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#### Notions of US legal prestige and modeling solidify global inequality by replacing political violence with legal violence---turns the case because it subordinates effective domestic systems to predatory rule of law models

Ugo Mattei 3, Alfred and Hanna Fromm Professor of International and Comparative Law, ¶ U.C. Hastings; Professore Ordinario di Diritto Civile, Università di Torino A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance, ic.ucsc.edu/~rlipsch/pol160A/Mattei.pdf

This essay attempts to develop a theory of imperial law that is able to explain postCold War changes in the general process of Americanization in legal thinking. My claim is that “imperial law” is now a dominant layer of world-wide legal systems.1 Imperial law is produced, in the interest of international capital, by a variety of both public and private institutions, all sharing a gap in legitimacy, sometimes called the “democratic deficit.” Imperial law is shaped by a spectacular process of exaggeration, aimed at building consent for the purpose of hegemonic domination. Imperial law subordinates local legal arrangements world-wide, reproducing on the global scale the same phenomenon of legal dualism that thus far has characterized the law of developing countries. Predatory economic globalization is the vehicle, the all-mighty ally, and the beneficiary of imperial law. Ironically, despite its absolute lack of democratic legitimacy, imperial law imposes as a natural necessity, by means of discursive practices branded “democracy and the rule of law,” a reactive legal philosophy that outlaws redistribution of wealth based on social solidarity.2 At the core of imperial law there is U.S. law, as transformed and adapted after the Reagan-Thatcher revolution, in the process of infiltrating the huge periphery left open after the end of the Cold War. A study of imperial law requires a careful discussion of the factors of penetration of U.S. legal consciousness world-wide, as well as a careful distinction between the context of production and the context of reception3 of the variety of institutional arrangements that make imperial law. Factors of resistance need to be fully appreciated as well.

I. AMERICAN LAW: FROM LEADERSHIP TO DOMINANCE The years following the Second World War have shown a dramatic change in the pattern of world hegemony in the law. Leading legal ideas, once produced in Continental Civilian Europe and exported through the periphery of the world, are now for the first time produced in a common law jurisdiction: the United States.4 There is little question that the present world dominance of the United States has been economic, military, and political first, and legal only in a more recent moment, so that a ready explanation of legal hegemony can be found with a simple Marxist explanation of law as a superstructure of the economy.5 Nevertheless, the question of the relationship between legal, political, and economic hegemony is not likely to be correctly addressed within a cause-and-effect paradigm.6 Ultimately, addressing this question is a very important area of basic jurisprudential research because it reveals some general aspects about the nature of law as a device of global governance.

Observing historical patterns of legal hegemony allows us to critique the distinction between two main patterns of governance through the law (and of legal transplants).7 Scholars of legal transplants have traditionally distinguished two patterns. The first is law as dominance without hegemony, in which the legal system is ultimately a coercive apparatus asserting political and economic power without consent. This area of inquiry and this model have been used to explain the relationship between the legal system of the motherland and that of the colonies within imperialistic colonial enterprises. The opposing pattern, telling a story of consensual voluntary reception by an admiring periphery of legal models developed and provided for at the center, is usually considered the most important pattern of legal transplants. It is described by stressing on the idea of consent within a notion of “prestige.”8

Little effort is necessary to challenge the sufficiency of this basic taxonomy in introducing legal transplants. Law is a detailed and complex machinery of social control that cannot function with any degree of effectiveness without some cooperation from a variety of individuals staffing legal institutions. These individuals usually consist of a professional elite which either already exists or is created by the hegemonic power. Such an elite provides the degree of consent to the reception of foreign legal ideas that is necessary for any legal transplant to occur. Hence, the distinction between imperialistic and non-imperialistic transplants is a matter only of degree and not of structure. In order to understand the nature of present legal hegemony, it is necessary to capture the way in which the law functions to build a degree of consent to the present pattern of international economic and political dominance.9

In this essay I suggest that a fundamental cultural construct of presumed consent is the rhetoric of democracy and the rule of law utilized by the imperial model of governance, 10 triumphant worldwide together with the neo-American model of capitalism developed by the Reagan and Thatcher revolution early in the 1980s. I argue that the last twenty years have produced the triumph in global governance of reactive, politically irresponsible institutions, such as the courts of law, over proactive politically accountable institutions such as direct administrative apparatuses of the State.11

This essay attempts to open a radical revision of some accepted modes of thought about the law as they appear today, at what has been called “the end of history.”12 Its aim is to discuss some ways in which global legality has been created in the present stage of world-wide legal development. It will show how democracy and the rule of law, in the present legal landscape, are just another rhetoric of legitimization of a given international dynamic of power. It will also denounce the present unconscious state in which the law is produced and developed by professional “consent building” elites. The consequences of such unconsciousness are creating a legal landscape in which the law is “naturally” giving up its role of constraining opportunistic behavior of market actors. This process results in the development of faked rules and institutions that are functional to the interests of the great capital and that dramatically enlarge inequality within society. I predict that such a legal environment is unable to avoid tragic results on a global scale such as those outlined in the well-known parable of the tragedy of the commons.13

My object of observation is a legal landscape in transition. I wish to analyze this path of transition from one political setting (the local state) to another political setting (world governance) in which American-framed reactive institutions are asserting themselves as legitimate and legitimating governing bodies, which I call imperial law. Imperial law is the product of a renowned alliance between state and economic institutions, a cooperative game in which a very limited number of powerful players are at play.14 While in the ages of colonialism such political battles for international hegemony were mostly carried on with an open use of force and political violence (in such a way that final extensive conflict between superpowers was unavoidable), in the age of globalization and of economic Empire political violence has been transformed into legal violence.

#### Our alternative is to reject their emphasis on Western-models of law in favor of a fundamental rethink of democracy from the bottom-up

Ugo Mattei 9, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

In the complex spectrum of global law, both throughout the era of colonialism and neo-liberal US-led Western imperialism within a pattern of continuity, the rule of law, together with the theory of ‘lack’ and other powerful rhetorical arguments, has been used in order to legitimize political interventions and plunder in the ‘emerging’ economies. The sacred concept of rule of law, whose positive connotations are ‘naturally’ assumed, has been portrayed as the embodiment of a professional and neutral technology, thus being capable of substituting the lack of democratic legitimacy of the institutions that are protagonist in the creation of global law. But its dark side has never been shown or discussed. An imperial rule of law is now a dominant layer for the worldwide legal systems. It is produced, in the interest of international capital, by a variety of institutions, both public and private, all sharing a gap in political legitimacy sometimes referred to as ‘democratic deficit’.31 At the same time, law has been constructively turned into a technology and a mere component of an economic system of capitalism, thus hiding its intrinsic political nature, and annulling the relevance of local political systems, now impotent in front of the dynamics of global law. The ‘dry technology’ of the rule of law penetrates worldwide legal systems without any political discussion at the local level, attempting to create the conditions for the development of market economies, often without success, and causing serious consequences for the less powerful.

Under the technology of the rule of law, in its imperial version capable of producing plunder, the essence of the United States’ law hides. In the aftermath of World War II, there was a dramatic change in the pattern of Western legal development. Leading legal ideas once produced in continental Europe and exported through the colonized world are now, for the first time, produced in a common law jurisdiction: the United States. Clearly, the present world dominance of the United States has been economic, military and political first, and only recently legal, so that a ready explanation of legal hegemony can be found within a simple conception of law as a product of the economy.32 Furthermore, US law has been capable of expanding worldwide thanks to its prestige, the high level of professionalization of its attorneys and a series of procedural institutions, that benefit plaintiffs, that allow US courts to have a certain capacity to attract jurisdiction, while showing themselves as courts for universal justice.33

The general attitude of the United States has been a very ethnocentric one, and precisely that of showing itself as the guardian of a universal legality, which it is legitimized to export through its courts of law, scholarly production, military and political intervention, and through a set of US-centric international institutions. In recent times, in particular after September 11th 2001 and the declaration of the ‘war on terror’, the US rule of law has come under attack 34, so that once admiring crowds of lawyers and intellectuals worldwide are now beginning to look upon the United States as an uncivilized old West from the perspective of legal culture, despite the professional prestige still enjoyed by the giant New York law firms and by the US academy.

Notwithstanding, there has been no decline in the rhetoric of the rule of law when it comes to foreign relations. Bringing democracy and the rule of law is still used as a justification to keep intruding in foreign affairs. The same can be said for the international financial institutions and their innumerable ‘development’ projects that come packaged with the prestigious wrapping of the rule of law.

A rethinking of the very idea of global law is necessary and it must derive from a revaluation of the local dimension, which is currently ignored by the neo-liberal model of development. The production of global law should change its direction, and follow a bottom-up approach, rather than a top-down one, thus being sensitive to the local particularities and complexities. Western spectacular ideas of democracy and the rule of law should be rethought. On this planet, resources are scarce, but there would be more than enough for all to live well. Nobody would admire and respect someone who, at a lunch buffet for seven, ate 90 percent of the food, leaving the other guests to share an amount insufficient for one. In a world history of capitalism in which the rule of law has reproduced this precise ‘buffet’ arrangement on the large scale, admiring the instruments used to secure such an unfair arrangement seems indeed paradoxical. People have to be free to build their own economies.

There is nothing inevitable about the present arrangements and their dominant and taken-for granted certainties. Indeed, it may be that the present legal and political hegemonies suffer from lack: the lack of world culture and of global political realism.

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#### Congress will ultimately compromise to avert shutdown – GOP divisions make it more likely, not less

Tom Cohen, 9-20-2013, “Congress: will it be a government shutdown or budget compromise?” CNN, http://www.cnn.com/2013/09/19/politics/congress-shutdown-scenarios/index.html?utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+rss%2Fcnn\_allpolitics+(RSS%3A+Politics)

There hasn't been a government shutdown in more than 17 years, since the 28 days of budget stalemate in the Clinton administration that cost more than $1 billion. Now we hear dire warnings and sharpening rhetoric that another shutdown is possible and perhaps likely in less than two weeks when the current fiscal year ends. Despite an escalating political imbroglio, the combination of how Congress works and what politicians want makes the chances of a shutdown at the end of the month uncertain at best. In particular, a rift between Republicans over how to proceed has heightened concerns of a shutdown in the short run, but remains a major reason why one is unlikely in the end. A more probable scenario is a last-minute compromise on a short-term spending plan to fund the government when the current fiscal year ends on September 30. After that, the debate would shift to broader deficit reduction issues tied to the need to raise the federal debt ceiling sometime in October. "There's going to be a lot of draconian talk from both sides, but the likelihood of their being an extended shutdown is not high," said Darrell West, the vice president and director of governance studies at the Brookings Institution. Government shutdown: Again? Seriously? Conservatives tie Obamacare to budget talks While the main issue is keeping the government funded when the new fiscal year begins October 1, a conservative GOP wing in the House and Senate has made its crusade against Obamacare the focus of the debate. They demand a halt to funding for the signature program from President Barack Obama's first term, and they seem indifferent about forcing a government shutdown if that doesn't happen. "I will do everything necessary and anything possible to defund Obamacare," Republican Sen. Ted Cruz of Texas said Thursday, threatening a filibuster and "any procedural means necessary." The GOP split was demonstrated later Thursday by Sen. John McCain, who told CNN that "we will not repeal or defund Obamacare" in the Senate. "We will not, and to think we can is not rational," McCain said. A compromise sought by House Speaker John Boehner and fellow GOP leaders would have allowed a symbolic vote on the defunding provision that the Senate would then strip out. The result would have been what legislators call a "clean" final version that simply extended current levels of government spending for about two months of the new fiscal year, allowing time for further negotiations on the debt ceiling. However, conservative opposition to the compromise made Boehner agree to a tougher version that made overall government funding contingent on eliminating money for Obamacare. Moderate Republicans question the strategy, but fear a right-wing backlash in the 2014 primaries if they go against the conservative wing. In reference to the divisions in the House, McCain said it was "pretty obvious that (Boehner) has great difficulties within his own conference." The House passed the tea party inspired plan on an almost strictly party line vote on Friday, setting in motion what is certain to be 10 days or so of legislative wrangling and political machinations. The measure now goes to the Democratic-led Senate, where Majority Leader Harry Reid made clear on Thursday that any plan to defund Obamacare would be dead on arrival. Instead, the Senate was expected to strip the measure of all provisions defunding Obamacare and send it back to the House. "They're simply postponing an inevitable choice they must face," Reid said of House Republicans. Here is a look at the two most-discussed potential outcomes -- a government shutdown or a short-term deal that keeps the government funded for a few months while further debate ensues. House GOP: defund Obamacare or shut government down Shutdown scenario According to West, the ultimate pressure on whether there is a shutdown will rest with Boehner. With the Republican majority in the House passing the spending measure that defunds Obamacare, Senate Democrats say they will stand united in opposing it. "Don't make it part of your strategy that eventually we'll cave," Sen. Chuck Schumer of New York warned Republicans on Thursday. "We won't. We're unified, we're together. You're not." That means the Senate would remove any provisions to defund Obamacare and send the stripped-down spending proposal back to the House. Boehner would then have to decide whether to put it to a vote, even though that could undermine his already weakened leadership by having the measure pass with only a few dozen moderate Republicans joining Democrats in support. If he refuses to bring the Senate version to the floor for a vote, a shutdown would ensue. "The key player is really Boehner," West said. Polls showing a decrease in public support for the health care reforms embolden the Republican stance. Meanwhile, surveys showing most people oppose a government shutdown and that more would blame Republicans if it happens bolster Democratic resolve. Compromise scenario Voices across the political spectrum warn against a shutdown, including Congressional Budget Office Director Douglas Elmendorf, Federal Reserve Chairman Ben Bernanke, the U.S. Chamber of Commerce and Republican strategist Karl Rove. "Even the defund strategy's authors say they don't want a government shutdown. But their approach means we'll get one," Rove argued in an op-ed published Thursday by the Wall Street Journal. He noted the Democratic-controlled Senate won't support any House measure that eliminates funding for Obamacare, and the White House said Thursday that Obama would veto such a spending resolution. "Republicans would need 54 House Democrats and 21 Senate Democrats to vote to override the president's veto," Rove noted, adding that "no sentient being believes that will happen." West concurred, telling CNN that "you can't expect a president to offer his first born to solve a political problem for the other party." "It's the House split that's causing this to happen," he noted. "People now equate compromise with surrender. It's hard to do anything under those circumstances." Under the compromise scenario, the Senate would remove provisions defunding Obamacare from what the House passes while perhaps making other relatively minor changes to provide Boehner and House Republicans with political cover to back it.

#### The plan would trade off with Congress’s ability to avert the shutdown - GOP has momentum and will, but they need literally every hour to get it done

Frank James, 9-13-2013, “Congress Searches For A Shutdown-Free Future,” NPR, http://www.npr.org/blogs/itsallpolitics/2013/09/13/221809062/congress-searches-for-a-shutdown-free-future

The only thing found Thursday seemed to be more time for negotiations and vote-wrangling. Republican leaders recall how their party was blamed for the shutdowns of the mid-1990s and earnestly want to avoid a repeat, especially heading into a midterm election year. Cantor alerted members Thursday that during the last week of September, when they are supposed to be on recess, they will now most likely find themselves in Washington voting on a continuing resolution to fund the government into October. It looks like lawmakers will need every hour of that additional time. While talking to reporters Thursday, Boehner strongly suggested that House Republicans weren't exactly coalescing around any one legislative strategy. "There are a lot of discussions going on about how — about how to deal with the [continuing resolution] and the issue of 'Obamacare,' and so we're continuing to work with our members," Boehner said. "There are a million options that are being discussed by a lot of people. When we have something to report, we'll let you know."

#### Shutdown wrecks the economy

Yi Wu, 8-27-2013, “Government Shutdown 2013: Still a Terrible Idea,” PolicyMic, http://www.policymic.com/articles/60837/government-shutdown-2013-still-a-terrible-idea

Around a third of House Republicans, many Tea Party-backed, sent a letter last week calling on Speaker John Boehner to reject any spending bills that include implementation of the Affordable Care Act, otherwise known as Obamacare. Some Senate Republicans echo their House colleagues in pondering this extreme tactic, which is nothing other than a threat of government shutdown as neither congressional Democrats nor President Obama would ever agree on a budget that abolishes the new health care law. Unleashing this threat would amount to holding a large number of of the federal government's functions, including processing Social Security checks and running the Centers for Disease Control, hostage in order to score partisan points. It would be an irresponsible move inflicting enormous damage to the U.S. economy while providing no benefit whatsoever for the country, and Boehner is rightly disinclined to pursue it. Government shutdowns are deleterious to the economy. Two years ago in February 2011, a similar government shutdown was looming due to a budget impasse, and a research firm estimated that quater's GDP growth would be reduced by 0.2 percentage points if the shutdown lasted a week. After the budget is restored from the hypothetical shutdown, growth would only be "partially recouped," and a longer shutdown would result in deeper slowdowns. Further, the uncertainties resulting from a shutdown would also discourage business. A shutdown was avoided last-minute that year, unlike in 1995 during the Clinton administration where it actually took place for four weeks and resulted in a 0.5 percentage-point dent in GDP growth. Billions of dollars were cut from the budget, but neither Boehner nor the Republicans at the time were reckless enough to demand cancellation of the entire health care reform enacted a year before.

#### Global nuclear war

Harris & Burrows 9 Mathew, PhD European History @ Cambridge, counselor of the U.S. National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” http://www.ciaonet.org/journals/twq/v32i2/f\_0016178\_13952.pdf

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the **harmful effects on fledgling democracies** and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which **the potential for** greater **conflict could grow** would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. **Terrorism**’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any **economically-induced drawdown** of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, **acquire additional weapons**, and consider pursuing their own **nuclear ambitions**. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an **unintended escalation** and **broader conflict** if clear red lines between those states involved are not well established. The close proximity of potential **nuclear rivals** combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on **preemption** rather than defense, potentially leading to **escalating crises**. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in **interstate conflicts** if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

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#### Congressional intervention collapses crisis response --- they’re too inflexible, inexperienced, and open --- the link threshold is low --- (Holmes is wrong)

-AT: Holmes medical analogy

Eric A. Posner 12, Kirkland & Ellis Professor, University of Chicago Law School, Winter, “REFLECTIONS ON THE LAW OF SEPTEMBER 11: A TEN-YEAR RETROSPECTIVE: DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER SEPTEMBER 11: CONGRESS, THE COURTS, AND THE OFFICE OF LEGAL COUNSEL,” 35 Harv. J.L. & Pub. Pol'y 213, Lexis

THE DEFERENCE THESIS¶ The deference thesis states that during emergencies the legislature and judiciary should defer to the executive. n8 It assumes that the executive is controlled by the President, but to the extent that the President could be bound by agents within the executive, the deference thesis also holds that those agents should follow the President's orders, not the other way around. In normal times, the three branches of government share power. For example, if the executive believes that a new, dangerous drug has become available, but possession of the drug is not yet illegal, the executive may not act on its own to detain and prosecute those who deal and use the drug. The legislature must first enact a statute that outlaws the drug. The executive also depends on the legislature for financial appropriations and other forms of support. The executive also faces constraints from the courts. If the executive arrests drug dealers and seeks to imprison them, it must first obtain the approval of courts. The courts ensure that the executive does not go beyond the bounds of the new law, does not violate earlier-enacted laws [\*215] that have not been superseded by the new law, and does not violate the Constitution.¶ In emergencies, the executive often will contemplate actions that do not have clear legislative authority and might be constitutionally dubious. For example, after September 11, the U.S. government engaged in immigration sweeps, detained people without charges, used coercive interrogation, and engaged in warrantless wiretapping of American citizens. n9 Many, if not all, of these actions would have been considered violations of the law and the U.S. Constitution if they had been undertaken against normal criminal suspects the day before the attacks. After September 11, both the legislature and the courts gave the executive some deference. The legislature gave explicit authorities to the executive that it had initially lacked; n10 the courts did not block actions that they would have blocked during normal times. n11 But neither body was entirely passive. Congress objected to coercive interrogation and did not give the executive all the authorities that it requested. n12 After a slow start, the courts also resisted some of the assertions the executive made. There is some dispute about whether this resistance was meaningful and caused the executive to change policy or merely reacted to the same stimuli that caused the executive to moderate certain policies independently. n13 In any event, no one disputes that the courts gave the executive a nearly free pass over at least the first five to seven years of the conflict with al Qaeda.¶ The deference thesis, then, can be strong-form or weak-form. This ambiguity has had unfortunate consequences for debates about post-September 11 legal policies. Few people believe that the courts should impose exactly the same restrictions on the [\*216] executive during an emergency as during normal times. Indeed, doctrine itself instructs courts to balance the security value of a course of action and its cost to civil liberties, implying that certain actions might be legally justified to counter high-stakes threats but not to counter low-stakes threats. n14 Nor does anyone believe that the executive should be completely unconstrained.¶ The debate is best understood in the context of the U.S. government's post-September 11 policies. Defenders of these policies frequently invoked the deference thesis--not so much as a way of justifying any particular policy, but as a way of insisting that the executive should be given the benefit of the doubt, at least in the short term. n15 The deference thesis rests on basic intuitions about institutional competence: that the executive can act more decisively and with greater secrecy than Congress or the courts because it is a hierarchical body and commands forces that are trained and experienced in countering security threats. The other branches lack expertise. Although they may have good ideas from time to time, and are free to volunteer them, the ability of the executive to respond to security threats would be unacceptably hampered if Congress and the courts had the power to block it to any significant degree.¶ Secrecy is an important part of the argument. Policymaking depends on information, and information during emergencies often must be kept secret. Congress and the courts are by nature and tradition open bodies; if they were to act in secret, their value would be diminished. Meanwhile, the argument continues, the fear of an out-of-control executive who would engage in abuses unless it was constrained by the other branches is exaggerated. The President has strong electoral and other political incentives to act in the public interest (at least, in the United States). Even if the executive can conceal various "inputs" into counterterrorism policy, it cannot conceal the "output"--the existence, or not, of terrorist attacks that kill civilians.¶ Thus, it was possible for defenders of the Bush Administration's counterterrorism policies to express discomfort with certain policy choices, while arguing nonetheless that Congress and the courts should not try to block executive policymaking [\*217] for the duration of the emergency--at least not as a matter of presumption. Critics of the Bush Administration argued that deference was not warranted--or at least not more than a limited amount of deference was warranted, although again these subtleties often were lost in the debate--for a variety of reasons. I now turn to these arguments.¶ II. EXTERNAL CONSTRAINTS: THE PROTOCOL ANALOGY¶ A. Medical Protocols¶ In an article published a few years ago, Professor Holmes uses the arresting image of the medical protocol as a device for criticizing the deference thesis--or, more broadly, the thesis that the executive should be "unconstrained" during emergencies. Holmes describes his own experience in an emergency room, where his daughter had been brought with a serious injury:¶ At a crucial moment, two nurses rushed into her hospital room to prepare for a transfusion. One clutched a plastic pouch of blood and the other held aloft my daughter's medical chart. The first recited the words on the bag, "Type A blood," and the other read aloud from the file, "Alexa Holmes, Type A blood." They then proceeded, following a prepared and carefully rehearsed script to switch props and roles, the first nurse reading from the dossier, "Alexa Holmes, Type A blood," and the second reading from the bag, "Type A blood." n16¶ To the layman, the repetitive actions of the nurses seem senseless. Why are they repeating themselves when the patient might die unless she receives the blood transfusion immediately? Surely, the nurses should depart from the script rather than follow it in a time of extreme medical urgency. Yet the protocol makes good sense. Experience has taught medical personnel that basic errors--the transfusion of the wrong blood--occur frequently, and that they can be avoided through the use of simple protocols. Although following the protocol uses valuable time, in practice the increased risk to the patient as a result [\*218] of the loss of time is less than the risk caused by the errors that protocols are designed to prevent. n17¶ The larger and more striking point of the example is that, even during emergencies, when the stakes are high and time is of the essence, agents should follow rules rather than improvise. In this way, agents should be constrained. n18 This argument has potentially radical implications. Recall that the conventional objection to deference is that the risk of executive abuse exceeds the benefits of giving the executive a free hand to counter al Qaeda. Professor Holmes argues--although at times he hedges--that in fact the benefits of giving the President a free hand are zero: A constrained executive, like a constrained medical technician, is more effective than an unconstrained executive. If the benefits of lack of constraint are zero, then the deference thesis is clearly wrong. Constraints both prevent executive abuses such as violations of civil liberties and ensure that counterterrorism policy is most effective.¶ B. Rules and Standards¶ The arresting medical protocol example helps clarify the tradeoffs involved, but it remains merely an illustration of the familiar rules versus standards tradeoff that has been a staple of the legal literature since time immemorial. n19 A rule is a norm that directs the decisionmaker to ignore some relevant policy considerations when deciding on a course of action; a standard is a norm that directs the decisionmaker to take into account all relevant policy considerations when deciding on a course of action. The familiar example is the speed limit. A sixty-mile-per-hour speed limit tells the driver that she does not face a legal sanction if she drives below sixty miles per hour, and that she does face a legal sanction if she exceeds that speed. A standard--for example, "drive carefully"--tells the driver that she does not face a legal sanction if she drives carefully, but that she does if she drives carelessly. The standard, unlike the rule, directs the driver to take into account all relevant considerations--the weather, traffic congestion, her own skill and [\*219] experience, the responsiveness of her car, and so on--when deciding how to drive.¶ A skilled and experienced driver who drives at sixty-five miles per hour on a clear day on an empty, straight road poses little threat to anyone, and most people would regard her driving as careful. Thus, under the standard she could not be held liable, although under a rule she would be. Meanwhile, an inexperienced driver who drives sixty miles per hour on a congested, dangerous road, at night, in bad weather, would probably be regarded as careless. He would be held liable under a standard but not under the rule. It is in the nature of standards that we cannot be sure that he would be held liable; it depends on the biases, intuitions, and experiences of the legal decisionmaker. n20 Thus, we say that applying standards involves high decision costs. It is in the nature of rules that we can easily tell whether the driver would be held liable or not, but only because the legal decisionmaker is forced to ignore relevant moral and policy considerations that otherwise complicate evaluation. Rules are under-and over-inclusive; by design, they cause error.¶ These considerations lead to a basic prescription. n21 Rules should be used to govern recurrent behavior, and standards to govern unusual behavior. Experience teaches us that if drivers obey certain rules (such as speed limits), the risk of accidents is greatly reduced, although judicious choice of (sometimes complex) rules ensures that error costs are low. When legislatures enact new rules, they can invest a great deal of time and effort determining the optimal rules, because the cost of the rules are then spread out over many instances of the behavior that the legislatures seek to regulate. Yet rules frustrate us because there always seems to be some new, unanticipated case where the application of rules leads to an injustice. The speed limit rule should not apply to the parent who rushes a badly injured child to the hospital. And there are many cases where rules can too easily be gamed. Tax rules, no matter how intricate, can be exploited: Lawyers set up tax shelters that evade the purpose of the rules. Congress reacted to this problem initially by creating ever more complex rules, but eventually trumped them [\*220] with a standard that prohibited bad faith evasion of the tax laws. n22¶ The legal landscape is a complex mix of rules and standards, which often overlap. Drivers must obey both traffic rules like the speed limit and traffic standards like laws against reckless driving and tort norms against negligent driving. Indeed, one can think of traffic norms as complex rules with standards--where there are apparently bright-line rules (drive under sixty miles per hour) that are subject to muddy standards (unless there is an emergency).¶ Medical protocols are just one more example of a choice along the rules-standards continuum. The nurses Professor Holmes describes follow a protocol that ensures that they do not use the wrong blood in a transfusion. Likewise, doctors are instructed to clear the windpipe before staunching the wound. n23 These protocols, like the speed limit, reflect generalizations from past medical experience. Delaying the blood transfusion is less risky than permitting only one nurse to check the blood type. Letting the blood flow from the wound is less risky than leaving the windpipe blocked. In the absence of protocols, medical practitioners may misjudge the situation, or panic, or allow themselves to be distracted by irrelevant factors (the goriness of the wound calls out for attention while the blocked windpipe is hidden). It is important to see that these rules, like the speed limit, are mere generalizations, and in individual cases the generalizations might be wrong. The patient dies because of the delay before the transfusion, yet we instruct medical practitioners to follow the rules because otherwise they are likely to make worse or more frequent errors.¶ That uncompromising rules produce high error costs supports adopting sensible exceptions to rules. Indeed, medical practitioners may violate protocols. The reasons are obvious. Consider Professor Holmes's insistence that the rule "always wash your hands" is unalterable and written in stone. n24 This clearly cannot be the case. Suppose that, in the midst of an emergency involving a patient with a serious trauma, the staff [\*221] is informed that the tap water is tainted, it is discovered that a patient has a rare allergy to the only soap available in the emergency room; or, for that matter, the emergency room runs out of soap. Common sense (which is just the application of the standard, "help the patient at minimal risk to him and oneself") will tell the doctors and nurses to deviate from the protocols when they clearly interfere with medical necessity. If they did not, they would be sued, and rightly so. The protocols, like many rules, turn out to be presumptions, which may be overcome by the press of events. That is why medical professionals are so highly trained; if one could really treat patients by following algorithms, one would not need doctors who have vast training and experience that supplies them with judgment and the ability to improvise. n25¶ In sum, medical protocols, like rules, provide a valuable service by simplifying the decision-making process at times of high stress, but, like rules, they unavoidably produce wrong results if they are not applied sensitively. Usually, when the stakes are high, rules and protocols create presumptions, but the decisionmaker is free to violate the presumption if circumstances suggest that that the presumption is based on factual assumptions that turn out not to be true in the particular setting in which the decisionmaker finds himself.¶ C. Rules and Standards During Emergencies¶ I now turn to the bulk of Professor Holmes's argument. Professor Holmes is right to identify confusion about the nature of emergency, and it is useful to distinguish a rule-development stage--which often but not always takes place before the emergency--and a rule-application stage--which takes place during the emergency. Holmes argues that during the emergency, rule application should be controlled by protocol, so the executive does not need (much) discretion; while pre-emergency, rule development does not need to be rushed and secret, so the executive can collaborate with Congress. The first problem with [\*222] this argument is that during the emergency one can follow protocols rather than exercise discretion only if the emergency is the same as earlier emergencies. This was not the case for September 11, though it may be the case for other security threats. The second problem is that the rule-development stage cannot always take place during normal times. For example, September 11 required not only an immediate response to the newly discovered threat but also the development of new rules under the shadow of that threat. Those rules needed to be developed quickly and (for the most part) secretly, and these exigencies limited the ability of Congress to contribute. A final point is that Holmes ignores an important dimension of the problem: the difference between agents, who in theory can merely follow rules and protocols, and principals, who cannot. The Bush Administration did in fact recognize the value of protocols and used them frequently; it just did not apply them to itself.¶ 1. Two Concepts of Emergency¶ Professor Holmes makes a valuable point, often neglected in the literature, that there are two distinct phases for addressing emergencies n26 --what I will call the stage of rule development and the stage of rule application. As we will see, the two stages can run together, but conceptually they are distinct. The rule-application stage comes when the patient is on the gurney. The doctors follow the protocols in the course of helping the patient. The rule development stage occurs earlier. Someone must decide what the protocols should be. Someone had to invent the rule that two nurses must check the blood type and that doctors should unblock the windpipe before staunching wounds--just as the legislature must determine the speed limit before drivers comply with it and police enforce it.¶ We might use the word "emergency" to refer to the time of rule application. As Professor Holmes points out, however, for the medical professionals, what seems like an emergency to a layperson is not an emergency at all. n27 They just apply the protocols that have been drilled into them, no different from assembly-line workers. Under this definition of "emergency," it is hard to support the deference thesis and those who argue that the executive [\*223] must be unconstrained during emergencies. If doctors are constrained during emergencies, why not executives?¶ If we refer instead to the time of rule-development, reliance on the idea of emergency seems even less appropriate. The doctors who develop emergency room protocols do not do so under time pressure but at their leisure. They also can do so in a large body, so as to take advantage of the perspectives of many different people, and in public, so that all stakeholders have a say. The executive can as well, the argument goes. When the executive determines the rules that will govern the response during a terrorist attack, it does so in advance, and it can, indeed should, do so in consultation with Congress and subject to judicial constraint.¶ Thus, executive deference is unnecessary. During rule development, there is no emergency, and so the executive, Congress, and the courts can collaborate in developing appropriate rules that will govern during emergencies. They can do so openly, deliberately, and slowly, with full respect for constitutional norms. During rule application, there is an emergency, but the executive can merely follow the rules or protocols that were developed during the rule-development stage. Thus, in the rule-application phase, executive discretion is unnecessary. It follows that deference to the executive is also unnecessary. During rule development, Congress has no reason to defer to the executive. During rule application, courts also have no reason to defer to the executive, but should instead insist that the executive comply with the rules.¶ 2. Rule Application¶ Let us consider the stages in reverse order. We already have addressed some of the problems with Professor Holmes's argument from protocols. Rules are seldom as bright-line as they first appear. They often turn out to be presumptions which are themselves subject to standards (drive under the speed limit unless there is an emergency). It is true that security threats, like medical emergencies, often fall into patterns and can be addressed in partially rule-governed fashion. Thus, when a gunman takes a hostage, the police follow certain rules: first clearing the area, then making contact with the gunman, and so on. Some officers will be given very simple rule-governed tasks ("don't let anyone cross this line"). But the rules quickly give out. Every hostage-taker is different, and the most highly [\*224] trained police officers will be given a great deal of discretion to deal with him and to make the crucial decision to use force. But even these types of threats are simple compared with the scenario that opened up on September 11. The government knew virtually nothing about the nature of the threat. It did not know how many more members of al Qaeda were in the United States, what their plans were, what resources were at their disposal, what their motives were, or how much support they had among American Muslims. n28 Protocols were worthless because nothing like the attack had ever happened before. (The closest analogy seemed to be the absurdly irrelevant example of Pearl Harbor.) The government could not follow rules; it had to improvise subject to a vague standard--protect the public while maintaining civil liberties to the extent possible. Improvise it did--instituting detentions, sweeps, profiling, surveillance, and many other policies on an unprecedented (in peacetime, if that was what it was) scale. n29¶ For the rule-application stage, the deference thesis counsels Congress and the judiciary to (presumptively) defer. Congress simply cannot set about holding hearings, debat[e]ing policy, and vot[e]ing on laws in the midst of emergency. Either the problem will not be addressed, or Congress will end up voting on a bill that it has not written, debated, or even read. n30 For courts, too, the alternatives are unrealistic. If courts enforce rules developed for normal times, then they will interfere with the proper response to the terrorist threat, just as they would if they required the U.S. military to comply with the Fourth Amendment on the battlefield. Alternatively, the courts could insist on applying a standard and halt executive actions that, in the courts' view, violated the standard described above--protect the nation while maintaining civil liberties to the extent possible. But here the courts are at a significant disadvantage. They do not have information [\*225] about the nature of the threat. n31 Courts can demand this information from the government, but the government will not give it to them because the government fears leaks (to say nothing of recalcitrance caused by rivalries among intelligence agencies). Moreover, judges are inexperienced in national security unlike the specialists in the executive branch.

#### The plan collapses executive crisis response --- triggers terrorism, rogue state attacks, and wildfire prolif

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The most important of the president’s powers are commander-in-chief and chief executive.¶ As Alexander Hamilton wrote in Federalist 74, “The direction of war implies the direction of the common strength, and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority.”¶ Presidents should conduct war, he wrote, because they could act with “decision, activity, secrecy, and dispatch.” In perhaps his most famous words, Hamilton wrote: “Energy in the executive is a leading character in the definition of good government. . . It is essential to the protection of the community against foreign attacks.”¶ The Framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Instead, they can demand swift, decisive action, sometimes under pressured or even emergency circumstances, that are best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. ¶ Congress is too large and unwieldy to take the swift and decisive action required in wartime. ¶ Our Framers replaced the Articles of Confederation, which had failed in the management of foreign relations because it had no single executive, with the Constitution’s single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, Congress’s loose, decentralized structure would paralyze American policy while foreign threats grow. ¶ Congress has no political incentive to mount and see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid like the plague any vote that will anger large segments of the electorate. They prefer that the president take the political risks and be held accountable for failure.¶ Congress's track record when it has opposed presidential leadership has not been a happy one.¶ Perhaps the most telling example was the Senate's rejection of the Treaty of Versailles at the end of World War I. Congress's isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed Neutrality Acts designed to keep the United States out of the conflict.¶ President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president's foreign adventurism, the real threat to our national security may come from inaction and isolationism.¶ Many point to the Vietnam War as an example of the faults of the “imperial presidency.” Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War, and the passage of the ineffectual War Powers Resolution. Congress passed the Resolution in 1973 over President Nixon's veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it.¶ Despite the record of practice and the Constitution’s institutional design, critics nevertheless argue for a radical remaking of the American way of war. They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to “declare War.” But these observers read the eighteenth-century constitutional text through a modern lens by interpreting “declare War” to mean “start war.” ¶ When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with launching hostilities. In the century before the Constitution, for example, Great Britain – where the Framers got the idea of the declare-war power – fought numerous major conflicts but declared war only once beforehand.¶ Our Constitution sets out specific procedures for passing laws, appointing officers, and making treaties. There are none for waging war, because the Framers expected the president and Congress to struggle over war through the national political process.¶ In fact, other parts of the Constitution, properly read, support this reading. Article I, Section 10, for example, declares that the states shall not “engage” in war “without the consent of Congress” unless “actually invaded, or in such imminent Danger as will not admit of delay.” ¶ This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. If the Framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive.¶ Presidents, of course, do not have complete freedom to take the nation to war. Congress has ample powers to control presidential policy, if it wants to. ¶ Only Congress can raise the military, which gives it the power to block, delay, or modify war plans.¶ Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army to fight it. ¶ Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive, operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. ¶ If Congress wanted to discourage presidential initiative in war, it could build a smaller, less offensive-minded military.¶ Congress’s check on the presidency lies not just in the long-term raising of the military. It can also block any immediate armed conflict through the power of the purse.¶ If Congress feels it has been misled in authorizing war, or it disagrees with the president's decisions, all it need do is cut off funds, either all at once or gradually.¶ It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action.¶ Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. ¶ Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation.¶ The Framers expected Congress's power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: “The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist.” Congress ended America’s involvement in Vietnam by cutting off all funds for the war.¶ Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress’s funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo, or Korea, it is only because Congress has chosen not to exercise its easy check.¶ We should not confuse a desire to escape political responsibility for a defect in the Constitution. A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security.¶ In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility.¶ It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy.¶ The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security.¶ Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the Framers left war to politics.¶ As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

#### Emboldened rogue states threaten nuclear war --- crisis management is key to solve

Dibb 6 Emeritus Prof of IR @ Australian National University, Sydney Morning Herald (Australia), August 15, 2006 Tuesday, As one nuclear flashpoint reaches a lull, another simmers away, Pg. 11, Lexis

NOW that the building blocks for achieving a cessation in hostilities in the crisis involving Israel and Hezbollah in Lebanon are in place, the focus can shift back to the main game - Iran and North Korea. Both flashpoints have the potential to escalate out of control if they are not managed carefully. Yet neither region is noted for the success of its diplomacy. Both the Middle East and North-East Asia are heavily armed parts of the world characterised by deep-seated hatreds and long-standing territorial disputes. Historically, such situations have been a recipe for disaster. Not so long ago we were being told that we were living in a peaceful, interdependent world. Yet the fact is that the constraints and understandings of the bipolar Cold War world have been replaced by a more uncertain world, where there is much more jockeying for position and influence. In the Middle East, the destruction of Saddam Hussein's regime and its replacement, at least for now, by a weakened Iraq has allowed Iran to become the dominant regional power. The regime in Tehran is hell-bent on exporting terrorism and acquiring nuclear weapons. For Israel, the ceasefire may stall the military action, but the longer-term real strategic threat it faces - the spectre of a nuclear-armed Iran equipped with ballistic missiles of sufficient range and accuracy to target Israel without taking out Palestinian or neighbouring Arab territories - will not go away. Israel will not tolerate this and the US needs to make it clear to Tehran that any such attack on Israel will bring about Iran's destruction. That was a good enough understanding with the USSR at the height of the Cold War. But this discipline no longer applies because now there is only one superpower, which cannot control both Israel and Arab-Iranian protagonists. In North Korea a similar situation applies. Having seen the destruction of Saddam's regime, North Korea's Kim Jong-il is intent on acquiring nuclear weapons to preserve his regime. But the end of the Cold War has eroded the influence of North Korea's allies over its military ambitions and sense of security. China has been embarrassed by its inability to restrain North Korea from testing nuclear-capable ballistic missiles and Russia no longer wields any influence over the rogue state. In many ways, the situation in North-East Asia is potentially even more dire than in the Middle East. North Korea's recalcitrance in dismantling its nuclear weapons program comes at a time of unprecedented tensions between China and Japan and South Korea and Japan where one false move could spell disaster. North Korea is playing a dangerous game of bellicose brinkmanship; it continues to keep more than a million troops on high-alert status, including heavy artillery concentrations only 50 kilometres from Seoul, a city of more than 10 million people. North Korea's acquisition of nuclear weapons threatens to seriously destabilise North-East Asia and result in a nuclear arms race developing there. As it is, the North's belligerence is encouraging Japan to build up its military capabilities. This at a time when China's poor relations with Japan are worrying. The Chinese communist leadership drums up anti-Japanese nationalism whenever it suits, while China's military build-up greatly concerns Japan. The pace of Beijing's defence spending is puzzling, particularly as China faces no military threat for the first time in many decades. Similarly, Japan's relations with South Korea are at a low point, partly over Japan's view of the history of World War II but also because of territorial disputes, which Seoul has elevated to the level of national pride, threatening the use of military force. This is occurring when, from Tokyo's perspective, South Korea is drifting from the orbit of the US alliance and getting uncomfortably close to China, as well as appeasing North Korea. All this is an unhealthy mix of great power tensions and deep-seated historical distrust and growing military capabilities. The bigger worry is that Pyongyang's adventurism will incinerate any efforts to stabilise a region full of dangerous rivalries, as will the inevitable collision between Iran and Israel in the Middle East.

#### Effective executive response is key to prevent global crises --- specifically: Iranian nuclearization, North African terrorism, Russian aggression, and Senkaku conflict

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And while Obama plans to dedicate his efforts to the domestic agenda, a number of brewing international crises are sure to steal his attention and demand his time. Here are a few of the foreign policy issues that, like it or not, may force Obama to divert his focus from domestic concerns in this new term.¶ Syria unraveling: The United Nations says more than 60,000 people have already died in [a civil war t](http://www.cnn.com/2013/01/02/world/meast/syria-civil-war/index.html)hat the West has, to its shame, done little to keep from spinning out of control. Washington[has warned](http://www.nytimes.com/2012/12/04/world/middleeast/nato-prepares-missile-defenses-for-turkey.html?_r=0) that the use of chemical or biological weapons might force its hand. But the regime [may have already used them](http://www.reuters.com/article/2013/01/19/us-syria-chemical-newspaper-idUSBRE90I0JV20130119). The West has failed to nurture a moderate force in the conflict. Now Islamist extremists are growing [more powerful](http://www.al-monitor.com/pulse/originals/2013/01/fighter-syria-aleppo-turkey.html) within the opposition. The chances are growing that worst-case scenarios will materialize. Washington will not be able to endlessly ignore this dangerous war.¶ Egypt and the challenge of democracy: What happens in Egypt strongly influences the rest of the Middle East -- and hence world peace -- which makes it all the more troubling to see liberal democratic forces lose battle after battle for political influence against Islamist parties, and to hear blatantly [anti-Semitic speech](http://www.nytimes.com/2013/01/15/world/middleeast/egypts-leader-morsi-made-anti-jewish-slurs.html) coming from the mouth of Mohammed Morsy barely two years before he became president.¶ Iran's nuclear program: Obama took office promising a new, more conciliatory effort to persuade Iran to drop its nuclear enrichment program. Four years later, he has succeeded in implementing international sanctions, but Iran has continued enriching uranium, leading [United Nations inspectors](http://news.yahoo.com/un-credible-evidence-iran-working-nuke-weapons-153544271.html) to find "credible evidence" that Tehran is working on nuclear weapons. Sooner or later the moment of truth will arrive. If a deal is not reached, Obama will have to decide if he wants to be the president on whose watch a nuclear weapons race was unleashed in the most dangerous and unstable part of the world.¶ North Africa terrorism: A much-neglected region of the world is becoming increasingly difficult to disregard. In recent days, [Islamist extremists](http://edition.cnn.com/2013/01/18/opinion/ghitis-algeria-hostage-crisis/index.html?hpt=op_t1) took American and other hostages in Algeria and France sent its military to fight advancing Islamist extremists in Mali, a country that once represented optimism for democratic rule in Africa, now overtaken by militants who are potentially turning it into a staging ground for international terrorism.¶ Russia repression: As Russian President Vladimir Putin succeeds in [crushing opposition](http://www.france24.com/en/20121027-russian-opposition-leaders-detained-protest-navalny-udaltsov-vladimir-putin) to his [increasingly authoritarian](http://www.freedomhouse.org/report/freedom-world/2013/russia)rule, he and his allies are making anti-American words and policies their favorite theme. A recent ban on adoption of Russian orphans by American parents is only the most vile example. But Washington needs Russian cooperation to achieve its goals at the U.N. regarding Iran, Syria and other matters. It is a complicated problem with which Obama will have to wrestle.¶ Then there are the long-standing challenges that could take a turn for the worse, such as the Israeli-Palestinian conflict. Obama may not want to wade into that morass again, but events may force his hand.¶ And there are the so-called "black swans," events of low probability and high impact. [There is talk](http://www.economist.com/news/asia/21569757-armed-clashes-over-trivial-specks-east-china-sea-loom-closer-drums-war) that China and Japan could go to war over a cluster of disputed islands.¶ A war between two of the world's largest economies could prove devastating to the global economy, just as a sudden and dramatic reversal in the fragile Eurozone economy could spell disaster. Japan's is only the hottest of many territorial disputes between China and its Asian neighbors. Then there's North Korea with its nuclear weapons.¶ We could see regions that have garnered little attention come back to the forefront, such as Latin America, where conflict could arise in a post-Hugo Chavez Venezuela.¶ The president -- and the country -- could also benefit from unexpectedly positive outcomes. Imagine a happy turn of events in Iran, a breakthrough between Israelis and Palestinians, the return of prosperity in Europe, a successful push by liberal democratic forces in the Arab uprising countries, which could create new opportunities, lowering risks around the world, easing trade, restoring confidence and improving the chances for the very agenda Obama described in his inaugural speech.¶ The aspirations he expressed for America are the ones he should express for our tumultuous planet. Perhaps in his next big speech, the State of the Union, he can remember America's leadership position and devote more attention to those around the world who see it as a source of inspiration and encouragement.¶ After all, in this second term Obama will not be able to devote as small a portion of his attention to foreign policy as he did during his inaugural speech.

#### Senkaku conflict is on the brink --- quick U.S. intervention is key to prevent global nuclear escalation

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Don't look now, but conditions are deteriorating in the western Pacific. Things are turning ugly, with consequences that could prove deadly and spell catastrophe for the global economy.¶ In Washington, it is widely assumed that a showdown with Iran over its nuclear ambitions will be the first major crisis to engulf the next secretary of defense -- whether it be former Senator Chuck Hagel, as President Obama desires, or someone else if he fails to win Senate confirmation. With few signs of an imminent breakthrough in talks aimed at peacefully resolving the Iranian nuclear issue, many analysts believe that military action -- if not by Israel, then by the United States -- could be on this year's agenda.¶ Lurking just behind the Iranian imbroglio, however, is a potential crisis of far greater magnitude, and potentially far more imminent than most of us imagine. China's determination to assert control over disputed islands in the potentially energy-rich waters of the East and South China Seas, in the face of stiffening resistance from Japan and the Philippines along with greater regional assertiveness by the United States, spells trouble not just regionally, but potentially globally.¶ Islands, Islands, Everywhere¶ The possibility of an Iranian crisis remains in the spotlight because of the obvious risk of disorder in the Greater Middle East and its threat to global oil production and shipping. A crisis in the East or South China Seas (essentially, western extensions of the Pacific Ocean) would, however, pose a greater peril because of the possibility of a U.S.-China military confrontation and the threat to Asian economic stability.¶ The United States is bound by treaty to come to the assistance of Japan or the Philippines if either country is attacked by a third party, so any armed clash between Chinese and Japanese or Filipino forces could trigger American military intervention. With so much of the world's trade focused on Asia, and the American, Chinese, and Japanese economies tied so closely together in ways too essential to ignore, a clash of almost any sort in these vital waterways might paralyze international commerce and trigger a global recession (or worse).¶ All of this should be painfully obvious and so rule out such a possibility -- and yet the likelihood of such a clash occurring has been on the rise in recent months, as China and its neighbors continue to ratchet up the bellicosity of their statements and bolster their military forces in the contested areas. Washington's continuing statements about its ongoing plans for a "pivot" to, or "rebalancing" of, its forces in the Pacific have only fueled Chinese intransigence and intensified a rising sense of crisis in the region. Leaders on all sides continue to affirm their country's inviolable rights to the contested islands and vow to use any means necessary to resist encroachment by rival claimants. In the meantime, China has increased the frequency and scale of its naval maneuvers in waters claimed by Japan, Vietnam, and the Philippines, further enflaming tensions in the region.¶ Ostensibly, these disputes revolve around the question of who owns a constellation of largely uninhabited atolls and islets claimed by a variety of nations. In the East China Sea, the islands in contention are called the Diaoyus by China and the Senkakus by Japan. At present, they are administered by Japan, but both countries claim sovereignty over them. In the South China Sea, several island groups are in contention, including the Spratly chain and the Paracel Islands (known in China as the Nansha and Xisha Islands, respectively). China claims all of these islets, while Vietnam claims some of the Spratlys and Paracels. Brunei, Malaysia, and the Philippines also claim some of the Spratlys.¶ Far more is, of course, at stake than just the ownership of a few uninhabited islets. The seabeds surrounding them are believed to sit atop vast reserves of oil and natural gas. Ownership of the islands would naturally confer ownership of the reserves -- something all of these countries desperately desire. Powerful forces of nationalism are also at work: with rising popular fervor, the Chinese believe that the islands are part of their national territory and any other claims represent a direct assault on China's sovereign rights; the fact that Japan -- China's brutal invader and occupier during World War II -- is a rival claimant to some of them only adds a powerful tinge of victimhood to Chinese nationalism and intransigence on the issue. By the same token, the Japanese, Vietnamese, and Filipinos, already feeling threatened by China's growing wealth and power, believe no less firmly that not bending on the island disputes is an essential expression of their nationhood.¶ Long ongoing, these disputes have escalated recently. In May 2011, for instance, the Vietnamese reported that Chinese warships were harassing oil-exploration vessels operated by the state-owned energy company PetroVietnam in the South China Sea. In two instances, Vietnamese authorities claimed, cables attached to underwater survey equipment were purposely slashed. In April 2012, armed Chinese marine surveillance ships blocked efforts by Filipino vessels to inspect Chinese boats suspected of illegally fishing off Scarborough Shoal, an islet in the South China Sea claimed by both countries.¶ The East China Sea has similarly witnessed tense encounters of late. Last September, for example, Japanese authorities arrested 14 Chinese citizens who had attempted to land on one of the Diaoyu/Senkaku Islands to press their country's claims, provoking widespread anti-Japanese protests across China and a series of naval show-of-force operations by both sides in the disputed waters.¶ Regional diplomacy, that classic way of settling disputes in a peaceful manner, has been under growing strain recently thanks to these maritime disputes and the accompanying military encounters. In July 2012, at the annual meeting of the Association of Southeast Asian Nations (ASEAN), Asian leaders were unable to agree on a final communiqué, no matter how anodyne -- the first time that had happened in the organization's 46-year history. Reportedly, consensus on a final document was thwarted when Cambodia, a close ally of China's, refused to endorse compromise language on a proposed "code of conduct" for resolving disputes in the South China Sea. Two months later, when Secretary of State Hillary Rodham Clinton visited Beijing in an attempt to promote negotiations on the disputes, she was reviled in the Chinese press, while officials there refused to cede any ground at all.¶ As 2012 ended and the New Year began, the situation only deteriorated. On December 1st, officials in Hainan Province, which administers the Chinese-claimed islands in the South China Sea, announced a new policy for 2013: Chinese warships would now be empowered to stop, search, or simply repel foreign ships that entered the claimed waters and were suspected of conducting illegal activities ranging, assumedly, from fishing to oil drilling. This move coincided with an increase in the size and frequency of Chinese naval deployments in the disputed areas.¶ On December 13th, the Japanese military scrambled F-15 fighter jets when a Chinese marine surveillance plane flew into airspace near the Diaoyu/Senkaku Islands. Another worrisome incident occurred on January 8th, when four Chinese surveillance ships entered Japanese-controlled waters around those islands for 13 hours. Two days later, Japanese fighter jets were again scrambled when a Chinese surveillance plane returned to the islands. Chinese fighters then came in pursuit, the first time supersonic jets from both sides flew over the disputed area. The Chinese clearly have little intention of backing down, having indicated that they will increase their air and naval deployments in the area, just as the Japanese are doing.¶ Powder Keg in the Pacific¶ While war clouds gather in the Pacific sky, the question remains: Why, pray tell, is this happening now?¶ Several factors seem to be conspiring to heighten the risk of confrontation, including leadership changes in China and Japan, and a geopolitical reassessment by the United States.¶ \* In China, a new leadership team is placing renewed emphasis on military strength and on what might be called national assertiveness. At the 18th Party Congress of the Chinese Communist Party, held last November in Beijing, Xi Jinping was named both party head and chairman of the Central Military Commission, making him, in effect, the nation's foremost civilian and military official. Since then, Xi has made several heavily publicized visits to assorted Chinese military units, all clearly intended to demonstrate the Communist Party's determination, under his leadership, to boost the capabilities and prestige of the country's army, navy, and air force. He has already linked this drive to his belief that his country should play a more vigorous and assertive role in the region and the world.¶ In a speech to soldiers in the city of Huizhou, for example, Xi spoke of his "dream" of national rejuvenation: "This dream can be said to be a dream of a strong nation; and for the military, it is the dream of a strong military." Significantly, he used the trip to visit the Haikou, a destroyer assigned to the fleet responsible for patrolling the disputed waters of the South China Sea. As he spoke, a Chinese surveillance plane entered disputed air space over the Diaoyu/Senkaku islands in the East China Sea, prompting Japan to scramble those F-15 fighter jets.¶ \* In Japan, too, a new leadership team is placing renewed emphasis on military strength and national assertiveness. On December 16th, arch-nationalist Shinzo Abe returned to power as the nation's prime minister. Although he campaigned largely on economic issues, promising to revive the country's lagging economy, Abe has made no secret of his intent to bolster the Japanese military and assume a tougher stance on the East China Sea dispute.¶ In his first few weeks in office, Abe has already announced plans to increase military spending and review an official apology made by a former government official to women forced into sexual slavery by the Japanese military during World War II. These steps are sure to please Japan's rightists, but certain to inflame anti-Japanese sentiment in China, Korea, and other countries it once occupied.¶ Equally worrisome, Abe promptly negotiated an agreement with the Philippines for greater cooperation on enhanced "maritime security" in the western Pacific, a move intended to counter growing Chinese assertiveness in the region. Inevitably, this will spark a harsh Chinese response -- and because the United States has mutual defense treaties with both countries, it will also increase the risk of U.S. involvement in future engagements at sea.¶ \* In the United States, senior officials are debating implementation of the "Pacific pivot" announced by President Obama in a speech before the Australian Parliament a little over a year ago. In it, he promised that additional U.S. forces would be deployed in the region, even if that meant cutbacks elsewhere. "My guidance is clear," he declared. "As we plan and budget for the future, we will allocate the resources necessary to maintain our strong military presence in this region." While Obama never quite said that his approach was intended to constrain the rise of China, few observers doubt that a policy of "containment" has returned to the Pacific.¶ Indeed, the U.S. military has taken the first steps in this direction, announcing, for example, that by 2017 all three U.S. stealth planes, the F-22, F-35, and B-2, would be deployed to bases relatively near China and that by 2020 60% of U.S. naval forces will be stationed in the Pacific (compared to 50% today). However, the nation's budget woes have led many analysts to question whether the Pentagon is actually capable of fully implementing the military part of any Asian pivot strategy in a meaningful way. A study conducted by the Center for Strategic and International Studies (CSIS) at the behest of Congress, released last summer, concluded that the Department of Defense "has not adequately articulated the strategy behind its force posture planning [in the Asia-Pacific] nor aligned the strategy with resources in a way that reflects current budget realities."¶ This, in turn, has fueled a drive by military hawks to press the administration to spend more on Pacific-oriented forces and to play a more vigorous role in countering China's "bullying" behavior in the East and South China Seas. "[America's Asian allies] are waiting to see whether America will live up to its uncomfortable but necessary role as the true guarantor of stability in East Asia, or whether the region will again be dominated by belligerence and intimidation," former Secretary of the Navy and former Senator James Webb wrote in the Wall Street Journal. Although the administration has responded to such taunts by reaffirming its pledge to bolster its forces in the Pacific, this has failed to halt the calls for an even tougher posture by Washington. Obama has already been chided for failing to provide sufficient backing to Israel in its struggle with Iran over nuclear weapons, and it is safe to assume that he will face even greater pressure to assist America's allies in Asia were they to be threatened by Chinese forces.¶ Add these three developments together, and you have the makings of a powder keg -- potentially at least as explosive and dangerous to the global economy as any confrontation with Iran. Right now, given the rising tensions, the first close encounter of the worst kind, in which, say, shots were unexpectedly fired and lives lost, or a ship or plane went down, might be the equivalent of lighting a fuse in a crowded, over-armed room. Such an incident could occur almost any time. The Japanese press has reported that government officials there are ready to authorize fighter pilots to fire warning shots if Chinese aircraft penetrate the airspace over the Diaoyu/Senkaku islands. A Chinese general has said that such an act would count as the start of "actual combat." That the irrationality of such an event will be apparent to anyone who considers the deeply tangled economic relations among all these powers may prove no impediment to the situation -- as at the beginning of World War I -- simply spinning out of everyone's control.¶ Can such a crisis be averted? Yes, if the leaders of China, Japan, and the United States, the key countries involved, take steps to defuse the belligerent and ultra-nationalistic pronouncements now holding sway and begin talking with one another about practical steps to resolve the disputes. Similarly, an emotional and unexpected gesture -- Prime Minister Abe, for instance, pulling a Nixon and paying a surprise goodwill visit to China -- might carry the day and change the atmosphere. Should these minor disputes in the Pacific get out of hand, however, not just those directly involved but the whole planet will look with sadness and horror on the failure of everyone involved.

#### Perception of weak Presidential crisis response collapses heg --- turns case

John R. Bolton 9, Senior fellow at the American Enterprise Institute & Former U.S. ambassador to the United Nations, “The danger of Obama's dithering,” Los Angeles Times, October 18, http://articles.latimes.com/2009/oct/18/opinion/oe-bolton18

Weakness in American foreign policy in one region often invites challenges elsewhere, because our **adversaries carefully follow** diminished American resolve. Similarly, presidential indecisiveness, whether because of uncertainty or internal political struggles, signals that the United States may not respond to international challenges in clear and coherent ways. Taken together, weakness and indecisiveness have proved historically to be a toxic **combination for America's global interests**. That is exactly the combination we now see under President Obama. If anything, his receiving the Nobel Peace Prize only underlines the problem. All of Obama's campaign and inaugural talk about "extending an open hand" and "engagement," especially the multilateral variety, isn't exactly unfolding according to plan. Entirely predictably, we see more clearly every day that diplomacy is not a policy but only a technique. **Absent** presidential leadership, **which at a minimum means** clear policy direction and persistence in the face of criticism and adversity**, engagement simply embodies** weakness and indecision.

### 1NC

#### The Legislative Branch of the United States federal government should provide all necessary financial support for warfare that has been initiated by the President of the United States.

## 1---Intervention

### Circumvention

#### Plan would be circumvented just like the WPR --- they have ZERO evidence to question this

### AT: Groupthink

#### Groupthink theory is wrong

Anthony Hempell 4, User Experience Consulting Senior Information Architect, “Groupthink: An introduction to Janis' theory of concurrence-seeking tendencies in group work., <http://www.anthonyhempell.com/papers/groupthink/>, March 3

In the thirty years since Janis first proposed the groupthink model, there is still little agreement as to the validity of the model in assessing decision-making behaviour (Park, 2000). Janis' theory is often criticized because it does not present a framework that is suitable for empirical testing; instead, the evidence for groupthink comes from largely qualitative, historical or archival methods (Sunstein, 2003). Some critics go so far as to say that Janis's work relies on "anecdote, casual observation, and intuitive appeal rather than rigorous research" (Esser, 1998, cited in Sunstein, 2003, p.142). While some studies have shown support for the groupthink model, the support tends to be mixed or conditional (Esser, 1998); some studies have revealed that a closed leadership style and external threats (in particular, time pressure) promote groupthink and defective decision making (Neck & Moorhead, 1995, cited by Choi & Kim, 1999); the effect of group cohesiveness is still inconclusive (Mullen, Anthony, Salas & Driskel, 1994, cited by Choi & Kim, 1999). Janis's model tends to be supported by studies that employ a qualitative case-study approach as opposed to experimental research, which tends to either partially support or not support Janis's thesis (Park, 2000). The lack of success in experimental validation of groupthink may be due to difficulties in operationalizing and conceptualizing it as a testable variable (Hogg & Hains, 1998; Park, 2000). Some researchers have criticized Janis for categorically denouncing groupthink as a negative phenomenon (Longley & Pruitt, 1980, cited in Choi & Kim, 1999). Sniezek (1992) argues that there are instances where concurrence-seeking may promote group performance. When used to explain behaviour in a practical setting, groupthink has been frames as a detrimental group process; the result of this has been that many corporate training programs have created strategies for avoiding groupthink in the workplace (Quinn, Faerman, Thompson & McGrath, 1990, cited in Choi & Kim, 1999). Another criticism of groupthink is that Janis overestimates the link between the decision-making process and the outcome (McCauley, 1989; Tetlock, Peterson, McGuire, Chang & Feld, 1992; cited in Choi & Kim, 1999). Tetlock et al argue that there are many other factors between the decision process and the outcome. The outcome of any decision-making process, they argue, will only have a certain probability of success due to various environmental factors (such as luck). A large-scale study researching decision-making in seven major American corporations concluded that decision-making worked best when following a sound information processing method; however these groups also showed signs of groupthink, in that they had strong leadership which attempted to persuade others in the group that they were right (Peterson et al, 1998, cited in Sunstein, 2003). Esser (1998) found that groupthink characteristics were correlated with failures; however cohesiveness did not appear to be a factor: groups consisting of strangers, friends, or various levels of previous experience together did not appear to effect decision-making ability. Janis' claims of insulation of groups and groups led by autocratic leaders did show that these attributes were indicative of groupthink symptoms. Moorhead & Montanari conducted a study where they concluded that groupthink symptoms had no significant effect on group performance, and that "the relationship between groupthink-induced decision defects and outcomes were not as strong as Janis suggests" (Moorhead & Montanari, 1986, p. 399; cited by Choi & Kim, 1999).

### AT: Lashout

#### Multiple checks prevent Executive overreach --- their impact is a myth

John Yoo 9, Emanuel S. Heller Professor of Law @ UC-Berkeley Law, visiting scholar @ the American Enterprise Institute, former Fulbright Distinguished Chair in Law @ the University of Trento, served as a deputy assistant attorney general in the Office of Legal Council at the U.S. Department of Justice between 2001 and 2003, received his J.D. from Yale and his undergraduate degree from Harvard, “Crisis and Command,” E-Book

A second lesson of this book is that the notion of an unchecked executive, wielding dictatorial powers to plunge the nation into disaster, is a myth born of Vietnam and Watergate. Congresses have always possessed ample ability to stalemate and check an executive run amok. Congress regularly ignores executive proposals for legislation, rejects nominees, and overrides vetoes. It can use its power over legislation, funding, and oversight to exercise significant control over the administrative state. There would be no agencies, no delegated powers, and no rule-making without Congress's basic decisions to create the federal bureaucracy. It can use these authorities even at the zenith of presidential power: foreign affairs. Congress can cut off war funding, shrink the military, stop economic aid, and block treaties. It used its sole control of the purse to limit the Mexican-American War and to end the Vietnam conflict, for example.

#### Reject their hyperbolic claims --- tyranny never materializes

John Yoo 9, Emanuel S. Heller Professor of Law @ UC-Berkeley Law, visiting scholar @ the American Enterprise Institute, former Fulbright Distinguished Chair in Law @ the University of Trento, served as a deputy assistant attorney general in the Office of Legal Council at the U.S. Department of Justice between 2001 and 2003, received his J.D. from Yale and his undergraduate degree from Harvard, “Crisis and Command,” Book, p. x-xi

This book is also written out of respect for Congress as well as the President. I have had the honor to serve as general counsel of the Senate Judiciary Committee under the chairmanship of Senator Orrin G. Hatch of Utah, a good and decent man as well as a strward of the Senate. I have the greatest respect for the awesome powers of Congress and the ways in which Congress and the broader political system can check any Chief Executive. It was Congress that forced the resignation of Richard Nixon through hearings, political pressure, spending constraints, and ultimately, the threat of impeachment. Today’s critics of the Presidency underestimate the power of politics to corral any branch of government that goes too far. They give too much credit to appeals to abstract notions of constitutional balance to restrain a truly out-of-control President, or misread active responses to unprecedented challenges as challenges to the Constitution. The hyperbole in such rhetoric is manifest in overwrought yet commonplace invocations of “treason” or “tramplings” of the Constitution. Has the Constitution indeed been trampled on? History provides us with a guide.¶ Certainly, the fear that a President might abuse power for personal gain or to maintain his or her position has haunted America from her birth. Executive power, as the Founding Fathers well knew, always carries the possibility of dictatorship. In their own day, the great Presidents were all accused of wielding power tyrannically. Yet, they were not dictators. They used their executive powers to the benefit of the nation. Once the emergency subsided, presidential power receded and often went into remission under long periods of congressional leadership. When chief executives misused their powers, the political system blocked or eventually ejected the President. No dictator has ever ruled in the United States, yet critics of contemporary presidential power wish to work radical change in current practice out of fear of impending dictatorship.

### AT: “Better Wars”

#### Doesn’t solve “better wars”

Jide Nzelibe 6, Asst. Profesor of Law @ Northwestern, and John Yoo, Emanuel S. Heller Professor of Law @ UC-Berkeley Law, “Rational War and Constitutional Design,” Yale Law Journal, Vol. 115, SSRN

But before accepting this attractive vision, we should ask whether the Congress first system produces these results. In other words, has requiring congressional ex ante approval for foreign wars produced less war, better decision making, or greater consensus? Students of American foreign policy generally acknowledge that comprehensive empirical studies of American wars are impractical, due to the small number of armed conflicts. Instead, they tend to focus on case studies. A cursory review of previous American wars does not suggest that congressional participation in war necessarily produces better decision making. We can certainly identify wars, such as the Mexican-American War or the Spanish-American War, in which a declaration of war did not result from extensive deliberation nor necessarily result in good policy.14 Both wars benefited the United States by expanding the nation’s territory and enhanced its presence on the world stage,15 but it seems that these are not the wars that supporters of Congress’s Declare War power would want the nation to enter – i.e., offensive wars of conquest. Nor is it clear that congressional participation has resulted in greater consensus and better decision making. Congress approved the Vietnam War, in the Tonkin Gulf resolution, and the Iraq war, both of which have produced sharp division in American domestic politics and proven to be mistakes.

The other side of the coin here usually goes little noticed, but is just as important for evaluating the substantive performance of the Congress-first system. To a significant extent, much of the war powers literature focuses on situations in which the United States might erroneously enter a war where the costs outweigh the expected benefits. Statisticians usually label such errors of commission as Type I errors. Scholars rarely, if ever, ask whether requiring congressional ex ante approval for foreign wars could increase Type II errors. Type II errors occur when the United States does not enter a conflict where the expected benefits to the nation outweigh the costs, and this could occur today when the President refuses to launch a preemptive strike against a nation harboring a hostile terrorist group, for example, out of concerns over congressional opposition. It may be the case that legislative participation in warmaking could prevent the United States from entering, or delaying entry, into wars that would benefit its foreign policy or national security. The clearest example is World War II. During the inter-war period, Congress enacted several statutes designed to prevent the United States from entering into the wars in Europe and Asia. In 1940 and 1941, President Franklin D. Roosevelt recognized that America’s security would be threatened by German control of Europe, and he and his advisers gradually attempted to bring the United States to the assistance of Great Britain and the Soviet Union.16 Nonetheless, congressional resistance prevented Roosevelt from doing anything more than supplying arms and loans to the Allies, although he arguably stretched his authority to cooperate closely with Great Britain in protecting convoys in the North Atlantic, among other things. It is likely that if American pressure on Japan to withdraw from China had not helped triggered the Pacific War, American entry into World War II might have been delayed by at least another year, if not longer.17 Knowing what we now know, most would agree that America’s earlier entry into World War II would have been much to the benefit of the United States and to the world. A more recent example might be American policy in the Balkans during the middle and late 1990s.

## 2---War Fighting

### AT: Credibility

#### GOP control of the House makes effective Obama diplomacy impossible

Jones, 11 (Erik, Professor of European Studies at Johns Hopkins, “European Security, Transatlantic Relations, and the Challenge to US Global Leadership,” European Security and the Future of Transatlantic Relations, April, <http://www.iai.it/pdf/Quaderni/iairp_01.pdf>)

Europe is not a rival to the United States and yet it is not obviously a supportive influence either. Meanwhile, the United States has problems of its own. The Obama administration suffered a significant setback during the mid-term elections held in November 2010. The Republican Party won control over the House of Representatives and it was able to reduce the Democratic majority in Senate. As a consequence, the Obama administration has lost much of its room for maneuver in domestic policy and it faces an uphill battle getting Senate approval for key appointments and international treaties (it managed to have the US-Russia New START treaty on the reduction of nuclear warheads approved by the Senate in the final days of the lame-duck session, though). In turn, international perceptions of the strength of Obama as president have diminished, making it easier for some to ignore US entreaties or blandishments and for others to take advantage of perceived American weakness or preoccupation at home. Many question whether the prospects for American leadership have been fatally challenged and some even wonder whether they can ever be repaired.5

#### Capability outweighs credibility — US actions appear irrational, so countries don’t interpret our signals

Steve Chapman 9/5/13, columnist and editorial writer for the Chicago Tribune, “War in Syria: The Endless Quest for Credibility,” http://reason.com/archives/2013/09/05/war-in-syria-the-endless-quest-for-credi

The United States boasts the most powerful military on Earth. We have 1.4 million active-duty personnel, thousands of tanks, ships and planes, and 5,000 nuclear warheads. We spend more on defense than the next 13 countries combined. Yet we are told we have to bomb Syria to preserve our credibility in world affairs.¶ Really? You'd think it would be every other country that would need to confirm its seriousness. Since 1991, notes University of Chicago security scholar John Mearsheimer, the U.S. has been at war in two out of every three years. If we haven't secured our reputation by now, it's hard to imagine we ever could.¶ On the surface, American credibility resembles a mammoth fortress, impervious to anything an enemy could inflict. But to crusading internationalists, both liberal and conservative, it's a house of cards: The tiniest wrong move, and it collapses.¶ In a sense, though, they're right. The U.S. government doesn't have to impress the rest of the world with its willingness to defend against actual attacks or direct threats. But it does have to continually persuade everyone that we will lavish blood and treasure for purposes that are irrelevant to our security.¶ Syria illustrates the problem. Most governments don't fight unless they are attacked or have dreams of conquest and expansion. War is often expensive and debilitating even for the winners, and it's usually catastrophic for losers. Most leaders do their best to avoid it.¶ So even though the Syrian government is a vicious, repressive dictatorship with a serious grudge against Israel, it has mostly steered clear of military conflict. Not since 1982 has it dared to challenge Israel on the battlefield. When Israeli warplanes vaporized a Syrian nuclear reactor in 2007, Bashar al-Assad did nothing. The risks of responding were too dire.¶ But the U.S. never faces such sobering considerations. We are more secure than any country in the history of the world. What almost all of our recent military interventions have in common is that they involved countries that had not attacked us: Libya, Iraq, Serbia, Haiti, Somalia, Panama, Grenada and North Vietnam.¶ With the notable exception of the Afghanistan invasion, we don't fight wars of necessity. We fight wars of choice.¶ That's why we have such an insatiable hunger for credibility. In our case, it connotes an undisputed commitment to go into harm's way even when -- especially when -- we have no compelling need to do so. But it's a sale we can never quite close.¶ Using force in Iraq or Libya provides no guarantee we'll do the same in Syria or Iran or Lower Slobbovia. Because we always have the option of staying out, there's no way to make everyone totally believe we'll jump into the next crisis.¶ The parallel claim of Washington hawks is that we have to punish Assad for using nerve gas, because otherwise Iran will conclude it can acquire nuclear weapons. Again, our credibility is at stake. But how could the Tehran regime draw any certain conclusions based on what happens in Syria?¶ Two American presidents let a troublesome Saddam Hussein stay in power, but a third one decided to take him out. George W. Bush tolerated Moammar Gadhafi, but Barack Obama didn't. Ronald Reagan let us be chased out of Lebanon, only to turn around and invade Grenada. If you've seen one U.S. intervention, you've seen one.¶ What should be plain to Iran is that Washington sees nuclear proliferation as a unique threat to its security, which Syria's chemical weapons are not. Just because we might let Assad get away with gassing his people doesn't mean we will let Iran acquire weapons of mass destruction that would be used only against other countries. Heck, we not only let Saddam get away with using chemical weapons against Iran -- we took his side.¶ Figuring out the U.S. government's future impulses is hard even for Americans. There's no real rhyme or reason. But because we're so powerful, other governments can ill afford to be wrong. What foreigners have to keep in the front of their minds is not our inclination to act but our capacity to act -- which remains unparalleled whatever we do in Syria.¶ Credibility is overrated. Sure, it's possible for hostile governments to watch us squabble over Syria and conclude that they can safely do things we regard as dangerous. But there are graveyards full of people who made that bet.

### AT: Congress Gives Cred

#### Congress doesn’t enhance cred --- narrow majorities make us look unsure --- empirics prove

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It is also not obvious that congressional deliberation ensures consensus. Legislative authorization might reflect ex ante consensus before military hostilities, but it also might merely represent a bare majority of Congress or an unwillingness to challenge the President’s institutional and political strengths regardless of the merits of the war. It is also no guarantee of an ex post consensus after combat begins. Thus, the Vietnam War, which Ely and others admit satisfied their constitutional requirements for congressional approval, did not meet with a consensus over the long term but instead provoked some of the most divisive politics in American history. It is also difficult to claim that the congressional authorizations to use force in Iraq, of either the 1991 or 2002 varieties, reflected a deep consensus over the merits of war there. Indeed, the 1991 authorization barely survived the Senate and the 2002 one received significant negative votes and has become an increasingly divisive issue in national political and the 2004 presidential election. Congress’s authorization for the use of force in Iraq in 2003 has not served as a guarantee of political consensus. ¶ Conversely, a process without congressional declarations of war does not necessarily result in less deliberation or consensus. Nor does it seem to inexorably lead to poor or unnecessary war goals. Perhaps the most important example, although many might consider it a “war,” is the conflict between the United States and the Soviet Union from 1946 through 1991. War was fought throughout the world by the superpowers and their proxies during this period. Yet the only war arguably authorized by Congress – and even this is a debated point – was Vietnam. The United States waged war against Soviet proxies in Korea and Vietnam, the Soviet Union fought in Afghanistan, and the two almost came into direct conflict during the Cuban Missile Crisis. Despite the division over Vietnam, there appeared to be a significant bipartisan consensus on the overall strategy (containment) and goal (defeat of the Soviet Union, protection of Europe and Japan), and Congress consistently devoted significant resources to the creation of a standing military to achieve them. Different conflicts during this period that did not benefit from congressional authorization, such as conflicts in Korea, Grenada, Panama, and Kosovo, did not suffer from a severe lack of consensus, at least at the outset. Korea initially received the support of the nation’s political leadership, and it seems that support declined only once battlefield reverses had occurred. Grenada and Panama did not seem to suffer from any serious political challenge, and while Kosovo met with some political resistance, it does not appear to have been significant.

#### Adversaries won’t perceive Congressional participation as a sign of resolve

Matthew Waxman 8/25/13, Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN

The credibility-enhancing effects of legislative constraints on threats are subject to dispute. Some studies question the assumptions underpinning theories of audience costs – specifically the idea that democratic leaders suffer domestic political costs to failing to make good on their threats, and therefore that their threats are especially credible171 – and others question whether the empirical data supports claims that democracies have credibility advantages in making threats.172 Other scholars dispute the likelihood that leaders will really be punished politically for backing down, especially if the threat was not explicit and unambiguous or if they have good policy reasons for doing so.173 Additionally, even if transparency in democratic institutions allows domestic dissent from threats of force to be visible to foreign audiences, it is not clear that adversaries would interpret these mechanisms as political scientists expect in their models of strategic interaction, in light of various common problems of misperception in international relations.174 These disputes are not just between competing theoretical models but also over the links between any of the models and real-world political behavior by states. At this point there remains a dearth of good historical evidence as to how foreign leaders interpret political maneuvers within Congress regarding threatened force.

### AT: Soft Power

#### Soft power can’t solve global problems

Rachman, 9 (Gideon, chief foreign affairs commentator at the Financial Times, “Obama and the limits of soft power,” June 1, FT,

http://www.ft.com/cms/s/0/e608b556-4ee0-11de-8c10-00144feabdc0.html#axzz2b85RSNek)

Barack Obama is a soft power president. But the world keeps asking him hard power questions. From North Korea to Guantánamo Bay, from Iran to Afghanistan, Mr Obama is confronting a range of vexing issues that cannot be charmed out of existence. The problem is epitomised by the US president’s trip to the Middle East this week. Its focal point will be a much-trailed speech in Cairo on Thursday June 4, in which he will directly address the Muslim world. The Cairo speech is central to Mr Obama’s efforts to rebuild America’s global popularity and its ability to persuade – otherwise known as soft power. The president has been trying out potential themes for the speech on aides and advisers for months. He is likely to emphasise his respect for Islamic culture and history, and his personal links to the Muslim world. He will suggest to his audience that both the US and the Islamic world have, at times, misjudged and mistreated each other – and he will appeal for a new beginning. George W. Bush launched a military offensive in the Middle East. Mr Obama is launching a charm offensive. There is plenty to be said for this approach. Mr Bush embroiled America in a bloody war in Iraq that strengthened Iran and acted as a recruiting sergeant for America’s enemies. Mr Obama’s alternative strategy is based on diplomacy, engagement and empathy. Mr Bush had a shoe thrown at him in his last appearance in the Middle East. So if Mr Obama receives his customary standing ovation in Cairo, that will send a powerful symbolic message. But the president should not let the applause go to his head. Even if his speech is a success, the same foreign-policy problems will be sitting in his in-tray when he gets back to the Oval Office – and they will be just as dangerous as before. In particular, there is chatter in official Washington that the Israelis may be gearing up to attack Iran’s nuclear facilities before the end of the year. The Obama administration is against any such move and it is normally assumed that Israel would not dare to pull the trigger without the go-ahead from Washington – not least because the Israelis would have to fly across US-controlled airspace to get to their targets. But the Americans do not have a complete veto over Israel’s actions. One senior US official asks rhetorically: “What are we going to do? Shoot down their planes?” A conflict between Israel and Iran would scatter the Obama administration’s carefully laid plans for Middle East peace to the winds. It would also make talk of improving American soft power around the world seem beside the point. The immediate task would be to prevent a wider regional war. In the meantime, the US will press on with the effort to achieve peace between the Israelis and the Palestinians. But even that goal is unlikely to be advanced much by Mr Obama’s trip to the Middle East. Many in the audience in Cairo and in the wider Islamic world will want and even expect the new president to lay out a complete vision for a peace settlement and to apply unambiguous pressure on Israel. For reasons of domestic politics, diplomacy and timing, Mr Obama is highly unlikely to do this. Yet while his Arab audience may be disappointed by what he has to say about the Middle East peace process, Mr Obama is already facing an increasingly tense relationship with the new Israeli government. The administration has now clashed openly with the Israelis over the Netanyahu government’s tolerance of expanded settlements in occupied Palestinian land. Mr Obama is also running up against the limits of soft power elsewhere. Closing the prison camp at Guantánamo was meant to be the ultimate tribute to soft power over hard power. The Obama team argued consistently that the damage that Guantánamo did to America’s image in the world outweighed any security gains from holding al-Qaeda prisoners there. Yet, faced with the backlash against releasing the remaining 240 prisoners or imprisoning them in the US, the Obama administration has back-tracked. It is not clear whether Guantánamo will be closed on schedule or what will happen to the riskier-sounding prisoners, who may still be held indefinitely. The much-criticised military trials are likely to be revived. In Afghanistan, Mr Obama is trying a mixture of hard and soft power. There will be a military surge – but also a “civilian surge”, designed to build up civil society and governance in Afghanistan. Old hands in Washington are beginning to shake their heads and mutter about Vietnam. Mr Obama’s preferred tools of diplomacy, engagement and charm do not seem to be of much use with Kim Jong-il of North Korea, either. The North Koreans have just tested a nuclear weapon – leaving the Obama administration scratching its head about what to do. The president’s charisma and rhetorical skill are real diplomatic assets. If Mr Obama can deploy them to improve America’s image and influence around the world, that is all to the good. There is nothing wrong with trying to re-build American “soft power”. The danger is more subtle. It is that President Yes-we-can has raised exaggerated hopes about the pay-off from engagement and diplomacy. In the coming months it will become increasingly obvious that soft power also has its limits.

#### No empirical evidence supports an impact to soft power and it’s inevitable

Singh, 8 (Robert, professor in the School of Politics in Birkbeck College at University of London, “The exceptional empire,” Vol. 45, Iss. 5, ProQuest)

Like many theoretical constructs in social science, 'soft power' has its appeal and adherents. But it is not unproblematic . Realists typically have had little time for such ephemeral notions as the popularity of nations as being especially consequential in international relations. In addition, there exists a paucity of empirical evidence that substantiates the premises and prescriptions of soft power. Soft power is not a commodity that governments can actively deploy in pursuit of discrete foreign policy goals, unlike hardmilitary or economic resources. Moreover, to the extent that America is attractive, most of this soft resource is supplied not by the state but the private sector -- Hollywood, television and the music industry to universities , research institutes and businesses. The influence of government on whether, where and how these resources are deployed is limited, uneven and indirect (probably for the good).Moreover, in historical terms, the literature on anti-Americanisms makes plain that long before the US had a global roleto play, the nation and its people were already objects of contempt , ridicule and bafflement, especially in Europe (Singh, 2005).Anti-Americanism predated encounters with the American 'Other'. During periods of international tension in which relatively weak interlocutorsconfront a powerful US, it is unsurprising that animus is often vented towards Washington. As one Newsweek poll recorded the sorry figuresunderpinning America's 'tarnished global image.'

## 3---SOP

#### Friendly democracies can decipher between good and bad US norms, and authoritarian nations care either way

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The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

#### Modeling fails – different cultures and resources

Jeremy Rabkin 13, Professor of Law at the George Mason School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations

Even when people are not ambivalent in their desire to embrace American practices, they may not have the wherewithal to do so, given their own resources. That is true even for constitutional arrangements. You might think it is enviable to have an old, well-established constitution, but that doesn’t mean you can just grab it off the shelf and enjoy it in your new democracy. You might think it is enviable to have a broad respect for free debate and tolerance of difference, but that doesn’t mean you can wave a wand and supply it to your own population. We can’t think of most constitutional practices as techniques or technologies which can be imported into different cultures as easily as cell phones or Internet connections.

No impact (to SOP violations)

Constitutional Commentary 96 (Winter, p. 343-345)

A second, perhaps more interesting, difficulty with **the prophylactic approach** is that it may rely on a too judicialocentric view of the workings of government **that exaggerates the Court's role in the separation-of-powers struggle**. Professor Redish's argument rests on the notion that it is vitally important that the Court get its separation-of-powers jurisprudence right. The argument runs something like this: Separation of powers is a bulwark of liberty - without it, the individual protections of the Bill of Rights are nothing but paper. The Court defines separation-of-powers law. If it messes up, then so much for liberty. The Court is bound to mess up if it adopts anything other than a prophylactic approach to separation of powers. It is therefore urgent that the Court adopt this approach. Fortunately, the Framers' design is probably stronger than this argument presupposes. **Separation-of-powers gives each branch tools which enable ambition to counteract ambition.** The Court gets to decide cases. It justifies its decisions with opinions which the other branches and the citizenry generally follow as authoritative. Thus, although the Court does not have guns or money, it has words. These words are the Court's tools in the separation-of-powers struggle. **Any time the Court writes an opinion on separation of powers, it self-consciously uses its particular power to shove the boundaries of branch power** - sometimes to profound effect, as a simple hypothetical illustrates. Suppose Chief Justice Marshall had ended Marbury v. Madison with the following paragraph: Then again, Congress has just as much right to interpret the Constitution as I do - perhaps even more, because Congress is the branch closest to the people, and it is the people's Constitution. I was just kidding about that judicial review stuff. History would be very different, partially because such a result in Marbury would have grossly undermined the Court's future ability to compete in the separation-of-powers struggle successfully. On a more general level, Supreme Court opinions on any topic can affect the balance of branch power. For instance, the Supreme Court can undermine its authority by producing poorly reasoned opinions - or, much worse from a realpolitik point of view, unpopular opinions. The power, however, of any given decision to damage a Court staffed by relatively sane Justices is probably limited. This is an institution that has survived Dred Scott and Plessy v. Ferguson. Of course, the other branches also shove at the boundaries of branch power - FDR's Court-packing plan being one notable example of this practice. Sometimes the law of unintended consequences grabs hold. Perhaps the Court-packing plan concentrated the Justices' minds on finding ways to hold New Deal legislation constitutional, but it also blew up in FDR's face politically. **At least for the last two hundred years, however, no branch has managed to expand its power to the point of delivering an obvious knock-out blow to another branch**. Seen from this broader perspective, cases such as Morrison, Bowsher v. Synar, and Mistretta v. United States surely alter the balance of branch power at a given historical moment, but do not change the fundamental and brute fact that the Constitution puts three institutional heavyweights into a ring where they are free to bash each other. Judicialocentrism tends to obscure this obvious point because it causes people to dwell on the hard cases that reach the Supreme Court. The power of separation of powers, however, largely resides in its ability to keep the easy cases from ever occurring. For instance, Congress, although it tries to weaken the President from time to time, has not tried to reduce the President to a ceremonial figurehead a la the Queen of England. Similarly, Congress does not make a habit of trying cases that have been heard by the courts. This list could be continued indefinitely. **The Supreme Court has had two hundred years to muck about with separation-of-powers doctrine. Over that time, scores of Justices - each with his or her own somewhat idiosyncratic view of the law - have sat on the bench. Scholars have denounced separation-of-powers jurisprudence as a mess. But the Republic endures, at least more or less. These historical facts tend to indicate that the Court need not rush to change its approach to separation of powers to prevent a slide into tyranny.**

# 2NC

## Flexibility DA

### Link Debate

#### The structure of Congress inherently favors delay and inaction --- that’s awful for crisis response

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In order to weigh the advantages of the Congress-first approach, it is also important to understand its potential costs. The costs may not be obvious, since grounding the use of force in ex ante congressional consent bears a close resemblance to the process for enacting legislation. The legislative process increases the costs of government action. It is heavily slanted against the enactment of legislation by requiring the concurrence not just of the popularly elected House but also the state-representing Senate and the President. This raises decision costs by increasing the delay needed to get legislative concurrence, requiring an effort to coordinate between executive and legislature, and demanding an open, public discussion of potentially sensitive information. Decision costs are not encapsulated merely in the time-worn hypotheticals that ask whether the President must go to Congress for permissions to launch a preemptive strike against a nation about to launch its own nuclear attack. Rather, these decision costs might arise from delay in using force that misses a window of opportunity, or one in which legislative discussion alerts an enemy to a possible attack, or the uncertainty over whether congressional authorization will be forthcoming.

#### Congress is too slow to respond to 21st century threats --- executive deference is critical

Andrew Rudalevige 6, the Thomas Brackett Reed Professor of Government @ Bowdoin College, “The New Imperial Presidency,” UMich-Ann Arbor Press, Book, p. 264-67

That fragmentation is most obvious at the other end of Pennsylvania Avenue. Despite common grammatical usage, including in this book, Congress is not an “it” but a “they.” That is, Congress is not singular but plural and a fractious plural at that. The geographic basis of House representation— the “territorial imperative”—means that no two House members share identical interests.6 The distinctive constituencies and terms of the House and Senate generate few overlapping sympathies across the chambers. Sequential majorities and supermajorities are required for action, but only a small minority for inaction. This became even more true after the application of reforms in the 1970s designed to apply the openness and decentralization aimed at the executive branch to Congress itself. The reforms enhanced the power of subcommittees and gave party rank-and-‹le more power to override seniority in selecting committee chairs. What nineteenth-century observers like Woodrow Wilson condemned as “committee government” often atomized further into “subcommittee government” instead. As a result, one scholar noted, members of Congress can make laws “only with sweat patience, and a remarkable skill in the handling of creaking machinery.” But stopping laws is a feat “they perform daily, with ease and infinite variety.”7¶ Thus even an alert and aggressive Congress has endemic weaknesses.8 Its large size and relative lack of hierarchy hamper quick decision making. The specialized jurisdictions inherent in the committee system, so necessary for dividing labor, also divide issues and make their comprehensive consideration across functional lines nearly impossible. (Nor do House members’ two-year terms give much incentive for long-term planning.) For similar reasons Congress has difficulty in planning and agenda setting. The ready acceptance of the idea of a presidential legislative program after World War II was partly a question of legislative convenience, a way to weed through innumerable proposals and provide a focus for limited floor time. Finally, with so many members, each seeking press attention, Congress also finds it hard to keep a secret. As President George H. W. Bush’s counsel, Boyden Gray, put it, “any time you notify Congress, it’s like putting an ad in the Washington Post. Notification is tantamount to declaration.”9¶ In short, Congress has the problems inherent to any body of individuals that must take collective action. The decisions that are rational for a single member—especially those aimed at gaining particular benefits for his or her district—are not always good decisions for the body as a whole.10 James Madison wrote as early as 1791 that whenever a question of “general. . . advantage to the Union was before the House . . . [members] commonly resorted to local views.” Then, as now, coalition building had to overcome decentralized inertia, with the result that governing often comes down to, in the words of LBJ budget official Charles Schultze, “a lot of boodle being handed out in large numbers of small boodle.”11¶ Worse, fragmentation is not limited to the legislative branch. After all, Congress created most of the executive branch as well—and in its own image. The “politics of bureaucratic structure” result in a bureaucracy far different than what organization theorists would draw up on a blank page, one rarely aligned along functional lines or with clear lines of executive authority. Legislative majorities hope to institutionalize their own interests in government agencies and to structurally insulate those preferences against future majorities seeking to meddle. They hope to gain access to the bureaucratic decision-making process and to influence it whenever desirable. They hope to gain points with constituents for fixing the errors agencies make, perhaps to the point of structuring agencies that cannot help but make errors. If nothing else, the historical pattern of executive branch development has spurred a particular array of legislative committees—and organized special interests linked to both.12¶ As the size and scope of the national government grew, its organizational inefficiencies became more obvious and more meaningful. This in turn focused increased attention on the need for direction and coordination— for a chief executive who could actually manage the executive branch. The areas of homeland security and intelligence analysis are only the most recent cases where failures of communication or analysis within the bureaucracy have magnified the need for those qualities.¶ Globalization in some ways highlights the continuing limits of the presidency’s authority: its incumbent is not, after all, president of the world. Yet the practical advantages of presidential leadership vis-à-vis the legislature, at least, are further magnified in an era where rapid transportation, instantaneous communication, and huge flows of trade have changed the context of governance in ways that play to presidential strengths. Both opportunities and threats arise quickly and demand immediate response. Their resolution requires a broad national view, not territorialism; resident expertise, not the give-and-take of log-rolling compromise. Further, if, as Richard Neustadt suggested, the cold war’s omnipresent fear of nuclear war made the president for a time the “final arbiter” in the balance of power, the rise of rogue states and nonstate actors with access to similar weaponry ups the ante again. In this one sense at least the “modern presidency” described earlier may have given way to a “postmodern” one.13 As the Bush administration argued to the Supreme Court on behalf of the president’s power to designate enemy combatants,¶ The court of appeals’ attempt to cabin the Commander-in-Chief authority to the conduct of combat operations on a traditional battlefield is particularly ill-considered in the context of the current conflict. . . . The September 11 attacks not only struck targets on United States soil; they also were launched from inside the Nation’s borders. The “full power to repel and defeat the enemy” thus necessarily embraces determining what measures to take against enemy combatants found within the United States. As the September 11 attacks make manifestly clear, moreover, al Qaeda eschews conventional battlefield combat, yet indiicts damage that, if anything, is more devastating.14

#### Secrecy is vital to effective military policy

William Galston 8/22/13, senior fellow @ the Brookings Institute’s Governance Studies Program, “Politics & Ideas: How Much Transparency Do We Really Want?” WSJ, Factiva

The problem here is obvious: Policy makers often face a choice between private diplomacy and no diplomacy. Secretary of State John Kerry clearly thought that the precise content of his shuttle diplomacy between Israel and the Palestinian Authority had to be kept from public view if there was to be any chance of restarting peace talks. A measure of secrecy is a necessary (if not sufficient) condition of success.¶ This maxim applies broadly. No one thinks that nations at war have a responsibility to make their military strategy public. If the Allies had not succeeded in confusing the Germans, the Normandy landing might have failed.¶ The same consideration of secrecy applies to the acquisition of intelligence. Government officials believe that revealing the details, or even the existence, of secret surveillance programs would help our adversaries elude their reach. They also believe that briefing more than a handful of elected representatives would lead inevitably to public disclosure. Those who do receive briefings are sworn not to reveal their substance, even in congressional debate.¶ Effectiveness and accountability collide -- a tension that can be managed more or less well but never entirely abolished.¶ In the wake of Vietnam and Watergate, Congress and the executive branch pieced together a new strategy for managing this tension. Institutions such as congressional intelligence committees and the Foreign Intelligence Surveillance Court would ensure executive branch accountability while preserving necessary secrecy.¶ The current surveillance controversy challenges the entire post-Watergate regime. Many members of Congress have come to doubt that the intelligence committees permit sufficient accountability; an increasing share of the public now doubts that the system established by the 1978 Foreign Intelligence Surveillance Act adequately protects privacy.¶ But what is to replace it? If secrecy is diminished in the name of public accountability and individual liberty, are we willing to sacrifice a measure of security?¶

#### Congress is too indecisive --- guarantees failure

Robert Turner 84, Principle Deputy Assistant Secretary of State for Legislative and Intergovernmental Affairs, 6/1, “The War Powers Resolution: Unconstitutional, Unnecessary, and Unhelpful,” Digital Commons @ LMU, Loyola of LA Law Review, http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1433&context=llr

Even were there no constitutional difficulties with the War Powers Resolution, a review of its implementation during the past nine years demonstrates that it has been as ineffective in practice as it is unwise in theory. Congress lacks the expertise to deal hurriedly with complex foreign policy emergencies, and most members are too busy with other duties to remain up-to-date on even a prolonged crisis. During times of crisis, decisiveness is often essential. Failure will almost be guaranteed if there are 536 potential secretaries of state trying to make decisions by consensus. Congress is not structured to make rapid decisions, and the more controversial and important the decision, the more likely it is that at least some members will want to prolong the debate to avoid having to take a position that might later prove to have been politically unwise.

#### Congress lacks the intelligence to correctly evaluate threats --- proves complete deference to the executive is preferable

David Mervin 2k, reader in politics at the University of Warwick, “The Law: Controversy: Demise of the War Clause,” Presidential Studies Quarterly, http://drworley.org/NSPcommon/War%20Powers/Journal%20Articles/PSQ%202000,12%20Mervin%20demise%20war%20clause.pdf

At the time of the Constitutional Convention, sailing ships moved at an average of five miles per hour, and the Atlantic and Pacific oceans provided the United States with for - midable defensive barriers. Those barriers remained significant even in the age of steam, but by the mid twentieth century and the invention of high-speed, long-range military aircraft, the United States became vulnerable to attack in a way that it had never been before, and that, of course, was only the beginning. Furthermore, in line with its superpower status, the United States of today has the biggest navy and the second biggest army in the world. And even in the post–cold war era, it has military personnel stationed in significant numbers in more than thirty countries, reflecting its worldwide spread of interest and its participation in a plethora of treaties and agreements with other nations.¶ Given these fundamentally different circumstances, it surely cannot be the case that “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” (Adler and George 1996, 20). In that earlier time, the idea of allowing Congress to be the arbiter in mat - ters of national security made sense, whereas it does not today. The comforting sense of isola - tion that figured so prominently in the thoughts of the founding generation is now no more than a distant memory.¶ The Information Advantage¶ Revolutionary advances in the acquisition and transmission of information have further undermined the case for a preeminent role for Congress in decisions to initiate hostilities. Two hundred years ago, the sources of military intelligence available to decision makers were extraordinarily crude by modern standards, and information traveled no faster than a horse or a sailing ship. Now, the president of the United States sits at the hub of an ultrasophisticated intelligence-gathering system, and information flashes around the world in an instant. This, in theory at least, allows the president to monitor threats to U.S. interests emerging on the other side of the world of which members of Congress may be totally unaware.¶ Some indications of the information resources available to contemporary presidents were evident from the press coverage of one of the incidents included in Adler’s (2000) cata - log of unconstitutional military initiatives by the Clinton administration: the missile strikes against targets in Afghanistan and Sudan in August 1998. The administration apparently had available to it “a multibillion-dollar array of satellites and worldwide electronic eavesdrop - ping facilities capable of photographing virtually any spot on Earth several times a day and intercepting nearly any form of electronic communication.” According to one intelligence expert, the advanced KH-11 satellites now in use provide remarkable “high resolution images that easily identify buildings and vehicles.” They are also equipped with infrared capability, which allows them to produce images at night; other satellites can penetrate cloud cover. In addition, the National Security Agency is “capable of intercepting radio, sat - ellite telephone, [and] even walkie-talkie communications” (Loeb and Grunwald 1998, A19)¶ The implications arising from the extraordinary degree of scrutiny available to deci - sion makers in the executive branch are far-reaching even though, it cannot be emphasized enough, intelligence sources are far from infallible. Indeed, considerable doubt has been cast on the reliability of the intelligence provided to Clinton prior to the missile strikes in ques - tion. The case for demolishing a factory at Al Shifa in Sudan rested on claims that it was pro - ducing chemical weapons for Osama bin Laden, whereas a variety of sources, including some within the administration, subsequently questioned the validity of the evidence. The suggested link with bin Laden was disputed; the factory was shown to be engaged in the pro - duction of pharmaceuticals, and its alleged involvement in the manufacture of chemical weapons was severely questioned (Weiner and Risen 1998).¶ Enormously sophisticated technology and other sources of intelligence available to the executive branch are obviously no guarantee against mistakes. And, even if the intelli - gence is sound, decision makers may well act unwisely. The presumption must be, however, that generally speaking the executive is infinitely better informed on such matters than are legislators. Members of Congress are supported by resources and expertise that are the envy of their counterparts elsewhere in the world, but they cannot hope to acquire the high-level information available to the White House.¶ No doubt in the past the information advantage accruing to the executive branch was far less, but in the modern context it cannot be brushed aside as being of no consequence (Adler and George 1996, 24). When a president, drawing on his vastly superior sources, pronounces that a threat to United States’ vital interests is developing somewhere on the other side of the world, it is difficult for him to be plausibly resisted. In the short run at least, responsible members of Congress are likely to feel obliged to defer to the president, take sec - ond place, and allow the president to meet his responsibilities as foreign policy leader and as guardian of the nation’s security.

### Prez Good

#### Presidential flexibility enables effective crisis response --- statutory restrictions/judicial review prevents this

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Understanding the contingency of our current circumstances brings us back to where we began, the purpose of the executive. As originally conceived, the need for the executive arose to respond to unforeseen dangers, unpredictable circumstances, and emergencies. It was given the virtues of speed, secrecy, vigor, and decisiveness to most effectively marshal society's resources in a time of crisis. The executive could correct for the instability, fractiousness, and inability to organize and decide (caused by what we today think of as transaction costs of a republican legislature) under time pressure. If the circumstances demand, the executive can even go beyond the standing laws in order to meet a greater threat to the nation's security.¶ It remains an open question whether the Constitution incorporated this prerogative. Hamilton believed that Article II's vesting of the executive power in the President necessarily included the ability to meet any challenge. To him, this power ought to "exist without limitation because" the "circumstances that endanger the safety of nations are infinite." There was no prerogative in the Lockean mold, only a President with open-ended powers in time of emergency. This broad conception of the executive underpinned the broader Hamiltonian program. A President of broad powers would guide the national government by developing proposals, managing legislation, and vigorously enforcing the law and setting foreign policy. In contrast, Jefferson believed that the President's ability to access the prerogative existed independent of the Constitution. To him, the natural right of self-preservation allowed the President to act beyond the Constitution itself when defending the nation. Whereas Locke believed that the executive would have to appeal to the heavens in the event of an exercise of the prerogative, Jefferson believed that an appeal to the nation was in order.¶ The prerogative allowed Jefferson to keep his devotion to a strict interpretation of the Constitution. If the prerogative could serve as a safety valve when emergency placed the government under stress, the Constitution would need no stretching. The government's powers would remain limited, rather than permanently extended, and individual liberty and hopefully state sovereignty would be preserved. The process for confirming the executive's use of the prerogative, an appeal to the people, advanced Jefferson's agenda to make the President the democratic representative of the nation as a whole. Jefferson did not believe that the approval of Congress or the courts alone was necessary, except insofar as they represented the will of the people.¶ History suggests that Hamilton had the better argument. The prerogative faces serious, perhaps fatal problems, chief of which is that it requires the executive to violate the Constitution. If the people bless executive lawbreaking, then they undermine the very purpose of the Constitution to bind future majorities. Although faced with the most serious threats to the nation's security, Lincoln and FDR did not claim a right to act outside the Constitution. While Lincoln suggested on several occasions that it might be necessary to violate the Constitution to save the nation, he never invoked the prerogative. In fact, he carefully argued that his every action, from using force against secession to the Emancipation Proclamation, was justified by his constitutional authorities. Roosevelt, too, never claimed the prerogative, and justified his actions by his authority as Commander-in-Chief. By the Cold War, the debate seemed to be over -- the Constitution accommodated the need to respond to extraordinary events through the President's executive power.¶ At first glance, it might appear that this understanding of the Constitution could only work to the benefit of the President. It allows him to claim a reservoir of power to meet any serious threat to the national security. But subordinating the prerogative to the law may have come with costs as well -- it has raised public expectations of the President to the point where no mere mortal can satisfy them. If the President has the constitutional authority to respond to any emergency, then the failure of the government to meet the latest national problem must be his fault.¶ A second effect may be the unwillingness of Presidents since FDR to challenge the Supreme Court. Presidents no longer claim an independent right to interpret the Constitution differently from the judiciary, giving up the inheritance of Jefferson, Jackson, Lincoln, and Roosevelt. There are understandable political reasons for this, but perhaps a deeper constitutional explanation lies in presidential adoption of the Hamiltonian theory of the executive. If the President accesses extraordinary power from the Constitution, he may seek judicial approval in order to address concerns that he is interpreting the Constitution solely for his own benefit. It is not clear whether this bargain is to the long-term benefit of the institution; abdicating the right to interpret the Constitution, in light of the President's obligation to enforce the laws, ultimately places the definition of his duties and powers solely in the hands of another branch. Presidents may have only won themselves the freedom to act in the short term, but they have left the long-term success in the hands of others.¶ The fundamental question of the prerogative lends presidential power a tragic quality. Due to the Constitution's design, the political system has great difficulty responding to unforeseen circumstances, fast-moving events, or decisions that require technical expertise or run high political risks. It will fall to the President to act at these times, which most often arise where the nation's foreign relations and national security are at stake. In exercising their constitutional powers, Presidents by definition act against the web of congressional statutes, court decisions, agency regulations, and interest groups that make up the political status quo. Invocation of executive authority is guaranteed to trigger a sharp response by the supporters of the governing regime.

#### Empirics prove --- broad powers are critical to guide the nation through existential threats

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FDR’s second challenge became another constant of the postwar world. The Soviet Union replaced Germany and Japan as the central national security threat – its nuclear weapons could have destroyed the United States in minutes, it enjoyed superiority in conventional forces, and it could project its influence globally. FDR’s successors did not have to worry about isolationism. Truman convinced Congress to cooperate in placing the United States in a permanent state of mobilization, unprecedented in American history, to counter the Soviet threat. His successors kept the United States committed to the strategy of containment over a period far longer – 45 years – than any “hot” war. While they sometimes turned to Congress for support, Presidents continued to dispatch the military into hostilities abroad on their authority, a prospect with even more dangerous consequences in a nuclear age. During the Cold War, the United States transformed its role from the arsenal of democracy to the guardian of the free world. Without recognizing broad constitutional powers in the Presidency, the United States could not have prevailed, and without Congress’s consistent provision of resources for the military and security agencies, the Presidents could not have succeeded. ¶ For guiding the nation safely through an existential threat unlike any the United States had ever faced, Presidents Truman, Eisenhower, and Regan rank among our ten greatest Presidents. This pattern has mistakenly led some to believe that war produces great Presidents. Not all Presidents, however, were up to the challenge of the Cold War. President Kennedy found his moment in the Cuban Missile Crisis but led the nation into Vietnam, where Lyndon Johnson’s ambitions foundered.

## Adv 1

### No Lashout

#### Structural factors prevent Executive overreach without constraining flexibility

Eric Posner 7, the Kirkland and Ellis Professor of Law @ U-Chicago, and Adrian Vermeule, the John H. Watson, Jr. Professor of Law @ Harvard, Jan 4, “Terror in the Balance: Security, Liberty, and the Courts,” Book, p. 53

\*gender modified

Four points are critical, and they suggest that the concern is either greatly overblown or does not support civil libertarian prescriptions, or both: presidential or executive preferences need not systematically favor increased executive power during emergencies; political constraints will rule out abuses that the politically engaged public does not favor; even if increased executive power in emergencies creates abuses, the security gains may be greater still; and in any event civil libertarian judicial review is a feeble bulwark against a truly imperial executive. ¶ First, the executive-despotism concern supposes that executive officials desire, above all, to maximize their power. As Daryl Levinson has emphasized, both for officials generally and for executive officials in particular, it is hardly obvious that this is so, at least in any systematic way. Lower—level executive officials and administrative agencies have many other possible goals or maximands, including the desire to enjoy leisure or to advance programmatic or ideological goals—goals which will usually be orthogonal to the tradeoff between security and liberty and which might even include the protection of civil liberties. The same is true for presidents: some have been power maximizers; some have not. Moreover, even with respect to power-maximizing presidents, critics fail to distinguish the [person] man from the office. Presidents as individuals do not internalize all of the gains from expanding the power of the presidency as an institution, because those gains are shared with future presidents and senior executive officials. Conversely, presidents as individuals do not fully internalize harms to the institution and may thus acquiesce its limitations on executive power for partisan or personal advantage. The latter point may be more pronounced in emergencies than in normal times, because emergencies shorten the relevant time horizon: policymaking for the short run looms larger than in normal times. (We bracket for now the question of whether this is bad, an issue taken up in chapter 2.) Emergencies thus increase the divergence between the utility of individual officeholders and the institutional power of their offices, which extends into the remote future, beyond the horizon of the emergency.¶ Second, whatever the intrinsic preferences of presidents and executive officials, politics sharply constrains their opportunities for aggrandizement, especially in times of emergency. The president is elected from a national constituency (ignoring the low probability that the Electoral College will make a difference). A first—term president who seeks reelection to a second term, or even a second—term president who seeks to leave a legacy, will try to appeal to the median voter, or at least to some politically engaged constituency that is unlikely to be extremist in either direction. If the national median or the political center favors increased executive authority during emergencies, them the president will push the bounds of his power, but if it does not, then he will not: there is no general reason to think that national politics will always push executive authority as far as possible, even during emergencies.¶ Of course, during emergencies, the public will often favor increased executive power, and this may be fully sensible, given the executive’s relative decisiveness, secrecy, centralization, and other advantages over Congress and other institutions. Note, in this connection, the important finding that political constraints on the executive are associated with increased terrorism; shackling the executive has real security costs. The critics of executive power typically assume that executive power not only expands during emergencies, but expands too far. However, the critics supply no general reason to think this is so; they systematically conflate increases in executive power with “aggrandizement,” a normatively loaded concept which connotes an unjustified increase. We return to this point shortly. Here, the point is just that the expansion of presidential power during emergencies may reflect nothing more than the demands of the politically effective public, rather than intrinsic opportunism.¶ The political constraints on the executive branch and the president are partisan as well as institutional. The president is the leader of a political party but is also beholden to it. The party constrains the president in various ways, and it is not necessarily in the interest of a single party to enhance the power of the executive during emergencies. For one thing, the president’s party may not win the next presidential election; for another, his party may have many other bases of power, including Congress, the judiciary, and local institutions. Expanding the president’s personal or institutional power need not be in the interest of partisan politicians who govern behind the scenes. Opposition parties, of course, have powerful incentives to criticize the expansion of presidential power during emergencies, portraying small adjustments to the legal rules as omens of a putsch. In emergencies, partisan criticism can make the political constraints on presidents even tighter than during normal times, a point we emphasize in chapter 5. Governmental decisionmaking is often more visible during emergencies than during normal times; emergency policymaking is more centralized, even within the executive branch, and more closely associated with the president; the resulting polices often present a larger target for political attack. ¶ Third, the critics of executive power in emergencies are usually unclear about their normative premises. Suppose that executive power increases during emergencies and that this results in abuses. In terms of the tradeoff thesis, however, such abuses are just a cost to be measured against the benefits of increased security, given the finding, reported above, that a constrained executive is associated with higher levels terrorism. If the gains on the security margin exceed the costs, then the expansion of executive power improves social welfare overall, and no special opprobrium should attach to the executive’s behavior, although it would be nice to also prevent the abuses if possible. The critics treat executive abuses of civil liberties as something to be minimized, down to zero. But this is quixotic, and even if it were feasible, it would not be desirable. Some rate of abuse is inevitable once an executive branch is created, and an increase in abuses is inevitable when executive discretion expands during emergencies but both shifts may be worth it; the critics fail to account for the gains side of the ledger. Granting the executive extensive powers during emergencies has many benefits, about which the critics are often silent.¶ Concerns about increasing executive power often rest on an implicit status quo bias, or naturalistic fallacy. The assumption is that the scope or level of executive power before the emergency was optimal. But this need not be so, and there is no general reason to think it will be so; consider the finding that the 7/7 attacks in London went unprevented because the United Kingdom’s intelligence services, who knew something about the plotters, had too few resources to investigate them adequately. Emergencies may release the polity from a sclerotic equilibrium in which executive power was too feeble to meet new challenges, as we illustrate in Chapter 4. One interpretation of history is that emergencies allow presidents to obtain powers that are necessary to cope with new problems. Our original constitutional structure, with a relatively weak presidency, reflects the concerns of the eighteenth century and is not well adapted to current conditions.¶ Finally, to the extent that the critics of executive power envision judicial review as the solution, they are whistling in the wind, especially during times of emergency. The critics envision an imperial executive, who is either backed by a sustained national majority or else has slipped the political leash, and who enjoys so much agency slack as to be heedless of the public’s preferences. Its either case, it is not obvious what the critics suppose the judges will or can do about it. As we will recount in more detail in later chapters, the judges proved largely powerless to stem the tide of the New Deal, in conditions of economic emergency, or to stop Japanese internment during World War II, or to block aggressive punishment and harassment of communists during the Cold War. What is more, many of the judges had no desire to block these programs. Judges are people too and share in national political sentiments: they are also part of the political elite and will rally ‘round the flag in times of emergency just as much as others do.¶ Critics of executive power implicitly appeal to a slippery—slope argument: once executive power is increased to meet an emergency in a manner that is necessary and reasonable, it will unavoidably expand beyond what is necessary and reasonable. As we emphasize in chapters 4 and 5, the problem with this argument is that there is no evidence for it and no mechanism that generates such a slope. The critics focus obsessively on pathological polities like Weimar, ignoring that current well-functioning liberal democracies do not present the same conditions that led to dictatorship in 1933. More recent work in comparative politics suggests that grants of emergency powers or of decree authority to executives do no systematically end in dictatorship.

### No Groupthink

#### Groupthink theory is based on over-generalizations, skewed studies, and ignores potential positives

Ramon Aldag 93, professor in the Management and Human Resources dept. of U-Wisconsin School of Business, and Sally Fuller, School of Business, U-Washington, “Beyond Fiasco : A Reappraisal of the Groupthink Phenomenon and a New Model of Group Decision Processes,” Psychological Bulletin, Vol. 113, Issue 3, EBSCO

Groupthink has been overwhelmingly viewed as an unalayed evil, leading to uniformly negative outcomes. Indeed, such a view is universally implicit in the language of groupthink (e.g., the common references to “symptoms of groupthink,” “victims of groupthink,” and “defects of groupthink”). When used in groupthink research, such negative terminology can invite distortions in responses caused by scale-use tendencies and related psychometric difficulties and can also result in framing effects.¶ Individuals (whether subjects or researchers) presented with negatively framed terminology may adopt the readily available negative frame and respond accordingly ( Bazerman, 1990; Tversky & Kahneman, 1986). Therefore, even simple attempts by the subjects to give responses that are consistent with the tone of the questions would result in negatively oriented responses. In many cases, failed decisions are examined and characteristics of groupthink are then sought. There is evidence that when individuals are provided with knowledge of a negative outcome, they infer a negative process ( Guzzo, Wagner, Maguire, Herr, & Hawley, 1986). Furthermore, a focus only on the conjunction of groupthink characteristics and negative outcomes invites illusory correlation (cf. Einhorn, 1980; Hogarth, 1980; Kleinmuntz, 1990).¶ On a more fundamental level, this framing has resulted in a focus on error rather than on decision quality per se. Janis (1982) noted that he began studying fiascoes “for the purposes of studying sources of error in foreign policy decision-making” (p. 9). However, there is more to the performance of a football team than the absence of fumbles and interceptions, and there is more to group decision quality than the absence of error. A focus on negative outcomes of group processes may divert attention from group synergies. One example is the assembly effect bonus, which, as noted by Collins and Guetzkow (1964), “is productivity which exceeds the potential of the most capable member and also exceeds the sum of the efforts of the group members working separately” (p. 58). There is considerable evidence for this assembly effect bonus, at least in some contexts (e.g., Burleson, Levine, & Samter, 1984). Thus, researchers may learn little about superior group performance by a focus solely on fiascoes. Instead, a focus on decisions with a broad range of outcomes, including superior performance, is necessary.¶ The consequences of the groupthink model's focus on fiascoes are doubly ironic. First, the consideration only of fiascoes precludes generalization to other decision situations used in virtually all attempts to assess the validity of groupthink. Second, the focus on fiascoes makes it impossible to say anything even about the determinants of fiascoes.

## Adv 2

### AT: Credibility of Threats Arg

#### Congressional restrictions cause adversaries to doubt the credibility of our threats --- causes crisis escalation

Matthew Waxman 8/25/13, Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN

A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued:¶ In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the most important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. … [I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179

#### Empirically proven

David Mervin 2k, reader in politics at the University of Warwick, “The Law: Controversy: Demise of the War Clause,” Presidential Studies Quarterly, http://drworley.org/NSPcommon/War%20Powers/Journal%20Articles/PSQ%202000,12%20Mervin%20demise%20war%20clause.pdf

The Yugoslavia case, however, also provides powerful support for those who question whether it is appropriate for Congress to be the ultimate authority in national security policy making. In a series of votes, during the course of three weeks, the national legislature sent an extraordinary mixture of messages casting grave doubt on where the United States stood with regard to one of the greatest crises of modern times. Thus, the House rejected by a vote of 427 to 2 a measure to formally declare war on Yugoslavia. On the other hand, a proposal to bring all U.S. forces home was defeated 290 to 139. A House resolution to give retrospective approval to air strikes already under way failed to pass, the result of the vote being a 213 to 213 tie (CNN 1999). The Senate by contrast voted to approve the air strikes but shortly afterward declined to pass a resolution authorizing Clinton to use “all necessary force” in the conflict. Subsequently, the House did what one reporter described as “a full back flip” by voting to approve special appropriations for the military twice as large as Clinton had requested (Gugliotta 1999).¶ The behavior of legislators in the face of this crisis was understandably the subject of scornful comment from the White House. Joe Lockhart, Clinton’s press secretary, said at a press briefing,¶ The House yesterday voted not to move forward, not to pull back, tied on what we’re doing. The only thing they seem able to agree on is to try to double the money we spend on a policy they’re not sure what they think about. If we were worried about sending mixed signals, I don’t imagine we should be because I don’t think anyone can comprehend the signal they sent. (CNN 1999)¶ The Kosovo case did little for the credibility of Congress as a foreign policy maker. Confronted by a major crisis, the legislature proved incapable of agreeing on a consistent, constructive, coherent policy. There was nothing unusual about this; coherence has never been one of Congress’ strong suits and is never likely to be given the weakness of parties and the centrifugal structure of power in Congress. There is also no guarantee of coherence in the executive branch, but the chances of achieving coherence there are infinitely greater.

### AT: Liberal Order

#### There is no “global liberal order”---it’s not key to anything and fails inevitably

Barma et al., 13 (Naazneen, assistant professor of national-security affairs at the Naval Postgraduate School; Ely Ratner, a fellow at the Center for a New American Security; and Steven Weber, professor of political science and at the School of Information at the University of California, Berkeley, March/April 2013, “The Mythical Liberal Order,” The National Interest, http://nationalinterest.org/print/article/the-mythical-liberal-order-8146)

Loyalists are quick to defend the concept of a robust liberal order by falling back on outdated metrics of success. The original de minimis aims of the postwar order achieved what now should be considered a low bar: preventing a third world war and a race-to-the-bottom closure of the global-trade regime. Beyond that, the last seventy years have certainly seen movement toward globalization of trade and capital as well as some progress on human rights—but less clearly as a consequence of anything like a liberal world order than as a consequence of national power and interest. ¶ What would a meaningful liberal world order actually look like if it were operating in practice? Consider an objective-based definition: a world in which most countries most of the time follow rules that contribute to progressively more collective security, shared economic gains and individual human rights. States would gradually downplay the virtues of relative advantage and self-reliance. Most states would recognize that foreign-policy choices are constrained (to their aggregate benefit) by multilateral institutions, global norms and nonstate actors. They would cede meaningful bits of sovereign authority in exchange for proactive collaboration on universal challenges. And they would accept that economic growth is best pursued through integration, not mercantilism, and is in turn the most reliable source of national capacity, advancement and influence. With those ingredients in place, we would expect to see the gradual, steady evolution of something resembling an “international community” bound by rights and responsibilities to protect core liberal values of individual rights and freedoms. ¶ No wonder proponents of the liberal-world-order perspective hesitate to offer precise definitions of it. Few of these components can reasonably be said to have been present for any length of time at a global level in the post–World War II world. There may be islands of liberal order, but they are floating in a sea of something quite different. Moreover, the vectors today are mostly pointing away from the direction of a liberal world order. ¶ HOW DID we get here? Consider two founding myths of liberal internationalism. The first is that expressions of post–World War II American power and leadership were synonymous with the maturation of a liberal order. The narrative should sound familiar: The United States wins World War II and controls half of global GDP. The United States constructs an international architecture aimed at promoting an open economic system and a semi-institutionalized approach to fostering cooperation on security and political affairs. And the United States provides the essential global public goods—an extended security deterrent and the global reserve currency—to make cooperation work. Some essential elements of the system survive in a posthegemony era because the advantages to other significant powers of sustained institutionalized cooperation exceed the costs and risks of trying to change the game. ¶ In the 1990s the narrative gets more interesting, controversial and relevant. This is when the second foundational myth of the liberal world order—that it has an inexorable magnetic attraction—comes to the fore. The end of the Cold War and the attendant rejection of Communism is supposed to benefit the liberal world order in breadth and depth: on the internal front, new capitalist democracies should converge on individuals’ market-based economic choice and election-based political choice; on the external front, the relationships among states should become increasingly governed by a set of liberal international norms that privilege and protect the civic and political freedoms that capitalist democracies promise. The liberal order’s geography should then expand to encompass the non-Western world. Its multilateral rules, institutions and norms should increase in density across economic, political and security domains. As positive network effects kick in, the system should evolve to be much less dependent on American power. It’s supposedly easier—and more beneficial—to join the liberal world order than it is to oppose it (or even to try to modify it substantially). A choice to live outside the system becomes progressively less realistic: few countries can imagine taking on the contradictions of modern governance by themselves, particularly in the face of expanding multilateral free trade and interdependent security institutions. ¶ The story culminates in a kind of magnetic liberalism, where countries and foreign-policy decisions are attracted to the liberal world order like iron filings to a magnet. With few exceptions, U.S. foreign policy over the last two decades has been predicated on the assumption that the magnetic field is strong and getting stronger. It’s a seductive idea, but it should not be confused with reality. In practice, the magnetic field is notable mainly for its weakness. It is simply not the case today that nations feel equally a part of, answerable to or constrained by a liberal order. And nearly a quarter century after 1989, it has become disingenuous to argue that the liberal world order is simply slow in getting off the ground—as if the next gust of democratic transitions or multilateral breakthroughs will offer the needed push to revive those triumphalist moments brought on by the end of World War II and the fall of the Berlin Wall. To the contrary, the aspirational liberal end state is receding into the horizon. ¶ THE PICTURE half a century ago looked more promising, with the initial rounds of the General Agreement on Tariffs and Trade and the successful establishment of NATO setting expectations about what multilateral governance could achieve. But international institutions picked off the low-hanging fruit of global cooperation decades ago and have since stalled in their attempts to respond to pressing international challenges. The 1990s served up the best possible set of conditions to advance global liberalism, but subsequent moves toward political and economic liberalization that came with the end of the Cold War were either surprisingly shallow or fragile and short-lived. ¶ Ask yourself this: Have developing countries felt and manifested over time the increasing magnetic pull of the liberal world order? A number of vulnerable developing and post-Communist transitional countries adopted a “Washington Consensus” package of liberal economic policies—freer trade, marketization and privatization of state assets—in the 1980s and 1990s. But these adjustments mostly arrived under the shadow of coercive power. They generally placed the burden of adjustment disproportionately on the most disempowered members of society. And, with few exceptions, they left developing countries more, not less, vulnerable to global economic volatility. The structural-adjustment policies imposed in the midst of the Latin American debt crisis and the region’s subsequent “lost decade” of the 1980s bear witness to each of these shortcomings, as do the failed voucher-privatization program and consequent asset stripping and oligarchic wealth concentration experienced by Russians in the 1990s. ¶ If these were the gains that were supposed to emerge from a liberal world order, it’s no surprise that liberalism came to have a tarnished brand in much of the developing world. The perception that economic neoliberalism fails to deliver on its trickle-down growth pledge is strong and deep. In contrast, state capitalism and resource nationalism—vulnerable to a different set of contradictions, of course—have for the moment delivered tangible gains for many emerging powers and look like promising alternative development paths. Episodic signs of pushback against some of the excesses of that model, such as anti-Chinese protests in Angola or Zambia, should not be confused with a yearning for a return to liberal prescriptions. And comparative economic performance in the wake of the global financial crisis has done nothing to burnish liberalism’s economic image, certainly not in the minds of those who saw the U.S. investment banking–led model of capital allocation as attractive, and not in the minds of those who held a vision of EU-style, social-welfare capitalism as the next evolutionary stage of liberalism. ¶ There’s just as little evidence of sustained liberal magnetism operating in the politics of the developing world, where entrenched autocrats guarding their legitimacy frequently caricature democracy promotion as a not-very-surreptitious strategy to replace existing regimes with either self-serving instability or more servile allies of the West. In practice, the liberal order’s formula for democratic freedom has been mostly diluted down to observing electoral procedures. The results have been almost uniformly disappointing, as the legacy of post–Cold War international interventions from Cambodia to Iraq attests. Even the more organic “color revolutions” of Eastern Europe and Central Asia at the beginning of the twenty-first century have stalled into equilibria Freedom House identifies as only “partly free”—in reality affording average citizens little access to political or economic opportunities. Only two years past the initial euphoria of the Arab Spring a similar disillusionment has set in across the Middle East, where evidence for the magnetic pull of a liberal world order is extremely hard to find.

#### Multilateral institutions are useless for democracy promotion

Fukuda-Parr, 3 (Sakiko, Director of the Human Development Report Office of the UN’s Development Program, “Multilateral Strategies to Promote Democracy,” Carnegie, Dec. 5, http://www.carnegiecouncil.org/publications/articles\_papers\_reports/1116.html/\_res/id=sa\_File1/1116\_Multi\_Strat\_to\_Prom\_Dem\_2.pdf)

FUKUDA-PARR :I took the question here to be: Where does peer pressure fit in democracy promotion? When I think about the broad, all-purpose, intergovernmental organizations, I think they are pretty useless, frankly. I do not mean that to be a criticism of these particular organizations and whatever they are supposed to be doing; but as far as democracy promotion is concerned, I do not really see them playing a major role. Why is that? Partly, I do not think of democracy promotion as something that relies that much on just peer pressure or on sanctions. Andrew referred to the possibility of using economic and other kinds of sanctions—“You are not part of our group. Go away. You cannot be recognized as one of our members. We will not buy things from you.” Well, I do not think that these are particularly strong incentives, nor very practical measures to implement, and they have all kinds of other side effects that I think are not necessarily good.

## SOP

#### Authoritarian states don’t follow norms — their “US justifies others” arg is naive

John O. McGinnis 7, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

#### Human Rights Cred is irrelevant — public opinion, global norms, and NGO networks outweigh US policy

Andrew Moravcsik 5, PhD and a Professor of Politics and International Affairs at Princeton, 2005, "The Paradox of U.S. Human Rights Policy," American Exceptionalism and Human Rights, http://www.princeton.edu/~amoravcs/library/paradox.pdf

It is natural to ask: What are the consequences of U.S. "exemptionalism” and noncompliance? International lawyers and human rights activists regularly issue dire warnings about the ways in which the apparent hypocrisy of the United States encourages foreign governments to violate human rights, ignore international pressure, and undermine international human rights institutions. In Patricia Derian's oft-cited statement before the Senate in I979: "Ratification by the United States significantly will enhance the legitimacy and acceptance of these standards. It will encourage other countries to join those which have already accepted the treaties. And, in countries where human rights generally are not respected, it will aid citizens in raising human rights issues.""' One constantly hears this refrain. Yet there is little empirical reason to accept it. Human rights norms have in fact spread widely without much attention to U.S. domestic policy. In the wake of the "third wave" democratization

in Eastern Europe, East Asia, and Latin America, government after government moved ahead toward more active domestic and international human rights policies without attending to U.S. domestic or international practice." The human rights movement has firmly embedded itself in public opinion and NGO networks, in the United States as well as elsewhere, despite the dubious legal status of international norms in the United States. One reads occasional quotations from recalcitrant governments citing American noncompliance in their own defense-most recently Israel and Australia-but there is little evidence that this was more than a redundant justification for policies made on other grounds. Other governments adhere or do not adhere to global norms, comply or do not comply with judgments of tribunals, for reasons that seem to have little to do with U.S. multilateral policy.

#### Human Rights inev — Economic development and democracy promotion solve

Francis Fukuyama ‘08the director of the International Development Program at Johns Hopkins AND Michael McFaul is a Hoover Senior Fellow and director of the Center on Democracy, Development, and Rule of Law, Winter 2007/2008 , The Washington Quarterly, “Should Democracy Be Promoted or Demoted?”

Moreover, **human rights and the democratic institutions that spring from them are inher- ently universal.** In keeping with the case made by Tocqueville in Democracy in America, **the historical arc toward universal human equality has been spreading providentially for the past 800 years. It has now encompassed not just the Western**, culturally Christian **world, but has spread and taken root in many other parts of the world as well, such as in India, Japan, Korea, and South Africa**. This suggests that **democracy has spread not as a manifestation of a particu- lar civilization’s cultural preferences, but because it serves universal needs or performs functions that are universally necessary, particularly at higher levels of economic development.** For example, the procedural rules of liberal democ- racy arguably guarantee that governments behave in a transparent, law-gov- erned way and remain accountable to the people they serve. **Even if a culture does not put a value on individual rights per se, liberal democracy is ultimately required for good governance and economic growth**

# 1NR

## Politics

### 2NC Disease Impact

#### Government shutdown wrecks CDC disease monitoring – key to check outbreaks

Emily Walker, 4-8-2011, "Both Sides Claim Win as Shutdown Averted," Med Page Today, http://www.medpagetoday.com/Washington-Watch/Washington-Watch/25826

The vast majority of employees at the Centers for Disease Control and Prevention (CDC) would be furloughed if the government ceased operations, said an HHS spokesman. Because the CDC tracks new public health threats such as disease outbreaks, the worst-case scenario during a shutdown would be a massive outbreak of a food-borne illness or other communicable disease. The CDC's emergency operation center -- a command center for monitoring and coordinating CDC's emergency response to public health threats in the United States and abroad -- will remain open. The center is currently working on responses to the earthquake and tsunami in Japan. But responses may be delayed, the spokesman said. "If a state were to call us and say 'We need help,' we may not be able to respond quickly," the spokesman said. While emergency workers will continue their jobs, the staff who work to "get people out the door," by booking travel and facilitating meetings, won't be working. "This would prevent us from responding as quickly as we'd like," the spokesman said. In addition, the CDC's ability to detect an outbreak could be jeapordized, he said. "We have a lot of disease surveillance networks. If those are scaled back to just the staff that monitor those networks, it could conceivably lead to us not being able to detect an outbreak as quickly as we'd like to. We simply won't have the manpower we have right now," the HHS spokesman said.

#### Extinction

Quammen 12 David, award-winning science writer, long-time columnist for Outside magazine for fifteen years, with work in National Geographic, Harper's, Rolling Stone, the New York Times Book Review and other periodicals, 9/29, “Could the next big animal-to-human disease wipe us out?,” The Guardian, pg. 29, Lexis

Infectious disease is all around us. It's one of the basic processes that ecologists study, along with predation and competition. Predators are big beasts that eat their prey from outside. Pathogens (disease-causing agents, such as viruses) are small beasts that eat their prey from within. Although infectious disease can seem grisly and dreadful, under ordinary conditions, it's every bit as natural as what lions do to wildebeests and zebras. But conditions aren't always ordinary. Just as predators have their accustomed prey, so do pathogens. And just as a lion might occasionally depart from its normal behaviour - to kill a cow instead of a wildebeest, or a human instead of a zebra - so a pathogen can shift to a new target. Aberrations occur. When a pathogen leaps from an animal into a person, and succeeds in establishing itself as an infectious presence, sometimes causing illness or death, the result is a zoonosis. It's a mildly technical term, zoonosis, unfamiliar to most people, but it helps clarify the biological complexities behind the ominous headlines about swine flu, bird flu, Sars, emerging diseases in general, and the threat of a global pandemic. It's a word of the future, destined for heavy use in the 21st century. Ebola and Marburg are zoonoses. So is bubonic plague. So was the so-called Spanish influenza of 1918-1919, which had its source in a wild aquatic bird and emerged to kill as many as 50 million people. All of the human influenzas are zoonoses. As are monkeypox, bovine tuberculosis, Lyme disease, West Nile fever, rabies and a strange new affliction called Nipah encephalitis, which has killed pigs and pig farmers in Malaysia. Each of these zoonoses reflects the action of a pathogen that can "spillover", crossing into people from other animals. Aids is a disease of zoonotic origin caused by a virus that, having reached humans through a few accidental events in western and central Africa, now passes human-to-human. This form of interspecies leap is not rare; about 60% of all human infectious diseases currently known either cross routinely or have recently crossed between other animals and us. Some of those - notably rabies - are familiar, widespread and still horrendously lethal, killing humans by the thousands despite centuries of efforts at coping with their effects. Others are new and inexplicably sporadic, claiming a few victims or a few hundred, and then disappearing for years. Zoonotic pathogens can hide. The least conspicuous strategy is to lurk within what's called a reservoir host: a living organism that carries the pathogen while suffering little or no illness. When a disease seems to disappear between outbreaks, it's often still lingering nearby, within some reservoir host. A rodent? A bird? A butterfly? A bat? To reside undetected is probably easiest wherever biological diversity is high and the ecosystem is relatively undisturbed. The converse is also true: ecological disturbance causes diseases to emerge. Shake a tree and things fall out. Michelle Barnes is an energetic, late 40s-ish woman, an avid rock climber and cyclist. Her auburn hair, she told me cheerily, came from a bottle. It approximates the original colour, but the original is gone. In 2008, her hair started falling out; the rest went grey "pretty much overnight". This was among the lesser effects of a mystery illness that had nearly killed her during January that year, just after she'd returned from Uganda. Her story paralleled the one Jaap Taal had told me about Astrid, with several key differences - the main one being that Michelle Barnes was still alive. Michelle and her husband, Rick Taylor, had wanted to see mountain gorillas, too. Their guide had taken them through Maramagambo Forest and into Python Cave. They, too, had to clamber across those slippery boulders. As a rock climber, Barnes said, she tends to be very conscious of where she places her hands. No, she didn't touch any guano. No, she was not bumped by a bat. By late afternoon they were back, watching the sunset. It was Christmas evening 2007. They arrived home on New Year's Day. On 4 January, Barnes woke up feeling as if someone had driven a needle into her skull. She was achy all over, feverish. "And then, as the day went on, I started developing a rash across my stomach." The rash spread. "Over the next 48 hours, I just went down really fast." By the time Barnes turned up at a hospital in suburban Denver, she was dehydrated; her white blood count was imperceptible; her kidneys and liver had begun shutting down. An infectious disease specialist, Dr Norman K Fujita, arranged for her to be tested for a range of infections that might be contracted in Africa. All came back negative, including the test for Marburg. Gradually her body regained strength and her organs began to recover. After 12 days, she left hospital, still weak and anaemic, still undiagnosed. In March she saw Fujita on a follow-up visit and he had her serum tested again for Marburg. Again, negative. Three more months passed, and Barnes, now grey-haired, lacking her old energy, suffering abdominal pain, unable to focus, got an email from a journalist she and Taylor had met on the Uganda trip, who had just seen a news article. In the Netherlands, a woman had died of Marburg after a Ugandan holiday during which she had visited a cave full of bats. Barnes spent the next 24 hours Googling every article on the case she could find. Early the following Monday morning, she was back at Dr Fujita's door. He agreed to test her a third time for Marburg. This time a lab technician crosschecked the third sample, and then the first sample. The new results went to Fujita, who called Barnes: "You're now an honorary infectious disease doctor. You've self-diagnosed, and the Marburg test came back positive." The Marburg virus had reappeared in Uganda in 2007. It was a small outbreak, affecting four miners, one of whom died, working at a site called Kitaka Cave. But Joosten's death, and Barnes's diagnosis, implied a change in the potential scope of the situation. That local Ugandans were dying of Marburg was a severe concern - sufficient to bring a response team of scientists in haste. But if tourists, too, were involved, tripping in and out of some python-infested Marburg repository, unprotected, and then boarding their return flights to other continents, the place was not just a peril for Ugandan miners and their families. It was also an international threat. The first team of scientists had collected about 800 bats from Kitaka Cave for dissecting and sampling, and marked and released more than 1,000, using beaded collars coded with a number. That team, including scientist Brian Amman, had found live Marburg virus in five bats. Entering Python Cave after Joosten's death, another team of scientists, again including Amman, came across one of the beaded collars they had placed on captured bats three months earlier and 30 miles away. "It confirmed my suspicions that these bats are moving," Amman said - and moving not only through the forest but from one roosting site to another. Travel of individual bats between far-flung roosts implied circumstances whereby Marburg virus might ultimately be transmitted all across Africa, from one bat encampment to another. It voided the comforting assumption that this virus is strictly localised. And it highlighted the complementary question: why don't outbreaks of Marburg virus disease happen more often? Marburg is only one instance to which that question applies. Why not more Ebola? Why not more Sars? In the case of Sars, the scenario could have been very much worse. Apart from the 2003 outbreak and the aftershock cases in early 2004, it hasn't recurred. . . so far. Eight thousand cases are relatively few for such an explosive infection; 774 people died, not 7 million. Several factors contributed to limiting the scope and impact of the outbreak, of which humanity's good luck was only one. Another was the speed and excellence of the laboratory diagnostics - finding the virus and identifying it. Still another was the brisk efficiency with which cases were isolated, contacts were traced and quarantine measures were instituted, first in southern China, then in Hong Kong, Singapore, Hanoi and Toronto. If the virus had arrived in a different sort of big city - more loosely governed, full of poor people, lacking first-rate medical institutions - it might have burned through a much larger segment of humanity. One further factor, possibly the most crucial, was inherent in the way Sars affects the human body: symptoms tend to appear in a person before, rather than after, that person becomes highly infectious. That allowed many Sars cases to be recognised, hospitalised and placed in isolation before they hit their peak of infectivity. With influenza and many other diseases, the order is reversed. That probably helped account for the scale of worldwide misery and death during the 1918-1919 influenza. And that infamous global pandemic occurred in the era before globalisation. Everything nowadays moves around the planet faster, including viruses. When the Next Big One comes, it will likely conform to the same perverse pattern as the 1918 influenza: high infectivity preceding notable symptoms. That will help it move through cities and airports like an angel of death. The Next Big One is a subject that disease scientists around the world often address. The most recent big one is Aids, of which the eventual total bigness cannot even be predicted - about 30 million deaths, 34 million living people infected, and with no end in sight. Fortunately, not every virus goes airborne from one host to another. If HIV-1 could, you and I might already be dead. If the rabies virus could, it would be the most horrific pathogen on the planet. The influenzas are well adapted for airborne transmission, which is why a new strain can circle the world within days. The Sars virus travels this route, too, or anyway by the respiratory droplets of sneezes and coughs - hanging in the air of a hotel corridor, moving through the cabin of an aeroplane - and that capacity, combined with its case fatality rate of almost 10%, is what made it so scary in 2003 to the people who understood it best. Human-to-human transmission is the crux. That capacity is what separates a bizarre, awful, localised, intermittent and mysterious disease (such as Ebola) from a global pandemic. Have you noticed the persistent, low-level buzz about avian influenza, the strain known as H5N1, among disease experts over the past 15 years? That's because avian flu worries them deeply, though it hasn't caused many human fatalities. Swine flu comes and goes periodically in the human population (as it came and went during 2009), sometimes causing a bad pandemic and sometimes (as in 2009) not so bad as expected; but avian flu resides in a different category of menacing possibility. It worries the flu scientists because they know that H5N1 influenza is extremely virulent in people, with a high lethality. As yet, there have been a relatively low number of cases, and it is poorly transmissible, so far, from human to human. It'll kill you if you catch it, very likely, but you're unlikely to catch it except by butchering an infected chicken. But if H5N1 mutates or reassembles itself in just the right way, if it adapts for human-to-human transmission, it could become the biggest and fastest killer disease since 1918. It got to Egypt in 2006 and has been especially problematic for that country. As of August 2011, there were 151 confirmed cases, of which 52 were fatal. That represents more than a quarter of all the world's known human cases of bird flu since H5N1 emerged in 1997. But here's a critical fact: those unfortunate Egyptian patients all seem to have acquired the virus directly from birds. This indicates that the virus hasn't yet found an efficient way to pass from one person to another. Two aspects of the situation are dangerous, according to biologist Robert Webster. The first is that Egypt, given its recent political upheavals, may be unable to staunch an outbreak of transmissible avian flu, if one occurs. His second concern is shared by influenza researchers and public health officials around the globe: with all that mutating, with all that contact between people and their infected birds, the virus could hit upon a genetic configuration making it highly transmissible among people. "As long as H5N1 is out there in the world," Webster told me, "there is the possibility of disaster. . . There is the theoretical possibility that it can acquire the ability to transmit human-to-human." He paused. "And then God help us." We're unique in the history of mammals. No other primate has ever weighed upon the planet to anything like the degree we do. In ecological terms, we are almost paradoxical: large-bodied and long-lived but grotesquely abundant. We are an outbreak. And here's the thing about outbreaks: they **end**. In some cases they end after many years, in others they end rather soon. In some cases they end gradually, in others they end with a crash. In certain cases, they end and recur and end again. Populations of tent caterpillars, for example, seem to rise steeply and fall sharply on a cycle of anywhere from five to 11 years. The crash endings are dramatic, and for a long while they seemed mysterious. What could account for such sudden and recurrent collapses? One possible factor is infectious disease, and viruses in particular.

### No Shutdown

#### Boehner will spur a compromise but its close

Jonathan Bernstein 9/16/13, politicial scientist who contributes to The Plum Line at The Washington Post, “This time, it’s Boehner, not Obama, who needs to avoid a government shutdown,” http://www.washingtonpost.com/blogs/plum-line/wp/2013/09/16/this-time-its-boehner-not-obama-who-needs-to-avoid-a-government-shutdown/

However, Noam Scheiber makes the case, in a piece generating some chatter today, for why there will be a government shutdown this time. His basic take is that Obama has every incentive to hold the line even if it results in a shutdown, because he no longer has to worry about reelection and the hit to the economy a shutdown it would entail. Scheiber also says John Boehner might have an incentive to allow a shutdown — in order to jar conservative Republicans to their senses and force them to accept the reality of their own limited negotiating leverage.¶ But make no mistake, the incentives are still heavily for Boehner to cut a deal and avoid a shutdown at all costs.¶ It’s true that the big change since 2011 and 2012 is that the president, without an upcoming election, is probably more inclined to take the short-term economic hit that a shutdown would cause. On the other hand, while Boehner has been a pretty good Speaker and has successfully helped Republicans avoid their worst impulses, I don’t really agree that this time Boehner’s incentive is to accept a shutdown.¶ Why? Because the key think to know about a shutdown is that it will end. Maybe after a day; maybe after a month. It will end, and it will end with something that both Boehner (and mainstream conservatives) and Obama (and mainstream liberals) can live with. And at that point, there is nothing more certain in this world than that radical “conservatives” will believe that if only Boehner and Congressional Republicans had held out a little while longer, Obama would have surrendered and Republicans would have won a total victory.¶ So a shutdown (or a debt limit breach) has to end with Boehner (supposedly) selling out conservatives, and doing it with far more press coverage and attention than he would get from (again, supposedly) selling them out before a shutdown by cutting a deal. That’s a disaster for him — and, on the other side of the Capitol, for Mitch McConnell — and one he’ll work hard to avoid.¶ Between Obama being more likely to fight through a shutdown, and more Republicans in Congress who don’t remember 1995-1996, it’s certainly very possible that a shutdown is coming. Or even a debt limit breach. But it’s absolutely in Boehner’s interests to do all he can to avoid either. If either happens, it will be only because Boehner struggled but failed to avert such an outcome. Bottom line: Expect Barack Obama to be a tougher negotiator this time around and expect Boehner to do all he can to cut a deal to avoid disaster.

#### Boehner will engineer a compromise

Washington Post 9-15-13, "Congress can turn back to the budget now," www.washingtonpost.com/opinions/congress-can-turn-back-to-the-budget-now/2013/09/15/e05c975c-1ca5-11e3-82ef-a059e54c49d0\_story.html

How this latest impasse plays out is anyone’s guess, though there are plausible scenarios under which Mr. Boehner can give the ultras in his caucus a chance to vote one more time against Obamacare, while engineering Democratic acquiescence in a short-term continuation of the current $988 billion annual spending rate. Such a result would avoid a partial government shutdown — for a few months.¶ The debt ceiling, too, probably can be finessed, as it has been in the past. Exactly how is admittedly difficult to predict given Mr. Obama’s insistence that raising it is not negotiable and Mr. Boehner’s seemingly incompatible insistence that he won’t increase Washington’s borrowing capacity except in return for progress on deficit reduction. But a default would not be in either side’s political interest.

## AT: Plan Popular

#### War powers debates are seen as contentious

Robert McMahon, ed. Council on Foreign Relations, 6-20-2011, "Balance of War Powers: The U.S. President and Congress," http://www.cfr.org/united-states/balance-war-powers-us-president-congress/p13092

The U.S. Constitution gives Congress and the president different responsibilities in waging wars, but there have long been disputes about where one's war powers begin and the other's ends. The Obama administration's dispute with Congress over its decision to participate in the military intervention in Libya in March 2011 revives a showdown over war powers last seen in spring 2007 when a Democratic-controlled Congress sought to expedite troop pullouts from Iraq in defiance of a Republican president. In the case of the Libyan mission, a Democratic president faces concerns from lawmakers of both parties over his decision to act without congressional approval. The administration delivered a report on June 15 stating that the military operations in Libya are too limited to require Congress to authorize them under the War Powers Resolution. House Speaker John Boehner said the White House letter "just doesn't pass the straight-face test in my view that we're not in the midst of hostilities." Aside from constitutional questions, many scholars point to the growing assertion of presidential war powers since the end of World War II. CFR Senior Vice President James Lindsay writes that "the war power gravitates to the White House, in practice if not in law." He notes the Supreme Court's reluctance in recent years to insert itself in war powers cases and the burden on Congress to change presidential action.

#### Restricting executive war powers is political contentious and has to overcome a veto

James M. Lindsay, 4-5-2011, "The Water's Edge: Is Operation Odyssey Dawn Constitutional? Part V," Council on Foreign Relations - The Water's Edge, http://blogs.cfr.org/lindsay/2011/04/05/is-operation-odyssey-dawn-constitutional-part-v/

By contrast, if presidents are free to act unless Congress stops them—as the judge suggested in Dellums v. Bush—then the burden of effort shifts to the other end of Pennsylvania Avenue. Congress can stop the president only by passing a law that commands him to do so. But that law is subject to a presidential veto. As long as a president can get thirty-four senators to back him, and almost every president can, he carries the day even if the other 501 members of Congress are opposed. Facing those daunting odds, most members of Congress don’t see the point in challenging the White House. Why waste valuable legislative energy tilting at windmills? Moreover, political incentives reinforce the urge that lawmakers have to head to the sidelines. After all, laying oneself open to charges of refusing to support U.S. troops in the field is hardly a recipe for electoral success. So the war power gravitates to the White House, in practice if not in law.

#### SOP on war powers issues is politically charged

James M. Lindsay, 4-5-2011, "The Water's Edge: Is Operation Odyssey Dawn Constitutional? Part V," Council on Foreign Relations - The Water's Edge, http://blogs.cfr.org/lindsay/2011/04/05/is-operation-odyssey-dawn-constitutional-part-v/

Most Americans think of the Supreme Court as the legal equivalent of a baseball umpire. In their view, the Court’s job is to call legal balls and strikes, and thereby tell us what the law is. So why then is the question of whether presidents can initiate military hostilities so hotly debated?

It turns out that the Supreme Court does not see its job as most Americans do, enforcing the dividing line between the executive and legislative branches. The Court sometimes sidesteps separation-of-powers issues, especially when it comes to foreign policy. The Court has good reason to bite its tongue. However, when it comes to the war power, its silence alters the basic constitutional structure that the Framers created. The Supreme Court hasn’t always shied away from refereeing separation-of-powers questions on foreign policy. In Little v. Barreme (1804), for example, the Court protected Congress’s war power from executive encroachment. The case arose when a U.S. naval ship seized a vessel sailing from a French port during the Quasi-War of 1798 with France. The problem was that Congress had specifically directed the U.S. Navy to seize ships heading to French ports. The captain of the U.S. ship defended his actions on the grounds that the secretary of the Navy had ordered him to seize ships regardless of whether they were bound to or from French ports. The Supreme Court rejected the captain’s defense. It ruled that the executive branch could not change Congress’s instructions, even if doing so would have been a more effective way of achieving the military goals Congress sought. Noticeably absent in the Court’s decision was any reference to the powers the president might have as the nation’s commander in chief. The modern Supreme Court, however, generally shies away from wading into war powers cases. The Court offers several reasons for its reluctance. One reason is the courts’ preference to hear only lawsuits brought by someone who has legal standing, which is defined as having suffered concrete personal harm. Traditionally, the courts have held that neither Congress nor the president suffers concrete personal injury when the other branch tries to usurp its authority. So it is generally (though not always) the case, as the late great legal scholar Louis Henkin put it, that “the president himself cannot bring a judicial proceeding to challenge alleged usurpation of his authority by Congress, nor can Congress (or members of Congress) sue to enjoin an alleged usurpation by the president.” For example, when twenty-six members of the House of Representatives sued Bill Clinton in 1999 for ordering the bombing of Serbia without congressional authorization, the lower federal courts dismissed the lawsuit on the grounds that the legislators did not have legal standing. The Supreme Court refused to hear the appeal. A second reason the courts may sidestep separation-of-powers questions is the principle of ripeness. Courts are not debating societies for thrashing out hypothetical issues. They are places for assessing allegations of real or imminent harm. So courts generally take only cases that meet these criteria. For example, 110 members of Congress sued President George H.W. Bush in the fall of 1990, arguing that he could not use U.S. troops to liberate Kuwait unless he first had congressional authorization. The judge in Dellums v. Bush granted the members standing, but then dismissed the case because it was not ripe for judicial review. He argued that the case would be ripe only if “the plaintiffs in an action of this kind be or represent the majority of the members of Congress.” In short, if Congress did not formally stop Bush from acting, the courts would not bail it out. The third reason the courts might pass on a separation of powers issue is the doctrine of political questions. The idea here is that it is the courts’ job to rule on the legality of what the government has done and not on the wisdom of its decision. The Supreme Court takes a broad view of what constitutes a political question in foreign affairs. For instance, in 1979 President Jimmy Carter unilaterally terminated the Mutual Defense Treaty with Taiwan. Sen. Barry Goldwater (R-Ariz.) and more than a dozen of his colleagues filed suit alleging that Carter had exceeded his constitutional authority. To all of us who did not go to law school, Goldwater v. Carter seems to have raised a straightforward legal question: which branch of government has the authority to terminate a treaty? But four Supreme Court justices argued that the question was “‘political’ and therefore nonjusticiable because it involves the authority of the President in the conduct of our country’s foreign relations and the extent to which the Senate or the Congress is authorized to negate the action of the President.” (A fifth justice argued that the case was not ripe for trial because the Senate had taken no formal steps to stop Carter.) Why have the courts in recent decades shied away from policing the boundaries of the separation of powers? Two practical motives stand out. One is that the courts want to limit their workload. If anyone could sue, regardless of whether he or she had been personally harmed, the courts would be swamped. The same would be true if the courts agreed to hear cases about legal “what-ifs” or if they took on the task of passing judgment on the wisdom rather than the legality of what the government does. The second practical reason for the rules on justiciability is specific to the separation-of-powers issue. If lawmakers know they can toss tough problems into the courts’ lap, that’s precisely what they will do. Why cast a politically tough vote if you can dump the matter on justices who don’t have to face the voters? This would undermine the democratic idea that the two political branches—Congress and the president—should decide the country’s future course.

### AT: Plan Immediate

#### Our interp is the plan gets IMMEDIATELY INTRODUCED, yes, but then must be debated---the aff must defend political implications

#### Framing issue---even if it’s a bit arbitrary it’s best for debate because of politics disad education---

#### Most portable impact

Saideman 11 Steve is an Associate Prof of PoliSci at McGill University. “Key Constraint on Policy Relevance,” July 25, http://duckofminerva.blogspot.com/2011/07/key-constraint-on-policy-relevance.html

I would go one step further and suggest that one of the key problems for scholars who want to be relevant for policy debates is that we tend to make recommendations that are "incentive incompatible." I love that phrase. **What is best for policy may not be what is best for politics**, and so we may think we have a good idea about what to recommend but get frustrated when our ideas do not get that far. ¶ Lots of folks talking about early warning about genocide, intervention into civil wars and the like blame "political will." That countries lack, for whatever reason, the compulsion to act. Well, that is another way of saying that domestic politics matters, but we don't want to think about it. ¶ Dan's piece contains an implication which is often false--that IR folks have little grasp of domestic politics. Many IR folks do tend to ignore or simplify the domestic side too much, but there is plenty of scholarship on the domestic determinants of foreign policy/grand strategy/war/trade/etc. Plenty of folks look at how domestic institutions and dynamics can cause countries to engage in sub-optimal foreign policies (hence the tradeoff implied in my second book--For Kin or Country). ¶ The challenge, then, is to figure out what would be a cool policy and how that cool policy could resonate with those who are relevant domestically. That is not easy, but it is what is necessary. To be policy relevant requires both parts--articulating a policy alternative that would improve things and some thought about how the alternative could be politically appealing. **¶ Otherwise, we can just dream about the right policy and gnash our teeth when it never happens.**

#### Neg ground---especially on a broad topic with 4 areas and tons of unpredictable mechs

## AT: Horsetrading

#### About Nicaragua---Obama would fight

#### Congressional restrictions on war powers trade off with the rest of the agenda---diverts focus

William G. Howell 9-3, the Sydney Stein Professor of American Politics at the University of Chicago, 9/3/13, “Count on Congress,” http://www.foreignaffairs.com/articles/139890/william-g-howell/count-on-congress

The first concerns Congress’ continuing relevance in military decision-making. Many analysts have long written it off. And to a certain extent, they have been right to do so. When it comes to foreign policy generally, and military action in particular, the president enjoys extraordinary power: power to unilaterally advance his own agenda; power with the public, which looks to him to chart foreign policy; and informational power, which allows the president to structure the terms and direction of any accompanying debate. Congress, meanwhile, can seem hamstrung and all but useless. The multiple veto points, partisan polarization, and pervasive gridlock predictably impede and distort even the most sober efforts to address real-world challenges.

Even so, in the domestic politics of war-making, it would be unwise to count Congress out. Obama did not have to seek congressional approval for military action in retaliation for the Assad regime’s recent alleged use of chemical weapons against his own people. But he did. And that was a prudent choice.

The advantages of consent will mostly matter in retrospect, not in the run-up to war. That is because, if Congress approves the military action, it cannot as easily criticize its effects. Just ask Secretary of State John Kerry, who stumbled through the 2004 campaign for the presidency trying to explain why he was for the Iraq War before he was against it. In the aftermath of a military action, members of Congress can use hearings, investigations, floor debates, and media appearances to make a case that a military venture failed outright or created new problems. In extreme cases, as occurred in the latter stages of the Vietnam War, all this may lay the groundwork for legislative action against the president. But even in the absence of a formal rebuke, congressional criticisms can turn the public against the president and his party, signal to U.S. allies and enemies a lack of resolve for continued military action, and upend congressional action on other aspects of the president’s policy agenda.