obama doctrine emerging, it is one much more realpolitik than his predecessor‘s, focused on relations with traditional great powers and relegating issues like human rights and democracy to second-tier concerns‖ (Baker 2010). However, it should be noted and taken into consideration that pragmatic responses advocated by the Obama administration may have been influenced by the legacy issues left from the previous administration. It is possible the Obama administration has taken a realistic and pragmatic approach because it is an alternative to the last administration. Therefore, it is important to consider how foreign policy is influenced by legacy and also how it may be constrained by reality. In any case, within any administration, Wilsonian ideals and moral values are never to be ignored. In his most recent State of the Union address Obama gave support to human rights and noted: Recent events have shown us that what sets us apart must not just be our power – it must also be the purpose behind it. In south Sudan – with our assistance – the people were finally able to vote for independence after years of war….And we saw that same desire to be free in Tunisia, where the will of the people proved more powerful than the writ of a dictator. And tonight, let us be clear: The U.S. of America stands with the people of Tunisia, and supports the democratic aspirations of all people (Obama 2011) While Obama does still express support for human rights and democratic values he does so with an air of caution. Unlike the previous administration, this administration refrains from soaring unrealistic rhetoric in favor of a more pragmatic and realistic rhetoric regarding foreign policy and democracy promotion. In doing so, this current administration is seen to be noticeably less hypocritical and inconsistent than the previous. C. Implementation: Rhetoric in Action? In reality U.S. democracy promotion efforts have not reflected the rhetoric surrounding it. Democracy promotion is inconsistent country to country and policy to policy. Actions do not reflect the language expressed by policy makers to support democracy. After the Bush administration it has become increasingly entangled with military interests resulting in the association of democracy promotion with regime change and forceful coercion. Under the façade of democracy promotion, policies may implement a top-down effort supporting supposed democratic leaders rather than fostering democratic values from the bottom-up through civil society. Its exclusiveness and selectiveness is seen when we support democracy in one state and ignore human rights in another. Within the Bush administration a large gap existed between talk and action whether it was the continued cozy relations with the Saudi government, the U.S. embrace of Pakistan‘s former military dictator Pervez Musharraf, or the largely uncritical line toward China‘s continued authoritarianism (Carothers 2007). In the Middle East, the Bush administration later came to characterize its interventionin Iraq as a democratizing mission, when clearly other interests, particularly security interests were involved from the start. Other U.S. autocratic allies in the region felt almost no pressure at all, despite the Bush team‘s grand pronouncements about its commitment to a politically transformed region (Carothers 2007). Instead, the Bush administration worked to tighten relations with allies in the region in an effort to create a friendly coalition of states that would serve as useful partners in the War on Terror and would help to maintain the balance of power as it was in the Middle East. Thus, the statement of principles made by President Bush at the World Economic Forum in Egypt in 2008 rarely applies to Egypt or other U.S. allies in the Middle East. Yemen, Saudi Arabia, Jordan, Egypt, Pakistan, Ethiopia have all escaped the rhetoric of supporting human rights and democratic values by the Bush administration(Carothers 2007). Indeed, inconsistency between rhetoric and action is widespread; however, inconsistency in rhetoric between private and public audiences also exists. This is a different situation where the U.S. presents public rhetoric of support, for example, in the case of Egypt -prior to the year 2011- but expresses disapproval and criticisms in private. The recent release of WikiLeaks documents has revealed how American diplomats have repeatedly raised concerns with Egyptian officials about jailed dissidents and bloggers. A 2009 cable from U.S. ambassador to Egypt, Margaret Scobey, highlighted the difficulty of promoting democracy in a state that is both a strategic ally, but also a partial democracy ruled by an oppressive president: We continue to promote democratic reform in Egypt, including the expansion of political freedom and pluralism, and respect for human rights. Egyptian democracy and human rights efforts, however, are being stymied, and the GoE [Government of Egypt] remains skeptical of our role in democracy promotion, complaining that any efforts to open up will result in empowering the Muslim Brotherhood, which currently holds 86 seats in Egypt's 454-seat parliament (Embassy Cairo. 2009) However, the documents also show that relations between Mubarak and Obama warmed up as a result of Obama playing down what was the so-called ‗name and shame‘ approach of the Bush Administration (Landler and Lehren 2011). The nature of the WikiLeaks documents concerning Egypt draw attention to a balancing of private pressure with strong public support for Mubarak under the current administration-underscoring yet another sign of inconsistency. II. How False U.S. Rhetoric Has Hurt U.S. Reputation and Image While the U.S. has unparalleled economic and military assets, American influence and standing in the world are significantly low. Frequent gaps between rhetoric and behavior, policy changes or even reversals have harmed the U.S. image as an international power and moral figure. This negative image is partially a consequence of false rhetoric. A recent committee on human rights in Washington acknowledged, ―The world is not blind to this double standard. When they see the U.S. promoting human rights, not as a matter of principle but as a matter of convenience, it saps these principles of much of their force, and it makes the U.S. a much less powerful moral force on behalf of the values that this Nation stands for‖ (U.S. 2008). Even among other Western nations, the U.S. is seen to have a weak stance concerning human rights. In 1998, The United States Information Agency (USIA) found that 59 percent of the British and 61 percent of Germans said the U.S. was doing a good job promoting human rights. Today, 56 percent of the British and 78 percent of Germans say the US is doing a bad job (Kull 2007). Clearly, opinions of the U.S. on human rights issues have degraded significantly. An American rhetoric supporting human rights and democratic ideals worldwide while, simultaneously, failing to be consistent in implementing this rhetoric evidently will influence this degradation. The U.S. is viewed as hypocritical in its rhetoric about human rights and democracy because it is seen to be selective in its actual application. American leaders pursue more confrontational strategies for supporting democratic change against those countries with strained relations with the U.S. and adopt policies of engagement to induce or, at times, overlook democratic change with allies and friends. ―Close American relationships with authoritarian regimes in Saudi Arabia, Egypt, Jordan, and cordial relationships with autocratic rulers in Kazakhstan, Azerbaijan, and Equatorial Guinea, undermine U.S. credibility when criticizing similar types of autocratic regimes with less friendly ties to Washington‖ (McFaul 2010,163). Rhetoric about liberty has been juxtaposed with the instability in Iraq and democracy promotion has become associated with regime change. In the past decade, ―the rhetorical conflation by the Bush Administration and its allies of the war in Iraq and democracy promotion has muddied the meaning of the democracy project, diminishing support for it at home and abroad‖ (Melia 2007, 12). Public opinion polls from a 2005 survey by the Pew Research Center found the U.S. to be broadly disliked in most countries surveyed. Furthermore, a degrading trend in U.S. image can be seen as a repercussion of the inconsistency in rhetoric and policy of the past. A poll, conducted for BBC World Service in 18 countries, tracked this issue from 2005-2007. ―On average, positive views of the U.S. have slipped from 40 percent in 2005 to 36 percent in 2006 to 29 percent in 2007. Negative views have risen from 46 percent in 2005 to 52 percent in 2007‖ (Kull 2007). What‘s more, Gallup Polls in 143 countries reveal the image of the leadership of the U.S. is generally poor worldwide, but that the Obama administration will have the most repair work to do on its image in the predominantly Muslim Middle East and North Africa, where regional median approval is just 15 percent (Ray 2009). One year into his term, global opinion polls taken by Gallup reflect a positive view of Obama‘s leadership and foreign policy, yet, still present mixed reviews towards his handlings of trouble spots in the Middle East (English 2010). Such negative views of the U.S. erode U.S. power and undermine U.S. influence abroad. III. Democracy Promotion as a Façade for Promoting Other U.S. Interests The point where democracy promotion rhetoric does not properly align with implementation of supporting democracy, in any given state, is a sign of inconsistency and the use of democracy promotion as a façade for promoting other U.S. interests. Inconsistency between rhetoric and action in democracy promotion highlights the varying and diverse interests of the U.S. where democracy promotion, at times, wrongly serves the purpose of justifying other non-related and sometimes contrary U.S. interests. While the U.S. does wish to support and uphold human rights and the universal concept of economic, social and political freedoms, these interests somehow fall behind other US interests. This raises the questions of: whether U.S. interests are presented as prioritized? And how does one account for the supremacy of security interests over values of supporting human rights and democracy in general? This section will first examine U.S. interests from a Wilsonian, idealist view and next, from a realist view. These two schools of thought concerning foreign policy and inevitably, democracy promotion are today seen to be in opposition with each other. This can be accounted for by the short-term mindset of foreign policy in any given administration. Foreign policy is bound to vary with each new administration, within the same administration or due to a change in the global landscape. A forward-looking foreign policy strategy encourages a balance between interests of supporting human rights and moral values (so called idealist interests), and realist tendencies to focus solely on security and strategic interests. The current strategy, however, juxtaposes these two interest views and prompts a choice between the two. Thus, while it is in U.S. interests in the long-term to promote democracy as an end in itself, U.S. actions concerning democracy promotion currently seem to be motivated and driven by short-term interests. This section will analyze where focus on short-term realist interests has prompted a lack of clarity and consistency in policies. In this manner, democracy promotion is used as a tool, rather than an end, to maintain or secure other strategic interests. What‘s more, efforts to advance democracy and human rights only occur when they are in agreement with other interests. Shortterm realist interests also reveal, in certain cases, that democracy promotion does not even exist at all; the U.S. does not intervene or interfere in certain states where other U.S. interests have a higher priority than supporting democracy. China, Ethiopia, Kazakhstan, Nigeria, Pakistan, and Russia, are sites where security and economic interests override the interest of supporting a democracy (Carothers 2007). Furthermore, lack of clarity and consistency in policies has wrongly entangled democracy promotion with military and security interests. Security, for any state, including the U.S. is critical to a state‘s survival. Indeed, first and foremost, security is America‘s primary interest. Michael McFaul notes that the ―central purpose of American power is not to make the world a better place, but first to ensure security, prosperity of American people‖ and the ―paramount objective of American foreign policy must always be to defend the security of the American people‖ (McFaul 2010, 10, 68). Deterring military foes, forging alliances, creating alliances, ensuring stable access to natural resources, creating and maintaining U.S. military bases, expanding trade and investment opportunities abroad all represent strategies to ensure American security and, therefore, generally precede other policies (United States 2010). However, security is not, nor should not, be the sole interest of U.S foreign policy. Foreign policy, must take other interests into account; clearly, ―Not all interests need to be vital to be worthy of American protection‖ (Haass 1995, 48). A. The Case for Wilsonianism A Wilsonian view of foreign policy and also democracy promotion states a U.S. interest in upholding moral values. The U.S. has a moral obligation to human rights, and here democracy promotion is not simply a tool for national interest. Democracy promotion is seen as an end in itself that promotes human rights values, quality of life, economic, political and social liberties. In rhetoric, America‘s stated interests for promoting democracy are normally Wilsonian ideals associated with supporting human empowerment and self-determination and the wish that democratic values are shared globally. Critics have deemed this view to be limited in the scope with which it can substantiate a policy action to promote democracy. Richard Haassargues, ―The principal problem with this thinking is that the active promotion of democracy is a luxury policymakers cannot always afford‖ (Haass 1995, 46). Further critiques note that there may still be instances where national security or economic interests override supporting democratic values. When it comes to human rights, nowhere have the conflicts and contradictions been greater than in Washington‘s dealings with superpowers. Haass continues, ―When it comes to relations with Russia or China, Saudi Arabia or Egypt, other national security interests must normally take precedence over (or at least coexist with) concerns about how they choose to govern themselves. During the early Bush administration certain neo-conservatives appropriated ―the fact that promoting democracy can be difficult and expensive also reduces its attraction as a foreign policy compass‖ as another means to highlight the apparent conflicting interests associated with democracy promotion (Haass 2005). B. The Case for Realism Realists emphasize the balance of U.S. power amongst other global actors through the maintenance of security. ―This theory prescribes that the U.S. has a security interest in increasing its military and economic power and fostering and maintaining alliances with powerful states to check the influence of other great or rising powers‖(McFaul 2010, 76). Above all else, maintaining a balance of power is ideal. U.S. needs access to oil, minerals, basing rights and trade from all countries willing to cooperate, irrespective of whether they are autocratic or democratic. Realists argue that democracy promotion can undermine allies, empower anti-American forces and generate both domestic and international instability. In the case of Egypt, for instance, supporters of Mubarak and Mubarak himself, argued that democratization could give way to the empowerment of non-western friendly actors, such as the Muslim Brotherhood and ultimately destabilize the Middle East region (Embassy Cairo 2010).Haass acknowledges ―The strength of the realist approach is that it does not overlook existing and potential threats to U.S. interests, threats that if they were to materialize could overwhelm policy concerns‖ (Haass 1995, 48). C. Democracy Promotion as a Tool, Rather Than an End Here is where focus on short-term realist interests prompts a lack of clarity and consistency in policies. Under a realist school of thought, democracy promotion is seen as a tool rather than an end. It can be emphasized as a strategy to ideally secure other interests. Consequently, democracy promotion, when it exists, can become entangled with military and security interests; or, democracy promotion may not exist at all where other strategic interests are already present. Still, there are cases where democracy promotion doesn‘t even exist at all; the U.S. does not intervene or interfere in certain states where other U.S. interests have a higher priority than supporting a democracy. U.S. military presence in the Middle East prompts the need for allies in the region. Pakistan represents one instance; Pervez Musharraf maintained control of Pakistan with his power as a military dictator up until the 2008 elections. Security interests as well as economic interests play a significant role in undermining democracy promotion in the Middle East. U.S. oil interests invoke a more hardheaded foreign policy that disregards human rights and quality of life standards in states such as Algeria and Saudi Arabia. Accordingly, Michael McFaul notes, ―Without the illiberal kingdom of Saudi Arabia as a trade partner today, the U.S. would not have enough affordable energy to support our current way of life‖ (McFaul 2010, 79). On the same note, other countries with limited trade and aid relations to the U.S., such as Syria, will not experience the same policy with the U.S. as does Saudi Arabia, for instance. Economic and strategic interests have, in the past, prevented the U.S. from taking a firm stance against China‘s human rights violations. China, on the contrary, maintains a favored nation status. For the U.S., ―promoting human rights was jettisoned in May 1994 when the need to export to China and engage in a host of strategic efforts proved too significant to set aside‖ (Haass 1995, 53). Indeed U.S. leverage against China‘s human rights violations is supposedly limited due to economic interests that are present. Furthermore, when powers face a challenger to their hegemony, they are more likely to tolerate autocracies that can present themselves as buffer against their rivals (Levitsky and Steven and Way, 2002). The U.S. has been cited for supporting the ‗democrat‘ rather than the democracy where support for autocratic allies is emphasized over support for actual democratic institutions. This policy was seen in Egypt, prior to January 25, 2011, where the U.S. has provided billions of dollars in aid over the past several decades to prop up the Egyptian dictatorship. Supporters of this policy acknowledge the false assumption that elected parties will be in agreement with the U.S. and its foreign policy. They acknowledge that democratic elections could promote the rise of a fascist leader (Kopstein 2006, 89). Mubarak, has been cited frequently for human rights violations; detention, torture, refusal to register opposition political parties were all used by Mubarak as a means to constrain the scope of democracy and prevent a threat to his persistent rule (Untied States 2008). In Egypt, Mubarak profited from this Western concern that Islamists will win a fair election in the country. ―As evidence Mubarak can point to the parliamentary elections of 2005, when candidates backed by the Muslim Brotherhood captured a majority of the seats they contested‖ (United States 2008). Although the U.S. rarely placed pressure on Mubarak publicly, documents from WikiLeaks reveal U.S. pressure on Mubarak to democratize and to improve human rights. Nevertheless, ―U.S. pressure for democratization largely ended with the strong Muslim Brotherhood showing of 2005‖(United States 2008). Instances of supporting autocratic allies have happened frequently in U.S. foreign policy, and present a challenge to the consistency in rhetoric of foreign policy and democracy promotion in the future. D. Entanglement of Democracy Promotion with Military or Security Interests Inconsistency between rhetoric and action can also manifest itself when other U.S. interests, specifically military and security interests, become entangled with the act of promoting democracy. In the past decade, entanglement represents one of the greatest faults to American foreign policy and its association with democracy promotion consequently. Entanglement presented itself most distinctly within Bush‘s Freedom Agenda where military force became an instrument for democracy promotion and democracy promotion became associated with regime change. Here, McFaul comments that “During the Bush administration, the American armed forces assumed a leading role in fostering democratic change (McFaul 2010, 155). At times, the purpose for a military intervention can be disguised under the veil of democracy promotion. Or, similarly, democracy promotion becomes a façade to fulfill other interests, as was seen in Iraq. “The increasingly threadbare nature of initial US justifications for the invasion, (weapons of mass destruction, the Iraq-Al-Qaeda ‘link‘), rendered the language of democracy promotion an attractive fall-back for the administration" (Durac and Cavatorta 2009, 9). A close association between military intervention and democracy promotion overshadows the more traditional and legitimate means for supporting democratic development in other countries. In Iraq, policy makers fell back on democracy when all other legitimate reasons to invade couldn‘t be summoned. In cases like this, the act of using democracy promotion as a façade renders U.S. democracy promotion misleading and unfounded. IV. Undermining U.S. Credibility and Image A. Accusations of Hypocrisy The determinedness with which the Bush administration tied democracy promotion rhetoric to aggressive War on Terror military actions had the opposite of its desired effect. The U.S. had hoped that its preemption policy might be more palatable if couched in values that are almost universally agreed upon, like freedom and democracy. President Bush‘s statement ―For the sake of our long-term security, all free nations must stand with the forces of democracy and justice that have begun to transform the Middle East‖ implies that the U.S.‘s involvement in the Middle East is consistently aimed at supporting democratic movements. However, the fact that security is a much more immediate concern in military conflicts meant that, in practice, democracy was not the primary consideration when it came to which governments to support and which to challenge. Egypt, for example, is a close U.S. ally and enjoyed generous military support throughout the freedom agenda years despite being decisively authoritarian. On the other hand, the U.S. refused to support Hamas although it was democratically elected by the Palestinian people. While both of these decisions make sense from a geopolitical/security perspective, they do not fit the democracy promotion agenda. When President Bush made universal statements about democracy promotion while at the same time supporting non-democracies and failing to support all functioning democracies for security reasons, the international community recognized the hypocrisy. B. Accusations of Hubris Another way in which U.S. democracy promotion rhetoric helped undermine our credibility and image abroad has been by declaring success, or at least marked progress, in places where democracy, if it exists at all, is not functioning enough to improve the quality of life of citizens. By calling these examples successful, the U.S. either looks disturbingly out of touch or too haughty to admit the shortcomings of its democracy promotion efforts. Iraq is an excellent example of this, as Frank Rich of the New York Times points out: ―Iraq‘s ‗example of freedom,‘‖ as President Bush referred to his project in nation building and democracy promotion, did not inspire other states in the Middle East to emulate it. If Iraq is an example of success, who indeed would volunteer to be the next patient of U.S. democracy promotion? There are many other examples stretching back before the Bush era of similarly willfully inaccurate statements. Thomas Carothers points to the Congo, Cambodia, and Soviet-free Afghanistan as cases where the U.S. stubbornly congratulated themselves on progress that, to the rest of the world, looked like tragedy. Setting unrealistic expectations for the results of democracy promotion, such as President Bush‘s ―long-term goal of ending tyranny in our world, ―are another form of this hubris (Bush 2005). These two types of misleading rhetoric create a very stark image of U.S. democracy promotion in the eyes of the rest of the world. The U.S. claims to stand behind democratic forces in all states, but does not follow through when more immediate strategic concerns are present. Actions claimed to be democracy promotion are implemented with military coercion and claimed as successes even if they fail to provide security or stability for the country‘s citizens, and, in the case of Iraq, actively destabilize a region. As a result, ―the credibility of the US as an agent of democracy promotion in the Middle East is called into question, both within the region and without‖ (Bali and Rana, 2010). V. Implications for Diplomatic Effectiveness: Realism The preceding mistakes have resulted in ―Obama and his foreign-policy team edge[ing] away from the language of democracy promotion, which they fear that the Freedom Agenda has rendered toxic. (Taub 2009)‖ The new administration may feel the need to avoid Bush-era rhetoric that engendered so much criticism, but the associations of U.S. democracy promotion with aggressive militarism, hypocrisy, and arrogance will not disappear overnight. They must be replaced by a strong, realistic redefinition of what democracy promotion means to the U.S., when and how it will be practiced, and when it must take a backseat to other more immediate concerns. Once the U.S. rhetorically embraces realistic standards, it will be possible for policy and rhetoric to be consistent. This will present a reasonable face for U.S. democracy promotion, encouraging cooperation and discussion rather than avoidance or presumptive opposition. This is something U.S. policymakers should be concerned with for more substantive reasons than international popularity. Being seen as hypocritical and arrogant strengthens the case of foreign leaders seeking to oppose U.S. policy, both in international forums and bilateral relations. The U.S.‘s ability to achieve foreign policy objectives- be they economic, military, or geopolitical- is materially harmed by the perception that we have qualities undesirable in a working relationship. Unrealistic assessment of outcomes, inconsistency, unwillingness to recognize areas of weakness, and arrogance are all characteristics that do not invite support and cooperation. Indeed, McFaul asserts the Bush administration‘s rhetoric and policy in the Middle East were damaging to the U.S.‘s ability to realize foreign policy goals to the extent that they formed ―a serious impasse between the White House and all other international organizations, which subsequently tried to steer clear of associating with Bush policies, including his freedom agenda‖ (McFaul 2010, 218). It clearly follows that all U.S foreign policy goals are served by a positive and respected image abroad, because other states and international organizations are more willing to cooperate with policies when they have a positive image of U.S. goals and methods for achieving them. Certain aspects of democracy promotion have been identified as contributing to a negative image abroad:  Aggression/militarism  Unwarranted declarations of success/denial of mistakes  Inconsistency o Between rhetoric and action Between standards for various states Accordingly, attempts to foster a more positive, cooperative image should involve amending democracy promotion policy to be more:  Peaceful and non-coercive  Realistic o In assessments of progress and willingness to discuss/learn from mistakes o Rhetoric able to be achieved with action o Policies capable of being applied consistently across cases (flexible, humble) Incorporating these guidelines into a new coherent democracy promotion strategy will help the Obama administration avoid the backlash against Bush era mistakes. As previously mentioned Obama is already bringing his democracy promotion rhetoric down to a more realistic level, but he has not fully embraced all the changes necessary for a new effective era of democracy promotion. His administration‘s handling of the recent Egyptian protests is an indication of the need for clear, consistent rhetoric that can be employed in situations where democracy promotion and other interests conflict. This is already acknowledged in private. A cable sent from the U.S. Embassy in Egypt in 2008 admits that ―An ongoing challenge remains balancing our security interests with our democracy promotion efforts.‖ Yet instead of openly addressing this conflict in statements on Egypt‘s unfolding revolution, President Obama delivered ―ambiguous messages about an orderly transition‖ (Embassy Cairo 2008). More than two weeks into the protests, he issued a statement saying ―the future of Egypt will be determined by the Egyptian people‖ (Obama 2011). While this is certainly an improvement on former president Bush‘s coercive and idealistic rhetoric, it does not provide a clear policy on democracy promotion and its limitations. Inherent in the statement is a message of non-coercion, acknowledgement of the unpredictability of democratization efforts, and an unwillingness to burn bridges with current government authorities. All of these considerations should be stated publicly and result from a clearly defined U.S. policy on democracy promotion that commits to realistic goals and recognizes that other interests like regional security must play a role in immediate decisions without endangering the long-term process of democratization. A. Non-coercion: Separating Immediate Security Concerns from Democracy Promotion Efforts As later sections of this paper will discuss, successful democratization is a long-term process requiring diverse economic and civil society development. While it is possible to destabilize a dictatorial regime through military or economic coercion, removing one undemocratic government does not automatically- or even usually- usher a functioning democracy into power. Therefore coercion is rarely a useful tool in democracy promotion efforts. More frequently, as described earlier in the chapter, democracy promotion ends up being used as a justification for otherwise unpopular coercive actions. Iraq is the most recent and most blatant example of military coercion justified by democracy promotion rhetoric, but understood by most politicians to be a strategic attempt to gain influence in the oil-rich Middle East. Cuba provides an excellent example of economic coercion in the name of democracy. If the sanctions imposed by the U.S. really were an attempt to force a democratic transition, the decades of unperturbed socialism since their implementation would have proven this method a failure. The fact that the embargo remains intact proves other strategic interests are at stake. If the U.S. can refrain from using democracy promotion rhetoric to justify coercive policies, foreign governments and citizens will be less likely to balk at the idea of allowing the U.S. influence in their country. Later sections of this paper will elaborate on strategies for peaceful and non-coercive democracy promotion. This should be a policy that the U.S. is firmly committed to. Not only does it adhere to a basic moral commitment to human rights, peace, and stability, as outlined previously, by showing respect for state sovereignty and international cooperation it will also increase the ability of the U.S. to achieve foreign policy goals through diplomatic channels. Matthew Longo agrees that ―Without question, military power is important, but it is not the only road forward. Nor is it always the best agent for change. The message of democracy-promotion abroad is not well-delivered from the opposite end of a gun‖ (Longo 2010). This is not a call for the U.S. to withdraw its foreign military presence or adopt a pacifist attitude; far from it. It simply urges that democracy promotion rhetoric not be used as a decoration to make military action more palatable. Security rhetoric can be militant, but for the sake of effectiveness in the international arena, democracy promotion rhetoric should be non-coercive. B. Achievable Rhetoric The second point, realistic assessment of progress in democracy promotion efforts, is crucial in order to achieve consistency between rhetoric and action. If the government makes grandiose statements about democracy promotion, as were common under Bush‘s Freedom Agenda, it will be hard pressed to live up to them. Eliminating tyranny entirely is a noble goal, as is supporting all democratic movements worldwide, but the truth is that the U.S. government is in no position to actually do either of those things. It cannot achieve consistency between rhetoric and action if rhetoric is unrealistic. This is not to say that there is no place for lofty or inspiring language. On the contrary, it often plays an important role in motivating populations to organize for democratic change. What is essential is that lofty rhetoric not be confused with actual commitments to act or expected outcomes of an action. For example, instead of claiming a completely free and democratic Middle East to be the goal of a policy like the Freedom Agenda, U.S. politicians could state that all citizens of Middle Eastern states deserve to have their basic rights and freedoms protected by accountable, responsive governments. It is entirely possible to reinforce a commitment to human rights and quality of life for all people without making specific claims about the U.S.‘s own power to reshape the world as it sees fit. C. Realism Allows for Consistency In addition to rhetoric about goals and actions being realistic in scope, it must also be as consistent as possible with actual U.S. interests, policies, and actions. Clearly this is not possible in all areas of foreign policy, particularly security and intelligence, but for democracy promotion it is largely possible and in fact helpful in many ways. Cavatorta and Durac point out that often, ―rather than being interested in democratic reform for its own sake, the US propounds democracy in the hope and expectation that it will deliver outcomes which the US desires.‖ It is important not to confuse democracy promotion for its own sake with democracy promotion used as part of a strategy to make a state less hostile to U.S. interests, be they economic, military, or political. This distinction is important because, as previously stated, democracy promotion is a long-term and contextually sensitive project and is unlikely to succeed as part of a short-term effort to affect specific strategic variables. Thus, if democracy promotion is tied to such projects rhetorically, it will seem to have a low success rate and diminish our credibility. If, however, it is made clear that the U.S. is seeking a strategic outcome, for instance permission to build a military base in a foreign state, and democracy promotion is one of many tools being employed to towards this end, no unrealistic expectations are raised. In this case, the U.S. appears pragmatic rather than blindly optimistic. Being clear and realistic rhetorically about the desired short-term and long-term outcomes of policies will improve the image of the U.S. as an international actor and restore credibility to its democracy promotion efforts. When democracy promotion is indeed the priority of a given project, it will be more successful and contribute to a more admirable and diplomatically effective U.S. when mistakes are recognized, discussed in a cooperative forum, and amended for future projects. Democracy promotion, like any process, will stagnate if unsuccessful models are ignored and allowed to proliferate because of a desire to save face. It is time to stop ―using transitional language to characterize countries that in no way conform to any democratization paradigm‖ and earn back the respect of the democracy promotion community (Carothers 2007, 4). D. Realism Encourages Multilateral Cooperation A further benefit to realistic assessments of progress beyond image repair is the possibility for greater international cooperation on democracy promotion projects. Discussions among democracy promoters about the successes and challenges of particular cases will not only foster a sense of shared goals, but also allow for faster and more effective revisions of unsuccessful tactics. Multilateralism has many benefits that will be more thoroughly discussed later in the paper, but most simply it will make us less vulnerable to accusations of arrogance. Exemplifying the willingness to cooperate and take criticism that we would like to see in other states will only bolster our credibility and effectiveness in the diplomatic arena. VI. Conclusion Improving the image of the U.S. abroad will increase its effectiveness in all aspects of foreign policy. Creating a clear, consistent democracy promotion policy that recognizes the need to compromise between immediate strategic interests and long-term democratization efforts is necessary to eliminate accusations of hubris and hypocrisy so common since the Bush Administration‘s Freedom Agenda. President Obama has made steps in the right direction, but has yet to present a cohesive, transparent democracy promotion policy to the public.

#### No mindless intervention

Mandelbaum 2011 (Michael Mandelbaum, A. Herter Professor of American Foreign Policy, the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University, Washington DC; and Director, Project on East-West Relations, Council on Foreign Relations, “CFR 90th Anniversary Series on Renewing America: American Power and Profligacy,” Jan 2011)

I think it is, Richard. And I think that this period really goes back two decades. I think the wars or the interventions in Somalia, in Bosnia, in Kosovo, in Haiti belong with the interventions in Afghanistan and Iraq, although they were undertaken by different administrations for different reasons, and had different costs. But all of them ended up in the protracted, unexpected, unwanted and expensive task of nation building. Nation building has never been popular. The country has never liked it. It likes it even less now. And I think we're not going to do it again. We're not going to do it because there won't be enough money. We're not going to do it because there will be other demands on the public purse. We won't do it because we'll be busy enough doing the things that I think ought to be done in foreign policy. And we won't do it because it will be clear to politicians that the range of legitimate choices that they have in foreign policy will have narrowed and will exclude interventions of that kind. So I believe and I say in the book that the last -- the first two post-Cold War decades can be seen as a single unit. And that unit has come to an end.

#### Pragmatic policy-focused approach is critical to productive change---K’s abstractions fail

William J. Novak 8, Associate Professor of History at the University of Chicago and Research Professor at the American Bar Foundation, “The Myth of the “Weak” American State”, June, http://www.history.ucsb.edu/projects/labor/speakers/documents/TheMythoftheWeakAmericanState.pdf

There is an alternative. In the early twentieth century, amid a first wave of nation- state and economic consolidation and assertiveness, American social science generated some fresh ways of looking at power in all its guises—social, economic, political, and legal. Overshadowed to some extent by exuberant bursts of American exceptionalism that greeted confrontations with totalitarianism and then terrorism, the pragmatic, critical, and realistic appraisal of American power is worth recovering. From Lester Frank Ward and John Dewey to Ernst Freund and John Commons to Morris Cohen and Robert Lee Hale, early American socioeconomic theorists developed a critique of a thin, private, and individualistic conception of American liberalism and interrogated the location, organization, and distribution of power in a modernizing United States. All understood the problem of power in America as complex and multifaceted, not simple or one-dimensional, especially as it concerned the relationship of state and civil society. Rather than spend endless time debating the proper definition of law or the correct empirical measure of the state, they concentrated instead on detailed investigations of power in action in the everyday practices and policies that constituted American public life. Rather than confine the examination of power to the abstract realm of political theory or the official political acts of elites, electorates, interest groups, or social movements, these analysts instead embraced a more capacious conception of governance as “an activity which is apt to appear whenever men are associated together.”35 More significantly, these political and legal realists never forgot, amid the rhetoric of law and the pious platitudes that routinely flow from American political life, the very real, concrete consequences of the deployment of legal and political power. They never forgot the brutal fact that Robert Cover would later state so provocatively at the start of his article “Violence and the Word” that legal and political interpretation take place “in a field of pain and death.” 36 The real consequences of American state power are all around us. In a democratic republic, where force should always be on the side of the governed, writing the history of that power has never been more urgent.

#### No alternative to the law/legal system---other ideas bring more inequality and abuse

Jerold S. Auerbach 83, Professor of History at Wellesley, “Justice Without Law?”, 1983, p. 144-146

As cynicism about the legal system increases, so does enthusiasm for alternative dispute-settlement institutions. The search for alternatives accelerates, as Richard Abel has suggested, "when some fairly powerful interest is threatened by an increase in the number or magnitude of legal rights.\*'6 Alternatives are designed to provide a safety valve, to siphon discontent from courts. With the danger of political confrontation reduced, the ruling power of legal institutions is preserved, and the stability of the social system reinforced. Not incidentally, alternatives prevent the use of courts for redistributive purposes in the interest of equality, by consigning the rights of disadvantaged citizens to institutions with minimal power to enforce or protect them. It is, therefore, necessary to beware of the seductive appeal of alternative institutions. They may deflect energy from political organization by groups of people with common grievances; or discourage effective litigation strategies that could provide substantial benefits. They may, in the end, create a two-track justice system that dispenses informal "justice" to poor people with "small" claims and "minor" disputes, who cannot afford legal services, and who are denied access to courts. (Bar associations do not recommend that corporate law firms divert their clients to mediation, or that business deductions for legal expenses—a gigantic government subsidy for litigation—be eliminated.) Justice according to law will be reserved for the affluent, hardly a novel development in American history but one that needs little encouragement from the spread of alternative dispute-settlement institutions.¶ It is social context and political choice that determine whether courts, or alternative institutions, can render justice more or less accessible—and to whom. Both can be discretionary, arbitrary, domineering—and unjust. Law can symbolize justice, or conceal repression. It can reduce exploitation, or facilitate it. It can prohibit the abuse of power, or disguise abuse in procedural forms. It can promote equality, or sustain inequality. Despite the resiliency and power of law, it seems unable to eradicate the tension between legality and justice: even in a society of (legal) equals, some still remain more equal than others. But diversion from the legal system is likely to accentuate that inequality. Without legal power the imbalance between aggrieved individuals and corporations, or government agencies, cannot be redressed. In American society, as Laura Nader has observed, "disputing without the force of law ... [is| doomed to fail."7 Instructive examples document the deleterious effect of coerced informality (even if others demonstrate the creative possibilities of indigenous experimentation). Freed slaves after the Civil War and factory workers at the turn of the century, like inner-city poor people now, have all been assigned places in informal proceedings that offer substantially weaker safeguards than law can provide. Legal institutions may not provide equal justice under law, but in a society ruled by law it is their responsibility.¶ It is chimerical to believe that mediation or arbitration can now accomplish what law seems powerless to achieve. The American deification of individual rights requires an accessible legal system for their protection. Understandably, diminished faith in its capacities will encourage the yearning for alternatives. But the rhetoric of "community" and "justice" should not be permitted to conceal the deterioration of community life and the unraveling of substantive notions of justice that has accompanied its demise. There is every reason why the values that historically are associated with informal justice should remain compelling: especially the preference for trust, harmony, and reciprocity within a communal setting. These are not, however, the values that American society encourages or sustains; in their absence there is no effective alternative to legal institutions.¶ The quest for community may indeed be "timeless and universal."8 In this century, however, the communitarian search for justice without law has deteriorated beyond recognition into a stunted off-shoot of the legal system. The historical progression is clear: from community justice without formal legal institutions to the rule of law, all too often without justice. But injustice without law is an even worse possibility, which misguided enthusiasm for alternative dispute settlement now seems likely to encourage. Our legal culture too accurately expresses the individualistic and materialistic values that most Americans deeply cherish to inspire optimism about the imminent restoration of communitarian purpose. For law to be less conspicuous Americans would have to moderate their expansive freedom to compete, to acquire, and to possess, while simultaneously elevating shared responsibilities above individual rights. That is an unlikely prospect unless Americans become, in effect, un-American. Until then, the pursuit of justice without law does incalculable harm to the prospect of equal justice.

### 2AC EPA GOOD Homer DA--- Link Turn

#### Warming doesn’t cause extinction nuke war turns it

Schweickart 2010 (David Schweickart, Professor at Loyola University Chicago, Ph.D. in Mathematics UVA, Ph.D. in Philosophy The Ohio State University, “Is Sustainable Capitalism Possible?,” Procedia Social and Behavioral Sciences 41 (2010) 6739–6752)

It is not true either that the various ecological crises we are facing will bring about “the end of the world.” Consider the projections of the Stern Review, the recently released report commissioned by the British Government. If nothing is done, we risk “major disruption to economic and social activity, later in this century and the next, on a scale similar to those associated with the great wars and economic depression of the first half of the 20th century.”¶ This is serious. Some sixty million people died in World War Two. The Stern Review estimates as many as 200 million people could be permanently displaced by rising sea level and drought. But this is not “the end of the world.” Even if the effects are far worse, resulting in billions of deaths—a highly unlikely scenario—there would still be lots of us left. If three-quarters of the present population perished, that would still leave us with 1.6 billion people—the population of the planet in 1900. ¶ I say this not to minimize the potentially horrific impact of relentless environmental destruction, but to caution against exaggeration. We are not talking about thermonuclear war—which could have extinguished us as a species. (It still might.) And we shouldn’t lose sight of the fact that millions of people on the planet right now, caught up in savage civil wars or terrorized by U.S. bombers (which dropped some 100,000 lbs. of explosives on a Baghdad neighborhood during one ten-day period in January 2008—the amount the fascists used to level the Basque town of Guernica during the Spanish Civil War), are faced with conditions more terrible than anyone here is likely to face in his or her lifetime due to environmental degradation.

#### The plan is DC District Court

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

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

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

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

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

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

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

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

#### Controversial decisions boost capital

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

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

#### Global warming is inevitable

Spaeth 2012 (Ryu Spaeth, December 5, 2012, “Why it's probably too late to roll back global warming,” The Week, http://theweek.com/article/index/237392/why-its-probably-too-late-to-roll-back-global-warming)

Two degrees Celsius. According to scientists, that's the rise in global temperature, measured against pre-industrial times, that could spark some of the most catastrophic effects of global warming. Preventing the two-degree bump has been the goal of every international treaty designed to reduce greenhouse gas emissions, including a new one currently being hammered out at a United Nations summit in Doha, Qatar. But a new study published by the journal Nature Climate Change shows that it's incredibly unlikely that global warming can be limited to two degrees. According to the study, the world in 2011 "pumped nearly 38.2 billion tons of carbon dioxide into the air from the burning of fossil fuels such as coal and oil," says Seth Borenstein at The Associated Press:¶ The total amounts to more than 2.4 million pounds (1.1 million kilograms) of carbon dioxide released into the air every second.¶ Because emissions of the key greenhouse gas have been rising steadily and most carbon stays in the air for a century, it is not just unlikely but "rather optimistic" to think that the world can limit future temperature increases to 2 degrees Celsius (3.6 degrees Fahrenheit), said the study's lead author, Glen Peters at the Center for International Climate and Environmental Research in Oslo, Norway.¶ What happens when the two-degree threshold is crossed? Most notably, that's when the polar ice caps will begin to melt, leading to a dangerous rise in sea levels. Furthermore, the world's hottest regions will be unable to grow food, setting the stage for mass hunger and global food inflation. The rise in temperature would also likely exacerbate or cause extreme weather events, such as hurricanes and droughts.¶ There is a very small chance that the world could pull back from the brink. The U.N. could still limit warming to two degrees if it adopts a "radical plan," says Peters' group. According to a PricewaterhouseCoopers study, such a plan would entail cutting carbon emissions "by 5.1 percent every year from now to 2050, essentially slamming the breaks on growth starting right now," says Coral Davenport at The National Journal, "and keeping the freeze on for 37 years." However, the U.N. has set a deadline of ratifying a new treaty by 2015, and implementing it by 2020, which means the world is already eight years behind that pace. There are still major disagreements between the U.S. and China over whether the developed world, which industrialized first, should bear the bulk of the cost of reducing carbon emissions. And there is, of course, a large contingent of Americans who don't even believe climate change exists, putting any treaty's ratification at risk. Climate change is so politically toxic in America that Congress has prioritized the fiscal cliff over — no exaggeration — untold suffering and the end of the world as we know it.¶ In other words, it isn't happening. And if that's not bad enough, keep in mind that the two-degree mark is just the beginning, says Davenport:¶ Michael Oppenheimer, a professor of geosciences and international affairs at Princeton University and a member of the Nobel Prize-winning U.N. Intergovernmental Panel on Climate Change, says that a 2-degree rise is not itself that point, but rather the beginning of irreversible changes. "It starts to speed you toward a tipping point," he said. "It's driving toward a cliff at night with the headlights off. We don't know when we'll hit that cliff, but after 2 degrees, we're going faster, we have less control. After 3, 4, 5 degrees, you spiral out of control, you have even more irreversible change."¶ Indeed, at the current emissions rate, the world is expected to broach the four-degree mark by 2100 — at which point, we can expect even worse environmental catastrophes.

#### US emissions low now and not key

Traub 12/7 (James Traub, contributing writer for The New York Times Magazine, December 7, 2012, “The Climate Scofflaw,” http://www.foreignpolicy.com/articles/2012/12/07/the\_climate\_scofflaw)

Actually, that's not true -- the last part, anyway. According to the International Energy Agency, U.S. emissions have dropped 7.7 percent since 2006 -- "the largest reduction of all countries or regions." Yes, you read that correctly. The United States, which has indeed refused to sign the Kyoto Accords establishing binding targets for emissions, has reduced its carbon footprint faster than the greener-than-thou European countries which have done so. The reasons for this have something to do with climate change itself (warm winters mean less heating oil -- something to do with market forces -- the shift from coal to natural gas in power plants) and something to do with policy at the state and regional level. And in the coming years, as both new gas-mileage standards and new power-plant regulations championed by the Obama administration kick in, policy will drive the numbers further downwards; U.S. emissions are expected to fall 23 percent between 2002 and 2020. Apparently Obama's record on climate change is not quite as calamitous as reputation would have it.¶ The West has largely succeeded in bending downwards the curve of carbon emissions. But the developing world has not. Last year, China's emissions rose 9.3 percent; India's, 8.7 percent. China is now the world's No. 1 source of carbon emissions, followed by the United States, the European Union, and India. The emerging powers have every reason to want to emulate the energy-intensive economic success of the West; even those, like China, who have taken steps to increase energy efficiency, are not prepared to do anything to harm economic growth. The real failure of U.S. policy has been, first, that it is still much too timid, and second, that it has not acted in such a way as to persuade developing nations to take the truly difficult decisions which would put the world on a sustainable path.

# 1AR

### Circumvention

#### No circumvention and the courts are effective—the executive will consent

Prakash and Ramsay 2012 (Saikrishna B. Prakash, David Lurton Massee, Jr. Professor of Law and Sullivan and Cromwell Professor of Law, University of Virginia School of Law. and Michael D. Ramsey, Professor of Law, University of San Diego School of Law; “The Goldilocks Executive”, Review of THE EXECUTIVE UNBOUND:AFTER THE MADISONIAN REPUBLIC. By Eric A. Posner & Adrian Vermeule, 90 Texas L. Rev. 973, http://www.texaslrev.com/wp-content/uploads/Prakash-Ramsey-90-TLR-973.pdf)

The Courts.—The courts constrain the Executive, both because courts are necessary to the Executive imposing punishments and because courts can enforce the Constitution and laws against the Executive. It is true, as Posner and Vermeule say, that courts often operate ex post and that they may defer to executive determinations, especially in sensitive areas such as national security. But these qualifications do not render the courts meaningless as a Madisonian constraint. First, to impose punishment, the Executive must bring a criminal case before a court. If the court, either via jury or by judge, finds for the defendant, the Executive does not suppose that it can nonetheless impose punishment (or even, except in the most extraordinary cases, continue detention). This is so even if the Executive is certain that the court is mistaken and that failure to punish will lead to bad results. As a result, the Executive’s ability to impose its policies upon unwilling actors is sharply limited by the need to secure the cooperation of a constitutionally independent branch, one that many suppose has a built-in dedication to the rule of law.84 And one can hardly say, in the ordinary course, that trials and convictions in court are a mere rubber stamp of Executive Branch conclusions. Second, courts issue injunctions that bar executive action. Although it is not clear whether the President can be enjoined,85 the rest of his branch surely can and thus can be forced to cease actions that judges conclude violate federal law or the Constitution.86 As a practical matter, while courts issue such injunctions infrequently, injunctions would be issued more often if an administration repeatedly ignored the law. Third, courts’ judgments sometimes force the Executive to take action, such as adhering to a court’s reading of a statute in areas related to benefits, administrative process, and even commission delivery. Though the claim in Marbury v. Madison87 that courts could issue writs of mandamus to executive officers was dicta,88 it was subsequently confirmed in Kendall v. United States ex rel. Stokes, 89 a case where a court ordered one executive officer to pay another.90 Finally, there is the extraordinary practice of the Executive enforcing essentially all judgments. The occasions in which the Executive has refused to enforce judgments are so few and far between that they are the stuff of legend. To this day, we do not know whether Andrew Jackson said, “John Marshall has made his decision, now let him enforce it.”91 Lincoln’s disobedience of Chief Justice Taney’s writ of habeas corpus is so familiar because it was so singular. Yet to focus on actual court cases and judgments is to miss the broader influence of the courts. Judicial review of executive action matters because the knowledge of such review affects what the Executive will do. Executives typically do not wish to be sued, meaning that they often will take measures designed to stave off such suits and avoid actions that raise the risk of litigation. The ever-present threat that someone will take a case to court and defeat the Executive acts as a powerful check on executive decision making. The Executive must take account of law, including law defined as what a court will likely order.

### 1AR--- Links to Politics

#### CP links to politics more

Billy Hallowell 13, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

### 1AR--- SR Fails

#### Only external checks solve

Healy 2008 (Gene Healy, JD U Chicago, vice president at the Cato Institute, October 14, 2008, “New President Won’t Tame Executive Power,” CATO, http://www.cato.org/publications/commentary/new-president-wont-tame-executive-power)

But there are good reasons to doubt that an Obama administration would meaningfully de-imperialize the presidency.¶ From Truman and Johnson’s undeclared wars to the warrantless wiretapping carried out by FDR, JFK, LBJ and Nixon, the Imperial Presidency has long been a bipartisan phenomenon. In fact, our most recent Democratic president, Bill Clinton went even further than his predecessors in his exercise of extraconstitutional war powers. Prior presidents had unilaterally launched wars in the face of congressional silence. But Clinton’s war over Kosovo in 1999 made him the first president to launch a war in the face of several congressional votes denying him the authority to wage it.¶ Recently, Barack Obama has found his own convenient rationales for endorsing broad presidential powers in the area of surveillance. When he signed on to the surveillance bill Congress passed this summer, Sen. Obama broke an explicit campaign promise to filibuster any legislation that would grant immunity to FISA-flouting telecom companies. By voting for the bill, Obama helped legalize large swaths of a dragnet surveillance program he’d long claimed to oppose. Perhaps some were comforted by Obama’s “firm pledge that as president, I will carefully monitor the program.” But our constitutional structure envisions stronger checks than the supposed benevolence of our leaders.¶ What motivated Obama’s flip-flop? Was it a desire to look “tough” on national security-or was it that, as he seems ever closer to winning the office, broad presidential powers seem increasingly appealing? Either way, it’s clear that the post-9/11 political environment will provide enormous incentives for the next president to embrace Bush-like theories of executive power. Can we really expect a Democratic president, publicly suspected of being “soft on terror,” to spend much political capital making himself less powerful?¶ Not likely, say analysts on both sides of the political spectrum. Law professors Jack Balkin and Sanford Levinson, both left-leaning civil libertarians, predict that “the next Democratic president will likely retain significant aspects of what the Bush administration has done”; in fact, “future presidents may find that they enjoy the discretion and lack of accountability created by Bush’s unilateral gambits.” Jack Goldsmith, head of the Bush administration’s OLC from 2003-04, argues that “if anything, the next Democratic president - having digested a few threat matrices … will be even more anxious than the current president to thwart the threat.”\

### 1AR Iran UQ

#### No deal—internal resistance

Erdbrink 11-14 (Thomas Erdbrink, The New York Times, “Iran and Western Powers Clash Over Why Nuclear Talks Failed” November 14, 2013 Thursday Late Edition – Final, Section A; Column 0; Foreign Desk; Pg. 14, Lexis)

While Mr. Zarif aimed most of his criticism at France, he may have done so, analysts say, to placate or undercut various domestic audiences, beginning with the millions who voted for President Hassan Rouhani and his moderate government -- one that promised to end the cold war with the West and relieve the economy of the sanctions imposed over the nuclear program.

But he also has to worry about hard-liners, many of whom think the talks are a fool's errand and have warned that Iran's opponents will try to trick or coerce it into a bad deal.

Generally, even conservatives who are suspicious of the talks have been sticking to the unofficial government order not to discuss the details. But Hossein Shariatmadari, the editor in chief of the hard-line newspaper Kayhan, has been leading a relentless campaign against the talks. On Monday Mr. Shariatmadari, who was appointed by Iran's supreme leader, Ayatollah Ali Khamenei, and is a close adviser to him, warned the negotiators not to be ''naïve.''

His newspaper printed what it said were six demands by the world powers, which each individually would be enough to enrage Iran's hard-line factions.

Citing ''reliable sources,'' Mr. Shariatmadari said the world powers want Iran to stop enriching uranium up to 20 percent, which is technical steps away from weapons-grade uranium. He wrote that Iran would have to drastically reduce its 18,000 uranium centrifuges, mothball the heavy-water reactor in Arak and close the uranium enrichment bunker near the city of Fordo.

In return, ''America and its allies'' proposed to lift sanctions on vehicles, gold and precious stones and petrochemicals, while releasing some Iranian assets that have been blocked in China, India and South Korea, Mr. Shariatmadari wrote.

He argued that the White House was refusing to compromise, instead engaging in ''ransom-seeking behavior'' and ''illegal expectations'' in order to block progress. He argued that the United States and France were actually playing a ''good cop, bad cop'' routine.

#### No deal—France

Erdbrink 11-14 (Thomas Erdbrink, The New York Times, “Iran and Western Powers Clash Over Why Nuclear Talks Failed” November 14, 2013 Thursday Late Edition – Final, Section A; Column 0; Foreign Desk; Pg. 14, Lexis)

TEHRAN -- Less than a week before the next round of nuclear talks in Geneva, it is still not clear why the last round failed, and who exactly walked away from the deal. Iran's foreign minister, Mohammad Javad Zarif, has laid the blame on the Western powers, saying they were divided. He says he has little to do now but wait for the world powers to get their act together.

''It's the United States which should get their partners on board, not Iran,'' said Mohammad Ali Shabani, a political analyst with close ties to Mr. Zarif. ''From the information that is available, what was on the table was an American proposal. It was France that ripped into it, not Iran.''It is a message tailored to his domestic audience, but not everyone here is buying it. Whatever happened behind closed doors, analysts say, Mr. Zarif had little choice but to take this line. High hopes on all sides were shattered last weekend when Iran and the world powers failed to reach an interim agreement that could have led to reining in Iran's nuclear program, which the West fears is a cover for producing nuclear weapons. Secretary of State John Kerry said Mr. Zarif and his team balked after having been faced with a unified proposal that went further than the Iranian leadership was prepared to go. Mr. Zarif fired back on Twitter, hinting that the Americans had failed to get their ally France behind their own proposal, allowing France to sabotage the deal.

### Weak Now

#### Obama weak now--- Syria is just one example

Brooks 2013 (Rosa Brooks, law professor at Georgetown University and a Schwartz senior fellow at the New America Foundation, August 29, 2013, “Wounded Giant,” Foreign Policy, http://www.foreignpolicy.com/articles/2013/08/29/wounded\_giant\_united\_states\_syria)

Pity poor President Obama. These days, he can't win.¶ Do nothing as the slaughter in Syria continues? Critics will say he's weak, he lacks strategic vision, he's indifferent to the suffering that Bashar al-Assad's regime is inflicting on the Syrian people, and he doesn't care whether Assad thumbs his nose at international law.¶ Take military action in Syria? Critics will say he's a reckless hawk, he lacks strategic vision, he's indifferent to the suffering a U.S. air campaign will inflict on the Syrian people, and he's thumbing his nose at international law.¶ It's not just Syria. It's Egypt, too, and the dashed hopes of the Arab Spring. It's the no-win endless war against al Qaeda and the no-win soon-to-end war in Afghanistan. It's the failed "reset" with Russia and the stillborn "pivot" to Asia. Look to your left, look to your right: You won't see many defenders of Obama's foreign policy these days.

#### Sufficient to trigger the link

Alterman 2013 (Jon Alterman, CSIS Global Security Chair and Middle East Program Director, 9/4/13, US-Iran Nuclear Deal Hinges On Syria Vote, www.al-monitor.com/pulse/originals/2013/09/us-iran-nuclear-deal-hinges-on-syria-vote.html)

Focusing solely on events in Syria, however, misses a large part of the Iranian calculus, if not the largest. What really matters to Iran is how successful Obama is in winning congressional support for his Syria policy. If he fails, it will deal a double blow to the president. Not only will the Iranian government dismiss the possibility of negotiations with his administration, it will also conclude that Obama can be defied with impunity. The international cost of domestic political failure would be profound.¶ To start, it is worth noting the extent to which foreign governments are sophisticated consumers of American political information. Decades of international cable news broadcasts and newspaper websites have brought intimate details of US politics into global capitals. Foreign ministers in the Middle East and beyond are US news junkies, and they seem increasingly distrustful of their embassies. For key US allies, the foreign minister often seems to have made him- or herself the US desk officer. Most can have a quite sophisticated discussion on congressional politics and their impact on US foreign relations.¶ The Iranian government is no exception. While former president Mahmoud Ahmedinejad was emotional and shrill in his opposition to the United States, there remains in Iran a cadre of Western-trained technocrats, fluent in English and nuanced in their understanding of the world. President Hassan Rouhani has surrounded himself with such people, and Supreme Leader Ayatollah Ali Khamenei has charged them with investigating a different relationship between Iran and the United States.¶ As they do so, they cannot help but be aware that on the eve of Rouhani’s inauguration, the US House of Representatives voted 400–20 to impose stiff additional sanctions on Iran. The House saw Rouhani’s electoral victory as a call for toughness, not potential compromise.¶ If Iran were to make concessions in a negotiation with the United States, they would surely seek sanctions relief and other actions requiring congressional approval. To make such concessions to Obama, they would need some confidence that he can deliver. A president who cannot bring around a hostile Congress is not a president with whom it is worth negotiating.

# 1NC

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