# Wake Round 3

## 1NC

### T 1

#### Introducing United States Armed Forces into hostilities means the introduction of human members of the armed forces not weapons systems

Lorber ’13 Eric, J.D. Candidate, University of Pennsylvania Law School, Ph.D Candidate, Duke University Department of Political Science. Journal Of Constitutional Law 15.3 <https://www.law.upenn.edu/live/files/1773-lorber15upajconstl9612013>.

The requirements may also be triggered if the United States deploys armed forces "in numbers which substantially enlarge United States Armed Forces 174 equipped for combat already located in a foreign nation." As is evident, the definition of "armed forces" is crucial to deciphering whether the WPR applies in a particular circumstance to provide congressional leverage over executive actions. The definition of "hostilities," which has garnered the 175 majority of scholarly and political attention, particularly in the recent Libyan conflict, will be dealt with secondarily here because it only becomes important if "armed forces" exist in the situation. 177 As is evident from a textual analysis, an examination of the legislative history, and the broad policy purposes behind the creation of the Act , "armed forces" refers to U.S. soldiers and members of the armed forces, not weapon systems or capabilities such as offensive cyber weapons. Section 1547 does not specifically define "armed forces," but it states that "the term 'introduction of United States Armed Forces' includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government." While this definition pertains to the broader phrase "introduction of armed forces," the clear implication is that only members of the armed forces count for the purposes of the definition under the WPR. Though not dispositive, the term "member" connotes a human individual who is part of an organization. Thus, it appears that the term "armed forces" means human members of the United States armed forces. However, there exist two potential complications with this reading. First, the language of the statute states that "the term 'introduction of United States Armed Forces' includes the assignment of members of such armed forces." By using inclusionary—as opposed to exclusionary— language, one might argue that the term "armed forces" could include more than members. This argument is unconvincing however, given that a core principle of statutory interpretation, expressio unius, suggests that expression of one thing (i.e., members) implies the exclusion of others (such as non-members constituting armed forces).

#### Violation – They increase a statutory restriction on nuclear weapons, which is not a human member of the armed forces.

#### Predictable limits. They include nukes which is big enough to be its own topic but also every single weapon system at the president’s disposal. Each one has a different mechanism explodes neg research burden and kills clash.

#### Field context. Our definition is used in the War Powers Act, which is a statutory restriction on the President’s war powers authority to introduce USAF into hostilities. Ensures predictability and should be a check on all counter-interps.

### T 2

#### War Power is distinct from Commander in Chief Power. It’s simply the ability to declare war [? That’s what the card says] and an authorization on the use of force, not command of the armed forces or personnel decisions

Weinberger 2009

Seth, Restoring the Balance, Santa Barbara, CA: Praeger Press, 20

The power to declare war, when properly understood, provides Congress with a powerful check on presidential power and a vital means of safeguarding domestic civil liberties. A declaration of war, as the Founders understood it, as the Constitution intends it, and as the executive, legislative, and judicial branches of government interpret it, is **not** about the command and direction of the armed forces of the United States. Whether the president can send American soldiers into battle **does not** depend on whether Congress has declared war or even given its specific authorization to the use of force. Nor does the ability of Congress to prevent or oversee the president’s use of force turn on the existence of a declaration of war. Rather, a declaration of war is about acknowledging the severity of the threat to the United States and recognizing that meeting the threat demands extraordinary measures above and beyond the foreign deployment of troops.

#### Violation –

#### Nuclear weapons, operation serval, coast guard in Cuba, missiles, national guard

#### Predictable limits. Commander-in-chief powers explode the topic since it’s any way the president conducts military operations. There are an infinite number of solvency advocates for military changes. No way for the neg to predict or clash with the aff.

#### Ground. You allow tiny and unpredictable affs that change one thing about a current military operation. The plan encourages the worst form of neg generics like cheating CPs that make your ground irrelevant.

### DA

#### High-skilled visa reform will pass

Rubin 11-14. [Jennifer, WaPo blogger, “Immigration reform outlook” Washington Post --¶ <http://www.washingtonpost.com/blogs/right-turn/wp/2013/11/14/immigration-reform-outlook/>]

There were some theatrics on Wednesday from liberal immigration reform advocates, claiming the speaker of the House was now refusing to go to conference with the Senate on immigration reform. Immigration reform dead! Really? No.¶ In fact, this morning at the U.S. Chamber of Commerce Headquarters, a collection of conservatives — Thomas J. Donohue, president and chief executive of the U.S. Chamber of Commerce; Dr. Russell Moore, president of the Ethics and Religious Liberty Commission of the Southern Baptist Convention; Grover Norquist, president of Americans for Tax Reform; Jay Timmons, president and chief executive of the National Association of Manufacturers; Bishop John C. Wester, bishop of Salt Lake City; and Greg Zoeller, the attorney general of Indiana (R) — will be holding a press conference to push for further action on immigration reform.¶ As for Speaker John Boehner, those familiar with his thinking tell Right Turn that he still supports taking up discrete immigration issues (border security, internal enforcement, visas, undocumented etc.) for debate and passage. This has been his position for some time. Whether the Senate will be willing to break up its bill into separate legislative chunks (passed in succession) is an open question, but Boehner is not going to engage on one massive bill. As for the prospects of those separate bills getting through this year, House leadership is realistic that months have now been chewed up on the shutdown and Obamacare.¶ Boehner and other Republicans nevertheless maintain that whether taken up in December or after the first of the year, something will come out of the House. Politico quoted Boehner yesterday as saying, “I’ve made it clear since the day after the election that it’s time to get this done.” His spokesman clarified, according to the report, that he was referring to his “taking up reform with a collection of bills, not a sweeping comprehensive bill like the Senate passed in June.”¶ From my vantage point, there really isn’t time in the next month and a half to get immigration done. But immigration reform opponents are mistaken if they think the issue is dead as of December 31. Immigration reform is still doable, albeit not in as sweeping a fashion as the Senate bill attempted.¶ In fact, I would argue that with the president on the ropes and anxious for something other than scandal, defeat and chaos, he and the Democrats might be willing to deal in ways they weren’t earlier this year. A pro-immigration reform GOP senator with whom I spoke a couple of weeks ago said he was more optimistic lately that Sen. Chuck Schumer (D-N.Y.) and the president could deal with Republicans on something other than, as he put it, a “special path to citizenship.” (“Special” here is the variable.) I would add that with the bruising taken by the far-right in the shutdown and Nov. elections and the re-engagement of Main Street Republicans (evidence by today’s press conference), the House may have more votes for immigration reform than before the disastrous shutdown.¶ In any event, immigration reform didn’t die yesterday. It continues to limp along just has it has for the last few months.

#### Capital key – pressure ensures votes.

Sanders 10-19. [Bob, columnist, "There’s no better time for Obama to push for immigration reform" Star-Telegram -- www.star-telegram.com/2013/10/19/5258963/theres-no-better-time-for-obama.html]

 Now that the Republican hijacking of the federal government has been brought to an end, perhaps President Barack Obama and Congress can move on to other major issues that have been neglected too long.¶ The president, in addition to wanting to work out a long-term budget deal, has said that he is now ready to push for passage of a comprehensive immigration bill, as well as rescuing the farm bill, which was gutted when GOP lawmakers stripped out the food stamp section.¶ Just a few months ago, immigration reform looked promising, garnering bipartisan support in the Senate. A measure that was long overdue passed the upper chamber in Congress last June, but has been stalled in the House as recalcitrant Republicans simply couldn't stomach the idea of providing a path to citizenship for the millions of illegal immigrants already in the country.¶ While the Senate bill has its faults - including adding 700 miles of new fencing along the U.S.-Mexico border - it is a compromise that, if passed, would be a giant step toward improving the entire immigration system and, at the same time, bringing illegal immigrants out of the shadows.¶ Obama got re-elected partly on his promise to pursue the issue aggressively, receiving 71 percent of the Latino vote. He has not been as aggressive as many would like, even though they're willing to cut him a little slack because of all the uncontrollable international crises and manufactured domestic distractions (like the shutdown of the government) he has had to deal with.¶ But he shouldn't let anything get in his way this time, even though Republicans in the House are vowing not to negotiate with him because the president stood his ground and refused to negotiate on his healthcare law in connection with raising the debt ceiling and ending the government shutdown.¶ House Speaker John Boehner, who has refused to bring the Senate bill to a vote, has said he won't bring any immigration legislation to the floor until a majority of his Republican caucus agrees.¶ That, in effect, means never. Or, if there is a bill that the majority of his party would support, you can almost bet it will be terribly inadequate, one that would not pass the Senate and one that the president wouldn't sign if it did.¶ Boehner, who has been on the losing end a lot lately, ought to be pressured into bringing the Senate bill to a vote. It's clear that on many of the important matters facing this country, the majority of his party in the House will reject just about anything the president supports.¶ Therefore, it will be left up to the House Democrats and the moderate Republicans who are not afraid of the "tea party" to get an immigration bill passed.¶ Since the government shutdown fiasco, in which the GOP unmistakably was the loser, the president has the upper hand, and he should take the opportunity to press forward with his agenda.¶ By no means am I suggesting that Obama become a bully or deliberately attempt to undermine Boehner's leadership, but he shouldn't back away from this fight again.¶ Every time an election approaches - and there's always an approaching election - it is suggested that it's the wrong time to bring up immigration reform.¶ Frankly, there's no better time than right now as candidates prepare to file for office and gear up their campaigns for the 2014 contests.

#### Clinton proves- changing first use doctrine requires mindset shifts which cost political capital

Bulletin of the Atomic Scientists ‘9

“It is 5 minutes to midnight: A prescription for U.S. nuclear weapons policy,” Bulletin of the Atomic Scientists, January/February 2009, vol. 65, no. 1, pp. 1–3, http://thebulletin.metapress.com/content/070q0423h52q1471/fulltext.pdf

It is 5 minutes to midnight: A prescription for U.S. nuclear weapons policy As president, Barack Obama could fundamentally alter U.S. nuclear weapons policy, but only if he devotes the necessary political capital to the effort and rethinks timeworn assumptions. It would be easy to be overly optimistic about the prospects for dramatic improvement in U.S. nuclear weapons policies when President-elect Barack Obama takes office on January 20. During the last eight years, the United States has laid out a series of destabilizing policies regarding the use of nuclear weapons and demonstrated an arrogant attitude toward resolving international conflicts. Correcting these missteps should be as easy as installing a new leader and resetting policies, right? Wrong. Many of the country’s nuclear weapon policies share a lineage with U.S. policies going back decades. Rerooting them will require more than just new leadership; it will require fundamental shifts in thinking and a sustained commitment to change. Early in 2008 the Bulletin published “The Bureaucracy of Deterrence,” by scholars Janne Nolan and James Holmes, which details the failures and foibles of President Bill Clinton’s attempt to remake the U.S. nuclear posture. As Obama prepares to take office, he and his national security team would be wise to review this account as a first step in revising U.S. nuclear policy. Nolan and Holmes refer to potential pitfalls facing presidents, none of which presents bigger challenges than the discrepancies between “declaratory” and “operational” doctrine—in other words, how U.S. leaders describe the role of U.S. nuclear weapons and how the weapons would actually be used. U.S. officials often say that the nation’s nuclear weapons are meant to deter aggressors, yet they have concluded that deterrence only works if matched by the demonstrated ability and willingness to wage nuclear war, according to Nolan and Holmes. As such, they conclude: “Despite countless changes in nuclear doctrine devised by political leaders over successive administrations, there has been a negligible impact on the configuration and operational objectives of U.S. nuclear forces. As a country, we have never had a real debate about how much deterrence is enough.” Reconciling U.S. declaratory and operational nuclear doctrine will be challenging, but the Obama administration should not shy away from taking it on. If the role of U.S. nuclear weapons is to deter aggression, then Obama should have the courage to ask how few weapons need to be maintained and on what alert status should they be kept? Most other nuclear weapon countries, with the exception of Russia, whose nuclear stockpile exceeds the approximately 3,500 U.S. operational weapons, maintain nuclear arsenals numbering in the hundreds, and several have publicly issued “no first-use” policies. China, for instance, feels sufficiently secure deterring aggressors with approximately 200 nuclear weapons (many of which are not mated to their missiles or kept on alert). So why do the United States and Russia require so many more weapons to meet their deterrence demands? Arguments against a posture of minimum deterrence similar to China’s suggest that if deterrence fails, a large nuclear force would limit damage. But this points to consistent weaknesses in any deterrence strategy: You can always argue for more nuclear weapons, as both the United States and the Soviet Union did during the Cold War, but at what cost—in both dollars and in terms of the risk of an accidental launch or misplaced fissile materials? The more salient argument is that the United States needs enough nuclear weapons to protect other nations under its nuclear umbrella. But as analyst Jeffrey Lewis questioned in a July/August 2008 Bulletin article on minimum deterrence, can or should nuclear weapons bear the burden of maintaining the credibility of any alliance? On the presidential campaign trail, Obama committed to work toward a nuclear-weapon-free world. No one expects this to happen overnight, least of all the government officials and bureaucrats around the world who currently set and maintain nuclear weapons policies. Yet, if Obama administration officials take a fresh look at U.S. operational needs and Obama himself commits political capital to righting current doctrinal discrepancies, U.S. policies can change over the course of his years in office in ways that reduce the risk of a deliberate or accidental nuclear exchange. Many of these changes can be made unilaterally. The United States can declare that the only mission of nuclear weapons is to prevent the use of nuclear weapons; it can decrease the number of weapons in its operational stockpile (for example, eliminating its entire force of intercontinental ballistic missiles); reduce the readiness of its remaining weapons; and dismantle all retired weapons. These actions would pave the way for further bilateral and multilateral nuclear reductions and for the mechanisms that can help to verify national commitments. But first Obama and other heads of state need to publicly acknowledge nuclear weapons’ lack of military utility and the dangers presented by their very existence. This type of bold thinking would ensure that nuclear weapons exist only as long as it takes to destroy every last one of them.

#### High skilled workers solves multiple internal links to the economy

Beadle 12/10 Amanda Peterson, Reporter/Blogger at ThinkProgress.org. She received her B.A. in journalism and Spanish from the University of Alabama, where she was editor-in-chief of the campus newspaper The Crimson White and graduated with honors. Before joining ThinkProgress, she worked as a legislative aide in the Maryland House of Delegates. “Top 10 Reasons Why The U.S. Needs Comprehensive Immigration Reform” http://thinkprogress.org/justice/2012/12/10/1307561/top-10-reasons-why-the-us-needs-comprehensive-immigration-reform-that-includes-a-path-to-citizenship/

The nation needs a comprehensive immigration plan, and it is clear from a recent poll that most Americans support reforming the U.S.’s immigration system. In a new poll, nearly two-thirds of people surveyed are in favor of a measure that allows undocumented immigrants to earn citizenship over several years, while only 35 percent oppose such a plan. And President Obama is expected to “begin an all-out drive for comprehensive immigration reform, including seeking a path to citizenship” in January.¶ Several top Republicans have softened their views on immigration reform following November’s election, but in the first push for reform, House Republicans advanced a bill last month that would add visas for highly skilled workers while reducing legal immigration overall. Providing a road map to citizenship for the millions of undocumented immigrants living in the U.S. would have sweeping benefits for the nation, especially the economy.¶ Here are the top 10 reasons why the U.S. needs comprehensive immigration reform:¶ 1. Legalizing the 11 million undocumented immigrants in the United States would boost the nation’s economy. It would add a cumulative $1.5 trillion to the U.S. gross domestic product—the largest measure of economic growth—over 10 years. That’s because immigration reform that puts all workers on a level playing field would create a virtuous cycle in which legal status and labor rights exert upward pressure on the wages of both American and immigrant workers. Higher wages and even better jobs would translate into increased consumer purchasing power, which would benefit the U.S. economy as a whole.¶ 2. Tax revenues would increase. The federal government would accrue $4.5 billion to $5.4 billion in additional net tax revenue over just three years if the 11 million undocumented immigrants were legalized. And states would benefit. Texas, for example, would see a $4.1 billion gain in tax revenue and the creation of 193,000 new jobs if its approximately 1.6 million undocumented immigrants were legalized.¶ 3. Harmful state immigration laws are damaging state economies. States that have passed stringent immigration measures in an effort to curb the number of undocumented immigrants living in the state have hurt some of their key industries, which are held back due to inadequate access to qualified workers. A farmer in Alabama, where the state legislature passed the anti-immigration law HB 56 in 2011, for example, estimated that he lost up to $300,000 in produce in 2011 because the undocumented farmworkers who had skillfully picked tomatoes from his vines in years prior had been forced to flee the state.¶ 4. A path to citizenship would help families access health care. About a quarter of families where at least one parent is an undocumented immigrant are uninsured, but undocumented immigrants do not qualify for coverage under the Affordable Care Act, leaving them dependent on so-called safety net hospitals that will see their funding reduced as health care reforms are implemented. Without being able to apply for legal status and gain health care coverage, the health care options for undocumented immigrants and their families will shrink.¶ 5. U.S. employers need a legalized workforce. Nearly half of agricultural workers, 17 percent of construction workers, and 12 percent of food preparation workers nationwide lacking legal immigration status. But business owners—from farmers to hotel chain owners—benefit from reliable and skilled laborers, and a legalization program would ensure that they have them.¶ 6. In 2011, immigrant entrepreneurs were responsible for more than one in four new U.S. businesses. Additionally, immigrant businesses employ one in every 10 people working for private companies. Immigrants and their children founded 40 percent of Fortune 500 companies, which collectively generated $4.2 trillion in revenue in 2010—more than the GDP of every country in the world except the United States, China, and Japan. Reforms that enhance legal immigration channels for high-skilled immigrants and entrepreneurs while protecting American workers and placing all high-skilled workers on a level playing field will promote economic growth, innovation, and workforce stability in the United States.¶ 7. Letting undocumented immigrants gain legal status would keep families together. More than 5,100 children whose parents are undocumented immigrants are in the U.S. foster care system, according to a 2011 report, because their parents have either been detained by immigration officials or deported and unable to reunite with their children. If undocumented immigrants continue to be deported without a path to citizenship enabling them to remain in the U.S. with their families, up to 15,000 children could be in the foster care system by 2016 because their parents were deported, and most child welfare departments do not have the resources to handle this increase.¶ 8. Young undocumented immigrants would add billions to the economy if they gained legal status. Passing the DREAM Act—legislation that proposes to create a roadmap to citizenship for immigrants who came to the United States as children—would put 2.1 million young people on a pathway to legal status, adding $329 billion to the American economy over the next two decades.¶ 9. And DREAMers would boost employment and wages. Legal status and the pursuit of higher education would create an aggregate 19 percent increase in earnings for young undocumented immigrants who would benefit from the DREAM Act by 2030. The ripple effects of these increased wages would create $181 billion in induced economic impact, 1.4 million new jobs, and $10 billion in increased federal revenue.¶ 10. Significant reform of the high-skilled immigration system would benefit certain industries that require high-skilled workers. Immigrants make up 23 percent of the labor force in high-tech manufacturing and information technology industries, and immigrants more highly educated, on average, than the native-born Americans working in these industries. For every immigrant who earns an advanced degree in one of these fields at a U.S. university, 2.62 American jobs are created.

#### Global economic crisis causes nuclear war

Cesare Merlini 11, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs, May 2011, “A Post-Secular World?”, Survival, Vol. 53, No. 2

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism**.**

### CP

#### The President of the United States should issue a declaratory policy that the United States will not introduce nuclear weapons first into hostilities. The Executive Branch of the United States should create “executive v. executive” divisions as per our Katyal evidence to promote internal separation of powers via separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts.

#### NFU can be done by the executive – it’s just a declaration

Mendelsohn – Adjunct professor at GWU and American University– ‘6

Jack, Delegitimizing Nuclear Weapons, http://www.issues.org/22.3/mendelsohn.html

To this end, three actions can be taken. The next administration should declare that the United States does not consider nuclear weapons to be a legitimate weapon of war and will not use them unless they are used by an adversary. This statement does not require congressional approval or presage costly military acquisitions. It might also be coordinated with the other nuclear powers. As the head of the Department of Energy's National Nuclear Security Administration, Linton Brooks, noted recently, "We can change our declaratory policy in a day."

#### Presidential veto power and executive deference mean external restraints fail – internal separation of powers constrains the president and leads to better decision making

Katyal ’6 Neal Katyal, Professor of Law @ Georgetown, The Yale Law Journal, “Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within” 115 Yale L.J. 2314, 2006

After all, Publius's view of separation of powers presumes three branches with equivalent ambitions of maximizing their powers, yet legislative abdication is the reigning modus operandi. It is often remarked that "9/11 changed everything"; 2 particularly so in the war on terror, in which Congress has been absent or content to pass vague, open-ended statutes. The result is an executive that subsumes much of the tripartite structure of government. Many commentators have bemoaned this state of affairs. This Essay will not pile on to those complaints. Rather, it begins where others have left off. If major decisions are going to be made by the President, then how might separation of powers be reflected within the executive branch? The first-best concept of "legislature v. executive" checks and balances must be updated to contemplate second-best "executive v. executive" divisions. And this Essay proposes doing so in perhaps the most controversial area: foreign policy. It is widely thought that the President's power is at its apogee in this arena. By explaining the virtues of internal divisions in the realm of foreign policy, this Essay sparks conversation on whether checks are necessary in other, domestic realms. That conversation desperately needs to center on how best to structure the ever-expanding modern executive branch. From 608,915 employees working in agencies in 1930, 3 to 2,649,319 individuals in 2004, 4 the growth of the executive has not generated a systematic focus on internal checks. We are all fond of analyzing checks on judicial activism in the post-Brown, post-Roe era. So too we think of checks on legislatures, from the filibuster to judicial review. But [\*2317] there is a paucity of thought regarding checks on the President beyond banal wishful thinking about congressional and judicial activity. This Essay aims to fill that gap. A critical mechanism to promote internal separation of powers is bureaucracy. Much maligned by both the political left and right, bureaucracy creates a civil service not beholden to any particular administration and a cadre of experts with a long-term institutional worldview. These benefits have been obscured by the now-dominant, caricatured view of agencies as simple anti-change agents. This Essay celebrates the potential of bureaucracy and explains how legal institutions can better tap its powers. A well-functioning bureaucracy contains agencies with differing missions and objectives that intentionally overlap to create friction. Just as the standard separation-of-powers paradigms (legislature v. courts, executive v. courts, legislature v. executive) overlap to produce friction, so too do their internal variants. When the State and Defense Departments have to convince each other of why their view is right, for example, better decision-making results. And when there is no neutral decision-maker within the government in cases of disagreement, the system risks breaking down. In short, the executive is the home of two different sorts of legitimacy: political (democratic will) and bureaucratic (expertise). A chief aim of this Essay's proposal is to allow each to function without undermining the other. This goal can be met without agency competition - overlapping jurisdiction is simply one catalyzing agent. Other ideas deserve consideration, alongside or independent of such competition, such as developing career protections for the civil service modeled more on the Foreign Service. Executives of all stripes offer the same rationale for forgoing bureaucracy-executive energy and dispatch. 5 Yet the Founders assumed that massive changes to the status quo required legislative enactments, not executive decrees. As that concept has broken down, the risks of unchecked executive power have grown to the point where dispatch has become a worn-out excuse for capricious activity. Such claims of executive power are not limited to the current administration, nor are they limited to politicians. Take, for example, Dean Elena Kagan's rich celebration of presidential administration. 6 Kagan, herself a former political appointee, lauded the President's ability to trump bureaucracy. Anticipating the claims of the current administration, Kagan argued that the [\*2318] President's ability to overrule bureaucrats "energizes regulatory policy" because only "the President has the ability to effect comprehensive, coherent change in administrative policymaking." 7 Yet it becomes clear that the Kagan thesis depends crucially on oversight by the coordinate legislative branch (typically controlled by a party in opposition to the President). Without that checking function, presidential administration can become an engine of concentrated power. This Essay therefore outlines a set of mechanisms that create checks and balances within the executive branch. The apparatuses are familiar - separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts. But these restraints have been informally laid down and inconsistently applied, and in the wake of September 11 they have been decimated. 8 A general framework statute is needed to codify a set of practices. In many ways, the status quo is the worst of all worlds because it creates the facade of external and internal checks when both have withered. I. THE NEED FOR INTERNAL SEPARATION OF POWERS The treacherous attacks of September 11 gave Congress and the President a unique opportunity to work together. Within a week, both houses of Congress passed an Authorization for Use of Military Force (AUMF); 10 two months later they enacted the USA PATRIOT Act to further expand intelligence and law enforcement powers. 11 But Congress did no more. It passed no laws authorizing or regulating detentions for U.S. citizens. It did not affirm or regulate President Bush's decision to use military commissions to try unlawful belligerents. 12 It stood silent when President Bush accepted thinly reasoned legal views of the Geneva Conventions. 13 The administration was content to rely on vague legislation, and Congress was content to enact little else. 14 There is much to be said about the violation of separation of powers engendered by these executive decisions, but for purposes of this Essay, I want [\*2320] to concede the executive's claim - that the AUMF gave the President the raw authority to make these decisions. A democratic deficit still exists; the values of divided government and popular accountability are not being preserved. Even if the President did have the power to carry out the above acts, it would surely have been wiser if Congress had specifically authorized them. Congress's imprimatur would have ensured that the people's representatives concurred, would have aided the government's defense of these actions in courts, and would have signaled to the world a broader American commitment to these decisions than one man's pen stroke. Of course, Congress has not passed legislation to denounce these presidential actions either. And here we come to a subtle change in the legal landscape with broad ramifications: the demise of the congressional checking function. The story begins with the collapse of the nondelegation doctrine in the 1930s, which enabled broad areas of policymaking authority to be given to the President and to agencies under his control. That collapse, however, was tempered by the legislative veto; in practical terms, when Congress did not approve of a particular agency action, it could correct the problem. But after INS v. Chadha, 15 which declared the legislative veto unconstitutional, that checking function, too, disappeared. In most instances today, the only way for Congress to disapprove of a presidential decree, even one chock full of rampant lawmaking, is to pass a bill with a solid enough majority to override a presidential veto. The veto power thus becomes a tool to entrench presidential decrees, rather than one that blocks congressional misadventures. And because Congress ex ante appreciates the supermajority-override rule, its members do not even bother to try to check the President, knowing that a small cadre of loyalists in either House can block a bill. 16 For example, when some of the Senate's most powerful Republicans (John McCain, Lindsay Graham, and John Warner) tried to regulate detentions and trials at Guantanamo Bay, they were told that the President would veto any attempt to modify the AUMF. 17 The result is that once a court [\*2321] interprets a congressional act, such as the AUMF, to give the President broad powers, Congress often cannot reverse the interpretation, even if Congress never intended to give the President those powers in the first place. Senator McCain might persuade every one of the other ninety-nine Senators to vote for his bill, but that is of no moment without a supermajority in the House of Representatives as well. 18 At the same time, the executive branch has gained power from deference doctrines that induce courts to leave much conduct untouched - particularly in foreign affairs. 19 The combination of deference and the veto is especially insidious - it means that a President can interpret a vague statute to give himself additional powers, receive deference in that interpretation from courts, and then lock that decision into place by brandishing the veto. This ratchet-and-lock scheme makes it almost impossible to rein in executive power. All legislative action is therefore dangerous. Any bill, like Senator McCain's torture bill, can be derailed through compromise. A rational legislator, fearing this cascading cycle, is likely to do nothing at all. This expansion of presidential power is reinforced by the party system. When the political branches are controlled by the same party, loyalty, discipline, and self-interest generally preclude interbranch checking. That reluctance is exacerbated by a paucity of weapons that check the President. Post-Chadha, Congress only has weapons that cause extensive collateral damage. The fear of that damage becomes yet another reason why Congress is plagued with inertia. And the filibuster, the last big check in periods of single-party government, is useless against the host of problems caused by Presidents who take expansive views of their powers under existing laws (such as the AUMF). Instead of preserving bicameralism, Chadha has led to its subversion and "no-cameralism." A Congress that conducts little oversight provides a veneer of legitimacy to an adventurist President. The President can appeal to the historic sense of checks and balances, even if those checks are entirely compromised by modern political dynamics. With this system in place, it is no surprise that recent calls [\*2322] for legislative revitalization have failed. No successful action-forcing mechanisms have been developed; instead we are still in John Hart Ely's world of giving a "halftime pep-talk imploring that body to pull up its socks and reclaim its rightful authority." 20 It is time to consider second-best solutions to bring separation of powers into the executive. Bureaucracy can be reformed and celebrated (instead of purged and maligned), and neutral conflict-decision mechanisms can be introduced. Design choices such as these can help bring our government back in line with the principles envisioned by our Founders. 21

#### Internal checks comparatively solve better and don’t link to politics

Metzger ‘9, Gillian E. Metzger, Professor of Law @ Columbia Law School, “The Interdependent Relationship Between Internal and External Separation of Powers” 59 Emory L.J. 423, Emory Law Journal, 2009

Several bases exist for thinking that internal separation of powers mechanisms may have a comparative advantage. First, internal mechanisms [\*440] operate ex ante, at the time when the Executive Branch is formulating and implementing policy, rather than ex post. As a result, they avoid the delay in application that can hamper both judicial and congressional oversight. 76 Second, internal mechanisms often operate continuously, rather than being limited to issues that generate congressional attention or arise in the form of a justiciable challenge. 77 Third, internal mechanisms operate not just at the points at which policy proposals originate and are implemented but also at higher managerial levels, thus addressing policy and administration in both a granular and systemic fashion. In addition, policy recommendations generated through internal checks may face less resistance than those offered externally because the latter frequently arise after executive officials have already decided upon a policy course and are more likely to take an adversarial form. 78 Internal mechanisms may also gain credibility with Executive Branch officials to the extent they are perceived as contributing to more fully informed and expertise-based decisionmaking. 79

### Politics of Schmitt K

#### Politics is Schmittian – trying to fight the executive on their own battlefield is naïve – the aff is just a liberal knee-jerk reaction that swells executive power

Kinniburgh, 5/27 **–** (Colin, Dissent, 5-27, <http://www.dissentmagazine.org/blog/partial-readings-the-rule-of-law>)

Our thesis is that these modifications to liberal legalism fail. Either they do not go far enough to square with the facts, or they go so far as to effec­tively abandon the position they seek to defend. We live in a regime of executive-centered government, in an age after the separation of powers, and the legally constrained executive is now a historical curiosity. As against liberal constitutional theorists like Janies Madison, Bruce Acker­man,1 and Richard Epstein,2 and liberal theorists of the rule of law like ..Albert Venn Dicey3 and David Dyzenhaus,4 we argue that in the modern administrative state the executive governs, subject to legal constraints that are shaky in normal times and weak or nonexistent in times of crisis. Whereas Madison is an exemplar of liberal legalism, particularly in the domain of constitutional theory, we draw upon the thought of the Weimar legal theorist Carl Schmitt. We do not agree with all of Schmitt’s views, by any means. To the. extent Schmitt thought that democratic poli­tics do not constrain the executive, or thought that in the administrative state the executive is not only largely unconstrained by law but also uncon­strained tout court, we disagree. Indeed, to the extent that Schmitt thought this, he fell into a characteristic error of liberal legalism, which equates lack of legal constraint with unbounded power. But Schmitt’s critical arguments against liberal legalism seem to us basically correct, at least when demysti­fied and rendered into suitably pragmatic and institutional terms. A central theme in Schmitt s work, growing outof Weimar’s running economic and security crises in the 1920s and early 1930s, involves the relationship between the classical rule-of-law state, featuring legislative enactment of general rules enforced by courts, and the administrative state, featuring discretionary authority and ad hoc programs, administered by the executive, affecting particular individuals and firms. The nub of Schmitt s view is the idea that liberal lawmaking institutions frame, general norms that are essentially “oriented to the past,” whereas “the dictates of modern interventionist politics cry out for a legal system conducive to a present- and future-oriented ‘steering’ of complex, ever-changing eco­nomic scenarios.”3 Legislatures and courts, then, are continually behind the pace of events in the administrative state; they play an essentially reac­tive and marginal role, modifying and. occasionally blocking executive policy initiatives, but rarely taking the lead. And in crises, the executive governs nearly alone, at least so far as law is concerned. In our view, the major constraints on the executive, especially in crises, do not arise from law or from the separation-of-powers framework defended by liberal legalists, but from politics and public opinion. Law and politics are hard to separate and lie on a continuum—elections, for example, are a complicated mix: of legal rules and political norms—but the poles are clear enough for our purposes, and the main constraints on the executive arise from the political end of the continuum. A central fallacy of liberal legalism, we argue, is the equation of a constrained executive with an executive constrained by law. The pressures of the administrative state loosen legal constraints, causing liberal legalists to develop tyrannophobia, or unjustified fear of dictatorship. They overlook the de facto political con­straints that have grown up and, to some degree, substituted for legal constraints on the executive.6 As the bonds of law have loosened, the bonds of politics have tightened their grip. The executive, “unbound” from the standpoint of liberal legalism, is in some ways more constrained than ever before. We do not claim that these political constraints necessarily cause the executive to pursue the public interest, however defined, or that they pro­duce optimal executive decision-making. We do claim that politics and public opinion at least block the most lurid forms of executive abuse, that courts and Congress can do no better, that liberal legalism goes wrong by assuming that a legally unconstrained executive is unconstrained overall, and that in any event there is no pragmatically feasible alternative to exec­utive government under current conditions. The last point has normative implications, because of the maxim “Ought implies can.” Executive gov­ernment is best in the thin sense that there is no feasible way to improve upon it, under the conditions of the administrative state.

#### Legality feeds a new form of muscular liberalism where these illusions cannot see how much they sustain it which legitimizes wars for democracies and doctrines of pre-emption

Motha 8 \*Stewart, Senior Lecturer, Kent Law School, University of Kent, Canterbury, Kent, Journal of Law, Culture, and Humanities Forthcoming 2008, Liberal Cults, Suicide Bombers, and other Theological Dilemmas

A universalist liberal ideology has been re-asserted. It is not only neo-con hawks or Blairite opportunists that now legitimise wars for democracy. Alarmingly, it is a generation of political thinkers who opposed the Nixonian logic of war (wars to show that a country can ‘credibly’ fight a war to protect its interests1), and those humbled by the anticolonial struggles of liberation from previous incarnations of European superiority that are renewing spurious civilizational discourses. This ‘muscular liberalism’ has found its voice at the moment of a global political debate about the legality and effectiveness of ‘just wars’ – so called ‘wars for democracy’ or ‘humanitarian war’. The new political alignment of the liberal left emerged in the context of discussions about the ‘use of force’ irrespective of UN Security Council endorsement or the sovereign state’s territorial integrity, such as in Kosovo – but gained rapid momentum in response to attacks in New York City and Washington on September 11, 2001. Parts of the liberal left have now aligned themselves with neoconservative foreign policies, and have joined what they believe is a new anti-totalitarian global struggle – the ‘war on terror’ or the battle against Islamist fundamentalism. One task of this essay, then, is to identify this new formation of the liberal left. Much horror and suffering has been unleashed on the world in the name of the liberal society which must endure. However, when suicide bombing and state-terror are compared, the retort is that there is no moral equivalence between the two. Talal Asad in his evocative book, On Suicide Bombing, has probed the horror that is felt about suicide bombing in contrast to state violence and terror.2 What affective associations are formed in the reaction to suicide bombing? What does horror about suicide bombing tell us about the constitution of inter-subjective relations? In this essay I begin to probe these questions about the relation between death, subjectivity, and politics. I want to excavate below the surface oppositions of good deaths and bad, justifiable killing and barbarism, which have been so central to left liberal arguments. As so much is riding on the difference between ‘our good war’ and ‘their cult of death’, it seems apt to examine and undo the opposition. The muscular liberal left projects itself as embodying the values of the ‘West’, a geo-political convergence that is regularly opposed to the ‘East’, ‘Muslims’, or the ‘Islamic World’. I undo this opposition, arguing that thanatopolitics, a convergence of death, sacrifice, martyrdom and politics, is common to left liberal and Islamist political formations. How does death become political for left liberals and Islamist suicide bombers? In the case of the latter, what is most immediately apparent is how little is known about the politics and politicization of suicide bombers. Suicide bombers are represented as a near perfect contrast to the free, autonomous, self-legislating liberal subject – a person overdetermined by her backward culture, oppressive setting, and yet also empty of content, and whose death can have no temporal political purchase. The ‘suicide bomber’ tends to be treated by the liberal left as a trans-historical ‘figure’, usually represented as the ‘Islamo-fascist’ or the ‘irrational’ Muslim.3 The causes of suicide bombing are often implicitly placed on Islam itself – a religion that is represented as devoid of ‘scepticism, doubt, or rebellion’ and thus seen as a favourable setting for totalitarianism.4 The account of the suicide bomber as neo-fascist assassin supplements a lack – that is, that the association of suicide bombing with Islam explains very little. The suicide bomber is thus made completely familiar as totalitarian fascist, or wholly other as “[a] completely new kind of enemy, one for whom death is not death”.5 So much that is written about the suicide bomber glosses over the unknown with political subjectivities, figures, and paradigms (such as fascism) which are familiar enough to be vociferously opposed. By drawing the suicide bomber into a familiar moral register of ‘evil’, political and historical relations between victim and perpetrator are erased.6 In the place of ethnographically informed research the ‘theorist’ or ‘public intellectual’ erases the contingency of the suicide bomber and reduces her death to pure annihilation, or nothingness. The discussion concludes by undoing the notion of the ‘West’, the very ground that the liberal left assert they stand for. The ‘West’ is no longer a viable representation of a geo-political convergence, if it ever was. Liberal discourse has regarded itself as the projection of the ‘West’ and its enlightenment. But this ignores important continuities between Islam, Christianity, and contemporary secular formations. The current ‘clash of monotheisms’, I argue after J-L Nancy, reveals a crisis of sense, authority, and meaning which is inherent to the monotheistic form. An increasingly globalised world is made up of political communities and juridical orders that have been ‘emptied’ of authority and certainty. This crisis of sense conditions the horror felt by the supposedly rational liberal in the face of Islamist terrorism. Horror at terrorism is then the affective bond that sustains a grouping that otherwise suffers the loss of a political project with a definite end. The general objective of this essay is to challenge the unexamined assumptions about politics and death that circulate in liberal left denunciations of Islamic fascism. The horror and fascination with the figure of the suicide bomber reveals an unacknowledged affective bond that constitutes the muscular liberal left as a political formation. This relies on disavowing the sacrificial and theological underpinnings of political liberalism itself – and ignores the continuities between what is called the ‘West’ and the theologico-political enterprise of monotheism. Monotheism is not the preserve of something called the ‘West’, but rather an enterprise that is common to all three Religions of the Book. The article concludes by describing how the writings of Jean-Luc Nancy on monotheism offer liberal left thinkers insights for rethinking the crisis of value that resulted from the collapse of grand emancipatory enterprises as well as the fragmentation of politics resulting from a focus on political identification through difference. I opened with a reference to the ‘liberal left’. Of course the ‘liberal left’ signifies a vast and varied range of political thinking and activism – so I must clarify how I am deploying this term. In this essay the terms ‘liberal left’ or ‘muscular liberal’ are used interchangeably. Paul Berman and Nick Cohen, whose writing I will shortly refer to, are exemplars of the new political alignment who self-identify as ‘democrats and progressives’, but whose writings feature bellicose assertions about the superiority of western models of democracy, and universal human rights.7 Among this liberal left, democracy and freedom become hemispheric and come to stand for the West. More generally, now, the ‘liberal left’ can be distinguished from political movements and thinkers who draw inspiration from a Marxist tradition of thought with a socialist horizon. The liberal left I am referring to would view the Marxist tradition as undervaluing democratic freedoms and human rights. Left liberals also tend to dismiss the so called post-Marxist turn in European continental philosophy as ‘postmodern relativism’.8 PostMarxists confronted the problem of the ‘collective’ – addressing the problem of masses and classes as the universal category or agent of historical transformation. This was a necessary correction to all the disasters visited on the masses in the name of a universal working class. The liberal state exploited these divisions on the left. It is true that a left fragmented through identity politics or the politics of difference were reduced to group based claims on the state. However, liberal multiculturalism was critiqued by anti-racist and feminist thinkers as early as the 1970s for ignoring the structural problems of class or as yet another nation-building device. The new formation of the muscular liberal left have only just discovered the defects of multiculturalism. The dismissal of liberal multiculturalism is now code for ‘too much tolerance’ of ‘all that difference’. The liberal left, or muscular liberal, as I use these terms, should not be conflated with the way ‘liberal’ is generally used in North America to denote ‘progressive’, ‘pro-choice’, open to a multiplicity of forms of sexual expression, generally ‘tolerant’, or ‘left wing’ (meaning socialist). It might be objected that it is not the liberal left, but ‘right wing crazies’ driven by Christian evangelical zeal combined with neo-liberal economic strategies that have usurped a post-9/11 crime and security agenda to mount a global hegemonic enterprise in the name of a ‘war on terror’. It might also be said that this is nothing new – global expansionist enterprises such as 18th and 19th century colonialism mobilised religion, science, and theories of economic development to secure resources and justify extreme violence where necessary. Global domination, it might be argued, has always been a thanatopolitical enterprise. So what’s different now? What is crucial, now, is that the entire spectrum of liberalism, including the ‘rational centre’, is engaged in the kind of mindset whereby a destructive and deadly war is justified in the name of protecting or establishing democracy, the rule of law, and human rights. It might then be retorted that this ‘rational centre’ of liberalism have ‘always’ been oriented in this way. That is partly true, but it is worth recalling that the liberal left I have in mind is the generation that came of age with opposition to the war in Vietnam, other Indo-Chinese conflagrations, and the undoing of empire. This is a left that observed the Cold War conducted through various ‘hot wars’ in Africa, Central and Latin America, and South East Asia and thus at least hoped to build a ‘new world order’ of international law and multilateralism. This is a left that was resolved, by the 1970s, not to repeat the error of blindly following a scientific discourse that promised to produce a utopia – whether this was ‘actually existing socialism’ or the purity of ‘blood and soil’. But now, a deadly politics, a thanatopolitics, is drawn out of a liberal horror and struggle against a monolithically drawn enemy called Islamic fundamentalism. What is new is that Islam has replaced communism/fascism as the new ‘peril’ against which the full spectrum of liberalism is mobilized. Islamist terrorism and suicide bombers, a clash between an apparently Islamic ‘cult of death’ versus modern secular rationality has come to be a central preoccupation of the liberal left. In the process, as Talal Asad has eloquently pointed out, horror about terrorism has come to be revealed as one way in which liberal subjectivity and its relation to political community can be interrogated and understood.9 Moreover, the potential for liberal principles to be deployed in the service of legitimating a doctrine of pre-emption as the ‘new internationalism’ is significant. The first and second Gulf Wars, according to the liberal left, are then not wars to secure control over the supply of oil, or regional and global hegemony, as others on the left might argue, but anti-fascist, anti-totalitarian wars of liberation fought in the name of ‘democracy’. Backing ‘progressive wars’ for ‘freedom and democracy’, those who self-identify as a left which is reasserting liberal democratic principles start by asking questions such as: “Are western freedoms only for westerners?”.10 In the process, freedom becomes ‘western’, and its enemy an amorphous legion behind an unidentifiable line between ‘west’ and the rest (the ‘Muslim world’). The ‘war for democracy’ waged against ‘Islamist terrorism’ and Muslim fundamentalism is the crucible on which the new alignment of the liberal left is forged.

#### The alt is to reject the aff in favor of building a culture of resilience

Vermeule and Posner 11 Adrian Vermeule, prof of Law at Harvard University Law School, Eric A Posner., prof of Law at the University of Chicago Law School, *Executive Unbound: After the Madisonian Republic*, Oxford University Press 2011

We do not yet live under a plebiscitary presidency. In such a system, the president has unchecked legal powers except for the obligation to submit to periodic elections. In our system, Congress retains the formal power to make law. It has subjected presidential lawmaking to complex procedures and bureaucratic checks,1 and it has created independent agencies over which the president in theory has limited control. The fed­eral courts can expect the executive to submit to their orders, and the Supreme Court retains certain quasi-lawmaking powers, which it exercises by striking down statutes and blocking executive actions. The federal system is still in place. State legal institutions retain considerable power over their populations. But these legal checks on executive authority (aside from the electoral constraint) have eroded considerably over the last two hundred years. Congress has delegated extensive powers to the executive. For new initia­tives, the executive leads and Congress follows. Congress can certainly slow down policymaking, and block bills proposed by the executive; but it cannot set the agenda. It is hard to quantify the extent of congressional control over regulatory agencies, but it is fair to say that congressional intervention is episodic and limited, while presidential control over both the executive and independent agencies is strong and growing stronger. The states increasingly exercise authority at the sufferance of the national government and hence the president. The federal courts have not tried to stop the erosion of congressional power and state power. Some commentators argue that the federal courts have taken over Con­gress’s role as an institutional check. It is true that the Supreme Court has shown little compunction about striking down statutes (although usually state statutes), and that it rejected some of the legal theories that the Bush administration used to justify its counterterrorism policies. However, the Court remains a marginal player. The Court ducked any legal rulings on counterterror policies until the 2004 Hamdi decision, and even after the Boumediene decision in 2008, no detainee has been released by final judicial order, from Guantanamo or elsewhere, except in cases where the government chose not to appeal the order of a district judge. The vast majority of detainees have received merely another round of legal process. Some speculate that judicial threats to release detainees have caused the administration to release them preemptively. Yet the judges would incur large political costs for actual orders to release suspected terrorists, and the government knows this, so it is unclear that the government sees the judi­cial threats as credible or takes them very seriously. The government, of course, has many administrative and political reasons to release detainees, quite apart from anything the courts do. So the executive submits to judi­cial orders in part because the courts are careful not to give orders that the executive will resist. In general, judicial opposition to the Bush administration’s counterter­rorism policies took the form of incremental rulings handed down at a gla­cial pace, none of which actually stopped any of the major counterterrorism tactics of that administration, including the application of military power against Al Qaeda, the indefinite detention of members of Al Qaeda, tar­geted assassinations, the immigration sweeps, even coercive interrogation. The (limited) modifications of those tactics that have occurred resulted not from legal interventions but from policy adjustments driven by changed circumstances and public opinion, and by electoral victory of the Obama administration. However, the Obama administration has mostly confirmed and in some areas even expanded the counterterrorism policies of the Bush administration. Strong executive government is bipartisan. The 9/11 attack provided a reminder of just how extensive the presi­dent’s power is. The executive claimed the constitutional authority to, in effect, use emergency powers. Because Congress provided redundant stat­utory authority, and the Supreme Court has steadfastly refused to address the ultimate merits of the executives constitutional claims, these claims were never tested in a legal or public forum. But it is worth trying to ima­gine what would have happened if Congress had refused to pass the Autho­rization for Use of Military Force and the Supreme Court had ordered the executive to release detainees in a contested case. We think that the execu­tive, backed up as it was by popular opinion, would have refused to obey. And, indeed, for just that reason, Congress would, never have refused its imprimatur and the Supreme Court would never have stood in the execu­tive’s way. The major check on the executives power to declare an emer­gency and to use emergency powers is—political. The financial crisis of 2008-2009 also revealed the extent of executive power. Acting together, the Fed, the Treasury, and other executive agencies spent hundreds of billions of dollars, virtually nationalizing parts of the financial system. Congress put up a fuss, but it could not make policy and indeed hardly even influenced policy. Congress initially refused to supply a blank check, then in world-record time changed its mind and gave the blank check, then watched helplessly as the administration adopted pol­icies different from those for which it said the legislation would be needed. Courts played no role in the crisis except to ratify executive actions in tension with the law.2 What, then, prevents the executive from declaring spurious emergencies and using the occasion to consolidate its power—or for that matter, consolidating its power during real emergencies so that it retains that power even after normal times return? In many countries, notably in Latin America, presidents have done just that. Citing an economic crisis, or a military threat, or congressional gridlock, executives have shut down independent media, replaced judges with their cronies, suppressed political opposition, and ruled by dictate. Could this happen in the United States? The answer is, very probably, no. The political check on the executive is real. Declarations of emergency not justified by publicly visible events would be met with skepticism. Actions said, to be justified by emergency would not be approved if the justification were not plausible. Separation of powers may be suffering through an enfeebled old age, but electoral democracy is alive and well. We have suggested that the historical developments that have under­mined separation of powers have strengthened democracy. Consider, for example, the communications revolution, which has culminated (so far) in the Internet Age. As communication costs decrease, the size of markets expand, and hence the scale of regulatory activity must increase. Localities and states lose their ability to regulate markets, and the national govern­ment takes over. Meanwhile, reduced communication costs increase the relative value of administration (monitoring firms and ordering them to change their behavior) and reduce the relative value of legislation (issuing broad-gauged rules), favoring the executive over Congress. At the same time, reduced communication costs make it easier for the public to mon­itor the executive. Today, whistleblowers can easily find an audience on the Internet,; people can put together groups that focus on a tiny aspect of the government s behavior; gigabytes of government data are uploaded onto the Internet and downloaded by researchers who can subject them to rigorous statistical analysis. It need not have worked out this way. Govern­ments can also use technology to monitor citizens for the purpose of suppressing political opposition. But this has not, so far, happened in the United States. Nixon fell in part because his monitoring of political enemies caused an overwhelming political backlash, and although the Bush administration monitored suspected terrorists, no reputable critic suggested that it targeted domestic political opponents. Our main argument has been methodological and programmatic: researchers should no longer view American political life through the Madisonian prism, while normative theorists should cease bemoaning the decline of Madisonianism and instead make their peace with the new political order. The center of gravity has shifted to the executive, which both makes policy and administers it, subject to weak constraints imposed by Congress, the judiciary, and the states. It is pointless to bewail these developments, and futile to argue that Madisonian structures should be reinvigorated. Instead, attention should shift to the political constraints on the president and the institutions through, which those political con­straints operate—chief among them elections, parties, bureaucracy, and the media. As long as the public informs itself and maintains a skeptical attitude toward the motivations of government officials, the executive can operate effectively only by proving over and over that it deserves the public s trust. The irony of the new political order is that the executive, freed from the bonds of law, inspires more distrust than in the past, and thus must enter ad hoc partnerships with political rivals in order to persuade people that it means well. But the new system is more fluid, allowing the executive to form those partnerships when they are needed to advance its goals, and not otherwise. Certain types of partnership have become recurrent pat­terns—for example, inviting a member of the opposite party to join the president’s cabinet. Others are likely in the future. In the place of the clockwork mechanism bequeathed to us by the Enlightenment thinking of the founders, there has emerged a more organic system of power sharing and power constraint that depends on shifting political alliances, currents of public opinion, and the particular exigencies that demand government action. It might seem that such a system requires more attention from the public than can reasonably be expected, but the old system of checks and balances always depended on public opinion as well. The centuries-old British parliamentary system, which operated in. just this way, should provide reason, for optimism. The British record on executive abuses, although hardly perfect, is no worse than the American record and arguably better, despite the lack of a Madisonian separation of legislative and executive powers

### Threats

#### Congressional oversight means more secrecy

Greenwald 12THURSDAY, JUN 7, 2012 03:05 AM PDT Probing Obama’s secrecy games Will high-level Obama officials who leak for political gain be punished on equal terms with actual whistleblowers? BY GLENN GREENWALD

What all of this reflects is the wildly excessive, anti-democratic secrecy behind which the U.S. Government operates, and the solution in the face of this growing controversy ought to be serious attempts to increase transparency and dilute the wall of secrecy. But that’s highly unlikely to happen. When people like Dianne Feinstein, Carl Levin and John McCain start digging their hands into these controversies, they reflexively do the opposite: they are devoted to always-increasing levels of government secrecy. For Security State servants like these, secrecy is the currency on which their power, influence and self-importance depends: the more government actions which they know about but which are concealed from the citizenry, the more influential and unaccountable they are. So as is usually true when bipartisan groups of self-important Senators gather in common cause, they’re certain to make the core problem worse. In response to the genuine problem of selective leak-punishment by the Executive Branch, they will not try to increase transparency but will do the opposite: attempt to plug leaks, punish whistleblowers, and fortify U.S. Government secrecy powers even beyond where they are now.

#### The executive will give the Congress the finger – secrecy, media and lying

Branfman 13 Fred, Director of Project Air War, interviewed the first Lao refugees brought down to Vientiane from the Plain of Jars in northern Laos, visited U.S. airbases in Thailand and South Vietnam, talking with U.S. Embassy officials, Alternet, 6-9

Whatever his personal beliefs prior to becoming President Mr. Obama, as the Executive's titular leader, has necessarily signed up to support the secrecy, lying, and disinformation it employs to enjoy maximum flexibility from democratic oversight in order to pursue its policies of overt and covert violence. Two important new books - Jeremy Scahill's Dirty Wars and Mark Mazzetti's The Way of the Knife - describe how, in near-total secrecy, the U.S. Executive is a world of its own. Over the last 12 years, Executive officials have unilaterally and secretly launched, escalated or deescalated wars; installed and supported massively corrupt governments, savage warlords, or local paramilitary forces, and overthrown leaders that have displeased it; created the first unit of global American assassins and fleets of machines waging automated war; engaged in vicious turf wars for more money and budget; spied on Americans including the media and activists on a scale unmatched in U.S. history; compiled 3 different sets of global "kill lists" independently operated by the White House, CIA and Pentagon/JSOC; used police-state tactics while claiming to support democracy, e.g. when it fed retina scans, facial recognition features and fingerprints of over 3 million Iraqi and Afghani males into a giant data base; incarcerated and tortured, either directly or indirectly, tens of thousands of people without evidence or trial; and much more. All of these major activities are conducted entirely by the Executive Branch, without meaningful Congressional oversight or the knowledge of the American people. The foundational principle of the U.S. Constitution is that governments can only rule with the "informed consent" of the people. But the U.S. Executive Branch has not only robbed its people of this fundamental right. It has prosecuted those courageous whistleblowers who have tried to inform them. The U.S. mass media, dependent upon the Executive for their information and careers, and run by corporate interests benefiting from Executive largesse, predominately convey Executive Branch perspectives on an hourly basis to the American people. Even on the relatively few occasions when they publish information the Executive wishes to keep secret, it has little impact on Executive policies while maintaining the illusion that the U.S. has a "free press". The U.S. Executive is essentially free to conduct its activities as it wishes. In future articles in this space we will explore three key features of the U.S. Executive Branch: (1) Evil - If evil consists of murdering, maiming, and making homeless the innocent, and/or waging the “aggressive war” judged the “supreme international crime” at Nuremberg, the U.S. Executive Branch is today clearly the world’s most evil institution. It has killed, wounded or made refugees of an officially-estimated 21 million people in Iraq and Indochina alone, far more than any other institution since the time of Stalin and Mao. President Obama is the first U.S. President to acknowledge, in his recent "counterterrorism" speech, that this number has included killing "hundreds of thousands" of civilians in Vietnam whom it officially claimed it was trying to protect. Former Secretary of Defense Robert McNamara put the total number of Vietnamese killed at 3.4 million. [38] (2) Lawlessness - If illegality consists of refusing to obey the law, the Executive is clearly the most lawless institution in the world. It routinely violates even timid legislative attempts to control its unilateral war-making. And no nation on earth has signed fewer international laws, and so failed to observe even those it has signed. These include measures like those intended to clean up the tens of millions of landmines and cluster bombs [39] with which it has littered the world, refused to clean up, and which continue to murder and maim tens of thousands of innocent people until today. (3) Authoritarianism - And if "authoritarianism" consists of a governing body acting unilaterally, regularly deceiving its own citizenry, neutering its legislature ,and prosecuting those who expose its lies, the U.S. Executive is clearly the most undemocratic institution in America. Indeed its deceiving its own people - keeping its activities secret and then lying about and covering them up when caught - throws its very legitimacy into question.

#### The executive can easily manipulate Congressional oversight

Beutler 13 Brian, senior congressional reporter for Talking Points, TPM, 6-19, http://tpmdc.talkingpointsmemo.com/2013/06/snowden-revelations-cast-new-doubts-on-intelligence-oversight-process.php

“We’ve learned from the past that there’s a right way and a wrong way to give Congress the information we need to make decisions about our laws and policies, but I think we’re still a work in progress when it comes to the level of transparency needed for meaningful exchange about ongoing activities,” Sen. Jay Rockefeller (D-WV), who sits on and used to chair the Senate Intelligence Committee, told TPM last Thursday. “The Bush Administration launched programs without any legal authority at all and then would show just the Intelligence Committee chairs and vice chairs a few perfunctory flip-charts - which we weren’t allowed to discuss even with each other — just so they could later claim ‘Congress was briefed.’ That created a deep distrust, and for me some skepticism lingers. It took years of wrangling with the intelligence community to open briefings up to more Senators, and there is still a lot of resistance to sharing information more broadly and with the public. But the process works far better today than in the past. The FISA law we passed requires multiple regular reports from the agencies, so if we see irregularities or areas of concern, we can pursue those.” It’s unusual for a member of the committee — even one who’s skeptical of the intelligence community’s most controversial practices — to critique the oversight process, even mildly. But reports and briefings are only as accurate and thorough as briefers are forthright and comprehensive — a variable that has hampered oversight efforts for years, according to members, aides and former aides who spoke with TPM. Likewise the sometimes arbitrary and legally dubious restrictions on what senior congressional aides with top-secret clearance are given access to, and what and to whom elected officials are allowed to tell even each other, can hobble the legislative branch’s efforts to understand what our spy agencies are really up to, let alone fulfill the government’s statutory obligation to fully and currently inform the Congress. Like all people with security clearances, members of the House and Senate intelligence committees are briefed about classified information in SCIFs — Sensitive Compartmented Information Facilities. On Capitol Hill, they’re “vaults,” tucked away underground and closed to the press. According to multiple sources briefings are much more informal than typical oversight hearings, and quite often, because the information under discussion isn’t typically blockbuster in nature, the only people who show up are the committee chairs and vice chairs. What transpires in these facilities — who briefs, how candid they are, how technical their information is, etc. — determines whether members and their cleared staffers obtain accurate understandings of U.S. intelligence programs. That epistemological problem introduces a high degree of uncertainty at the outset of the oversight process, and compounds other problems, such as the fact that committee members only hear from self-interested actors, can’t discuss what they’ve heard with outside experts or colleagues, and can’t affect changes in law without buy-in from the committee chairs at the very least. “Sometimes these briefings are a game of 20 questions,” former Rep. Jane Harman (D-CA), who used to chair the House Permanent Select Committee on Intelligence, told Reuters. “If you don’t ask exactly the right question, you don’t get the answer.” On all issues, across Congress, members rely on staff for subject-area knowledge. Between politicking and fundraising and traveling, it’s unrealistic to expect that every member has mastered all of the nuances of the issues their committees address. But most issues don’t require top-secret clearance. And here, members of the committee run into problems. First, their lawyers or aides with clearance aren’t typically techies, and their aides with technical expertise don’t typically have clearance. So there’s a skills mismatch. Imagine a scientific paper undergoing peer review by law professors. The problem gets even bigger when staff is denied access, and manifests in different ways depending on whether or not the member serves on the committee or not. Senior aides to members of the intel committees have access to a great deal of the intelligence community’s operations — including, in theory, the sorts of collection programs revealed by Edward Snowden. But the executive branch can pressure Congress to exclude these aides, and because the executive branch controls the information, Congress often accedes. They do as a matter of course when the so-called Gang of Eight (the committee chairs and vice chairs, House and Senate Minority Leaders, House Speaker and Senate Majority) are briefed on covert actions.

#### The executive will arbitrarily define words, they don’t care

Pollack, 13 -- MSU Guggenheim Fellow and professor of history emeritus [Norman, "Drones, Israel, and the Eclipse of Democracy," Counterpunch, 2-5-13, www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/, accessed 9-1-13, mss]

Bisharat first addresses the transmogrification of international law by Israel’s military lawyers. We might call this damage control, were it not more serious. When the Palestinians first sought to join the I.C.C., and then, to receive the UN’s conferral of nonmember status on them, Israel raised fierce opposition. Why? He writes: “Israel’s frantic opposition to the elevation of Palestine’s status at the United Nations was motivated precisely by the fear that it would soon lead to I.C.C. jurisdiction over Palestinian claims of war crimes. Israeli leaders are unnerved for good reason. The I.C.C. could prosecute major international crimes committed on Palestinian soil anytime after the court’s founding on July 1, 2002.” In response to the threat, we see the deliberate reshaping of the law: Since 2000, “the Israel Defense Forces, guided by its military lawyers, have attempted to remake the laws of war by consciously violating them and then creating new legal concepts to provide juridical cover for their misdeeds.” (Italics, mine) In other words, habituate the law to the existence of atrocities; in the US‘s case, targeted assassination, repeated often enough, seems permissible, indeed clever and wise, as pressure is steadily applied to the laws of war. Even then, “collateral damage” is seen as unintentional, regrettable, but hardly prosecutable, and in the current atmosphere of complicity and desensitization, never a war crime. (Obama is hardly a novice atthis game of stretching the law to suit the convenience of, shall we say, the national interest? In order to ensure the distortion in counting civilian casualties, which would bring the number down, as Brennan with a straight face claimed, was “zero,” the Big Lie if ever there was one, placing him in distinguished European company, Obama redefined the meaning of “combatant” status to be any male of military age throughout the area (which we) declared a combat zone, which noticeably led to a higher incidence of sadism, because it allowed for “second strikes” on funerals—the assumption that anyone attending must be a terrorist—and first responders, those who went to the aid of the wounded and dying, themselves also certainly terrorists because of their rescue attempts.) These guys play hardball, perhaps no more than in using—by report—the proverbial baseball cards to designate who would be next on the kill list. But funerals and first responders—verified by accredited witnesses–seems overly much, and not a murmur from an adoring public.

#### 1- Doesn’t de-legitimize nuclear weapons- potential for reversal

Harold A. Feiveson, co-director, the Program on Science and Global Security; and Ernst Jan Hogendoorn, Ph.D. student at the Woodrow Wilson School – 2003

No first use of nuclear weapons',The Nonproliferation Review,10:2,90 — 98

Opponents of a strong no-first-use declaration by the United States generally rely on three arguments. The first is that the United States may need nuclear weapons to respond to chemical and biological weapon attacks by rogue countries. This argument mistakenly conflates nuclear weapons with these other weapons of mass destruction, and in fact gives too much status to these "poor man's nuclear weapons." The second argument is that a no-first-use commitment can never be verified. While it is true that such a commitment is inherently uncertain, this uncertainty *supports* a no-first-use commitment, in that the country undertaking such a commitment will plan not to use nuclear weapons first, but other countries will never be quite sure that their potential adversary will never use nuclear weapons—and so nuclear use remains an existential deterrent regardless of declaratory policy. A third argument—that even if the United States would never actually use nuclear weapons, it is worthwhile to keep potential adversaries uncertain—is similarly flawed. Potential adversaries will always be uncertain. More important is to remove uncertainty from U.S. military commanders, who must never go into battle thinking they can rely on the use of nuclear weapons.

#### 2- NFU not credible- plan won’t alter force structure

Miller ‘2

(Steven E.-, Nov. 15, Pugwash Meeting, “The Utility of Nuclear Weapons and the Strategy of No-First-Use”, # 279, [www.pugwash.org/reports/nw/miller.htm](http://www.pugwash.org/reports/nw/miller.htm); Jacob)

The idea of no-first-use (NFU) of nuclear weapons has been rejected by some nuclear weapons states and accepted only at the declaratory level by most if not all of the others. But what would it mean for a state to genuinely adopt NFU? What must it do in order for NFU to become something more than a rhetorical stance easily disregarded not only by other parties, but by the leaders and military organizations of the state itself? To give NFU genuine meaning, states must be prepared to alter both the purposes for which nuclear weapons are deployed and the manner in which forces are deployed. In what follows, I will sketch both what must be abandoned and what must be altered if NFU is to have true operational meaning. This inventory reveals, however, that most nuclear-armed states are quite wedded to using nuclear weapons for a multiplicity of purposes incompatible with NFU. … author continues

CAPABILITIES ABANDONED: MAKING NO FIRST USE REAL

If NFU is to be more than a declaratory policy, then it must be meaningfully reflected in the war planning and force postures of the nuclear powers. Because the possibility of first use inheres in the possession of a nuclear arsenal, it is not easy to create a posture that effectively displays genuine fidelity to the NFU pledge. Because it is easy to proclaim NFU as a declaratory policy, little weight has been given in the past to the NFU pledges made by various nuclear powers. It seems safe to say, for example, that the United States and its NATO allies gave no credence whatsoever to the NFU commitment made by the Soviet Union.

What must nuclear-armed states do if they wish to genuinely adopt a strategy of no-first-use? How might they make this a credible and reassuring step? How could they configure their forces so as to reflect a real NFU policy? In the context of anything like present nuclear forces, it is not clear that there is a wholly convincing answer to these questions - or at least, an answer that would be wholly convincing to a suspicious adversary. But an implication of NFU is that the present force postures must be left far behind. Then, as a general matter, the answer must be that a real NFU policy would have to ripple through the entire military posture and preparations of the nuclear-armed state. And the end result would need to be a doctrine that does not rely on first use and a nuclear force posture that has little or no capacity to be used first.

War planning. NFU cannot be real if militaries develop war plans that include, or even depend upon, the expectation of first-use of nuclear weapons. It has long been a commonplace to note the gap that often exists in nuclear powers between declaratory policy and operation policy. The Soviet Union's NFU pledge, for example, coexisted with war plans for a European war that called for substantial use of nuclear weapons from the outset of hostilities.25 A genuine strategy of no-first use would need to be reflected in operational war plans. These would have to assume an entirely non-nuclear character and to extirpate all scenarios in which recourse is made to the first use of nuclear weapons.

Eradicating the idea that nuclear first use is an option would have enormous implications. It would alter the expectations of politicians and commanders. It would (or should) influence military investment decisions - more conventional capability may be necessary, for example.26 It could affect public articulations of defense policy and military doctrine. In the Soviet period, Moscow's NFU pledge was undermined by a profusion of military writings that emphasized nuclear preemption and warfighting and otherwise were in tension with NFU. But a genuine NFU strategy would need to harmonize doctrinal expositions and political explanations of defense policy with the constraints of the NFU commitment. Changes in public rhetoric alone will not be sufficient to convince the world that a NFU strategy is firmly in place. But they could help send the message that NFU was being taken seriously. NATO presently proclaims at every occasion that nuclear weapons are essential and that nuclear first-use is an integral component of alliance military strategy. If NATO instead were to proclaim that nuclear weapons are irrelevant to most of the alliance's security needs and that it could not envision circumstances in which it would use nuclear weapons first, this would certainly set a very different tone.

War planning, of course, is not a public activity, though it has public outcroppings. So though this is a necessary step if NFU is to be real, it must be coupled with other, more visible steps, if others are to be convinced that NFU is more than declaratory policy.

Exercises and training. Militaries, goes the old aphorism, fight the way they train. Military organizations are honed through years training and exercises to operate in certain ways with certain expectations. If exercises sometimes or routinely involve scenarios that include nuclear first use, this will be visible to observers of the exercises and will be have impact on the way the military thinks and behaves. NFU cannot be real if militaries are practicing as if nuclear weapons will be used first. In the context of a strategy of NFU, exercises should ingrain the idea that first-use is entirely out of the picture and should not figure at all in the calculations of military commanders.

Force Composition and Disposition. A strategy of NFU would require or permit dramatic alterations in force posture. A purely deterrent force could be much smaller and simpler than the present arsenals of the larger nuclear powers. There would be no need for emphasis on speed or offensive readiness. (Readiness for survivability would, of course, remain desirable.) The force postures most compatible with NFU, and most convincing to other powers, would possess little or no capability for first-use.

This proposition - that states should seek to minimize the first-use capacities of their nuclear arsenals - has potentially profound implications for nuclear posture. It could lead far down a road toward latent, residual, undeployed nuclear capabilities. In effect, this would entail the aggressive pursuit of deep dealerting.27 In the context of a strategy of NFU, nuclear forces need only survive an attack and be capable of retaliation. No other demands are placed upon them. This means that all readiness measures associated with first use options are superfluous, unnecessary, and even undesirable. Some categories of nuclear weapons - nonstrategic nuclear forces, for example - would become expendable. Forward deployed weapons, such as the American nuclear capabilities deployed in Europe, would be neither necessary nor appropriate. With offensive readiness no longer important, there would be no reason to leave warheads routinely mated to delivery systems. There might be little reason, indeed, to possess actively deployed nuclear weapons. There might be no compelling reason to leave nuclear weapons in the custody of military organizations. So long as survivability could be assured, there might be an argument for keeping few, if any, fully assembled nuclear weapons in the arsenal. Following this logic still further, in this sort of nuclear environment, states might grow comfortable not only with NFU, but with the notion of no-early-second-use - retaliation does not need to be prompt in order to deter. The end point of this logic might be something like the capacities of present day Japan, which might be regarded as a massively dealerted nuclear power. It possesses nuclear expertise, delivery systems, and fissile material. In some weeks or months it could build nuclear weapons for retaliation if it needed to. But no one fears its first use options. Thus, the premise of NFU, if taken seriously, produces a logic that can lead in stunning directions.

### Prolif

#### Can’t solve proliferation

#### A – Conventional weapons

Martin et al – Policy Analysis Program Officer, Stanley Foundation – ‘9

Matt, A New Look at No First Use, http://www.stanleyfoundation.org/resources.cfm?id=334

Many participants emphasized the realist’s perspective that, despite our attempts to reduce the salience of nuclear weapons, many countries do not see nuclear weapons as a tool to “ensure that nuclear weapons are never used,” but rather as an essential guarantee of their security against conventional attack. For example, a US NFU doctrine will have no effect on Israel’s nuclear strategy. Likewise, Russia sees its nuclear weapons as a way to offset the erosion of its conventional military strength. This applies to states like North Korea and Iranas well. Their nuclear programs are, in large part, a response to US conventional military might, so a change in US nuclear doctrine is unlikely to affect their own nuclear decisions.

#### C – It’s not reverse causal

Martin et al – Policy Analysis Program Officer, Stanley Foundation – ‘9

Matt, A New Look at No First Use, http://www.stanleyfoundation.org/resources.cfm?id=334

That said, conference participants were divided as to how, and how much, a NFU doctrine would affect nuclear-weapons-use norms and the nuclear weapons calculus of other states. The link between US declaratory policy and the strategic decisions of other nations is not always so clear. Iran, North Korea, and other countries have often protested US nuclear policy, citing these “nuclear threats” as a justification for their own arms programs. But conference participants generally agreed that Iran’s nuclear program is more likely a response to current US conventional superiority, and before now to Iraq’s nuclear program in the Saddam Hussein years. Indeed, the North Korean, Indian, and Pakistani nuclear weapons programs all accelerated during the 1990s, when the United States was moving to delegitimize nuclear weapons. Nevertheless, adopting NFU would at the very least deprive other states of one argument for their arsenals.

#### Nuclear threats solve prolif

Charles Glaser, Professor and Deputy Dean, Graduate School of Public Policy Studies at the University of Chicago, and Steve Fetter, Professor and Dean of the School of Public Policy University of Maryland – ‘5

Counterforce Revisited, International Security, Vol. 30, No. 2 (Fall 2005), pp. 84–126

There are also considerations that cut in the opposite direction. U.S. threats to use nuclear weapons against nuclear targets could decrease a state’s incentives to acquire nuclear weapons by making explicit that possessing them puts it on the U.S. nuclear target list. Moreover, if nuclear threats increase the adversary’s assessment that the United States would use nuclear weapons to destroy its nuclear capability, then **these** threats could reduce the value of acquiring nuclear weaponsin the first place**,** by lowering the expectation that they would be available for deterrence**.6**1 These considerations by themselves are unlikely to convince a state to forgo nuclear weapons, but they push in that direction.

### China

#### 1- China has no desire or incentive to counter U.S. nuclear counterforce threats

Long Research Rand ‘8

(Austin-, Deterrence: From Cold War to Long War: Lessons from Six Decades of RAND Research, http://www.dtic .mil/cgi-bin/GetTRDoc?AD=ADA489540&Location=U2&doc=GetTRDoc.pdf; Jacob)

Lieber and Press found this U.S. nuclear primacy troubling, as it may mean that Russia and China will take risks that may make accidental war more likely. It may also mean that the United States will be more likely to run risks in confrontations with these states, secure in the knowledge that it once again possesses nearly splendid counterforce. The interaction of these dynamics may make crises extraordinarily dangerous in the future, possibly leading to a nuclear war that neither side truly intends (Lieber and Press, 2006a, pp. 31–33).

While Lieber and Press’s worries cannot be dismissed out of hand, they appear to be overstated. The United States, even when resting extended deterrence almost entirely on nuclear weapons, was always extremely circumspect about even obliquely threatening their use; this was no less the case during the 1950s when it still retained a nearmonopoly on long-range nuclear weapons.6 In addition, at present and for the near term, U.S. conventional capabilities greatly reduce the need to rely on nuclear weapons for extended deterrence relative to the 1950s. Further, Russia and China do not appear panicked by the current state of affairs. China has never sought to build an incredibly robust deterrent; U.S. forces have always had a counterforce capability against Chinese forces.7 While there are signs that China’s force modernization may make this force less vulnerable, there has never been any sign of Chinese desperation about U.S. counterforce. Russia, while slowly modernizing its forces, also appears to be relatively unconcerned.

This relative lack of concern by both of these near-peer competitors is understandable, as they have not sought to extend deterrence to others in the same way that the United States has. Russian and Chinese nuclear forces exist almost exclusively to provide basic deterrence, which is inherently credible in intent. Given this highly credible intent to “trade Moscow or Beijing for Washington,” even a relatively small capability is very effective. What U.S. president would undertake an operation with even a 5 percent chance of resulting in the destruction of one or two major U.S. cities in any but the direst circumstances? A similar rationale underpinned the French and British nuclear-force structure in the Cold War; the survival of even a handful of nuclear weapons would give even the most hardened Soviet pause in launching a first strike. Here, the fear aspect of deterrence is clearly critical; even small uncertainties about relative gains from a first strike can deter in all but the bleakest scenarios involving highly credible threats (see Kahn, 1961, pp. 126–144; Jervis, 1984, p. 175, n. 47; and Kahneman and Tversky, 1979).

At the same time, neither Russia nor China has an incentive to launch first in most circumstances. The submarine portion of the U.S. deterrent alone is enough to inflict a devastating countervalue attack on either country even if its first strike succeeded in totally destroying both land-based legs of the nuclear triad. Given that neither Russia nor China is likely to be able to disarm a large portion of the land components of the triad in the foreseeable future, both have that much less incentive to fire first. Only in circumstances in which crises escalated to the point at which China or Russia felt that its basic deterrence was being undermined would this seem likely. This argues for limits on certain military options in crisis or confrontation, examples of which will be given in the scenario in the next section.

#### 2- Fear of U.S. doesn’t drive modernization

#### A. India

Roberts Vicechairman U.S. Council for Security Cooperation in the Asia Pacific ‘9

(Brad-, Prof. GW, Special Advisor @ U.S. STRATCOM Strategic Advisory Group, April, Beyond the Strait: PLA Missions other than Taiwan, Ed. Roy Kamphausen, David Lai, Andrew Scobell, “Chapter 6: Strategic Deterrence Beyond Taiwan”, <http://www.strategic>studiesinstitute.army.mil/pubs/display.cfm?PubID=910; Jacob)

China, then, has a mutual deterrent relationship with India. China’s experts attest that China is assured by India’s no first use commitment. But the modernization of China’s medium- and intermediate-range missile systems is improving the force it fields against India and the recent increases in road-mobile deployment sites noted above raise a question about the size of the future force that China has deemed or might deem necessary to counter India’s rise. Of course, China has also helped build up a nuclear-armed Pakistan as a counterweight to India’s nuclear power and counterfocus of its nuclear planning.

Chinese perceptions of strategic stability in the Sino-Indian relationship apparently differ from Indian perceptions just in the way Chinese and Russian perceptions differ. As one influential Indian analyst has argued:

The Chinese leadership comes from the Maoist tradition which asserts that power flows from the barrel of a gun. While calling nuclear weapons paper tigers, it went all out to get them at great cost to their people. It talked about joining the disarmament process if the U.S. and Soviet Union brought down their arsenals to half their original levels and has gone back on it. It talks about no-first use but tests tactical nuclear weapons which are essentially first-use weapons.72

Some Indian experts are also concerned about the potentially limited application of China’s no-first-use principle.

Beijing, while insisting that its nuclear weapons are exclusively “defensive” in nature and focused only on deterring the possibility of nuclear coercion by other nuclear weapon states, has an added proviso that nuclear weapons have a role in preserving its sovereign territorial integrity, thereby extending their use in any military operation it may launch to wrest the territory it claims from India.73

#### China-US relations are strong and sustainable – both know they need each other in the long term

Sieff, 1-5-‘12 [Martin Sieff, Three Time Pulitzer Prize Winner for International Reporting, Chief Global Analyst at The Globalist, MA History @ Oxford, “United States determined to maintain partnership with China,” January 5th 2012, http://apdforum.com/en\_GB/article/rmiap/articles/online/features/2012/01/05/china-us-partnership]

The rhetoric of domestic politics in China and the United States has obscured a fundamental truth the two nations understand well: The prosperity and well-being of China and the United States remain bound to each other. United States President Barrack Obama and U.S. Secretary of State Hillary Clinton are committed to a constructive partnership with China. They are not seeking to increase tensions or create a potentially destabilizing new confrontational posture against Beijing. Their goal is to stabilize Sino-American relations and the general balance of power in the East Asia and the western Pacific. The United States has advocated comprehensive negotiations in the South China Sea. “We both have much more to gain from cooperation than from conflict,” Clinton said. Clinton laid out the United States strategy to peacefully build a new era of peaceful cooperation with China in a major address published on the Foreign Policy magazine website in October. “We both have much more to gain from cooperation than from conflict,” she wrote. “We make the case to our Chinese colleagues that a deep respect for international law and a more open political system would provide China with a foundation for far greater stability and growth—and increase the confidence of China’s partners,” Clinton continued. “Without them, China is placing unnecessary limitations on its own development.” Obama recognizes that the United States and China are deeply dependent on each other. Obama has taken no actions to try to curtail Chinese exports into the United States and he does not intend to do so. The United States remains by far the largest and most lucrative market for Chinese exports. China ran a $273 billion trade surplus with the United States in 2010. It is projected to be even higher this year. If the United States curtailed the volume of its imports from China, Beijing’s leaders know that could set off a devastating economic crisis for them at home. China also holds more than $1 trillion in U.S. Treasury securities. It could cause a disastrous fall of the dollar and trigger a devastating economic double-dip back into recession on the U.S. economy if it sold too many of them too quickly on world markets. China’s greatest concern about the U.S. financial and economic policy is not a desire to see America grow weaker. On the contrary, Chinese Prime Minister Wen Jiabao repeatedly warned senior figures in the George W. Bush and Obama administrations to reduce the government’s ballooning annual federal budget deficit to restore investor confidence. Chinese leaders openly expressed their skepticism that boosting government spending too rapidly will not create jobs, but will threaten fiscal stability and undermine business confidence. These arguments reflect the clear recognition by China’s leaders that the United States and China remain deeply dependent upon each other for the continued prosperity and success of both nations. Also, Obama has made it clear that the United States remains committed to maintaining international security and stability in East Asia and the Western Pacific. The United States has rejected arguments to try to contain China or make it the enemy for a new generation of so-called neo-Cold War containment policies. China’s rise in economic and diplomatic influence across South-East Asia and through sub-Saharan Africa has been a stabilizing force. Chinese diplomats and companies are happy to work with secure governments throughout these regions as long as they can deliver stability and good conditions for economic development and investment. It enjoys mature relations with democratic Malaysia and Indonesia, as well as with authoritarian governments in Africa. China also has a vested interest, as does the United States, in global as well as in U.S. financial and economic stability and security. China has used its massive financial resources and global business clout to support the threatened euro currency and signal its support for European governments mired in massive national debts such as Italy and France. Like the United States, China remains a status quo power in is economic policies. U.S. interests also require a continuing stable, strong and friendly China. The U.S. government needs China to remain confident that its vast investment in U.S. Treasuries remains secure. Washington wants China also to go on attracting major Foreign Direct Investment, especially from the United States in the rapidly growing information technology and related high-tech sectors. China and the United States also share a concern in maintaining the security and stability of Indonesia and the Malacca Strait, through which so much of the oil imports from the Middle East for China, South Korea and Japan all have to pass. Many reported areas of apparent conflict or disagreement between the United States and China are either far less than generally realized, or have naturally subsided. China’s massive investment in solar and other forms of renewable and sustainable power has blunted previous criticism by American environmentalists of China’s energy policies. In reality, the United States and China both want to move to sustainable power sources as rapidly as possible while both countries recognize their need to remain dependent on traditional fossil fuel sources for the foreseeable future. Both countries are investing on a massive scale in clean natural gas which has a far smaller carbon footprint than oil or coal. China’s massive investment in hundreds of next-generation safe nuclear civilian power reactors has also been widely welcomed by American environmentalists. And both countries want to keep the Middle East stable, global oil prices down and global energy supplies secure. Disagreements over specific statements on individual issues have to be seen in this broader context. The United States, China and the entire Asia-Pacific region have benefitted tremendously from the decades of partnership and mutually beneficial growth between the world’s two largest economies. Obama’s administration is determined that it will continue.

China-US Relations in 2012: Caution Ahead

#### No US-China war – goodwill exchange solves power transition conflict\*\*

Lai, Professor Asian Security Studies at Strategic Studies Institute, ’11 (David, December, “The United States and China in Power Transition”)

Deadly Contest for Change? Deadly contest has been the rule of power transition in the past. However, there are good reasons that this will not be the case for the U.S.-China power transition. First, China and the United States are both aware of the power transition and agree to take measures to manage this evolving process. The goodwill exchange, no matter how questionable at this point, is a step in the right direction. Second, following this goodwill exchange, the United States and China have established regular high-level communications. The George W. Bush administration and the Chinese government initiated high-level strategic and economic dialogues in 2005. In 5 years, the two sides held six strategic and five economic annual dialogues.11 In 2009, the Barack Obama administration and its Chinese counterpart combined the two separate meetings into one annual dialogue between the two governments. The First Round of U.S.-China Strategic and Economic Dialogue took place in July 2009. China sent a delegation of more than 150 ministerial-level officials, the largest ever, to Washington. In May 2010, Secretary of State Hillary Clinton and Treasury Secretary Timothy Geithner reciprocated with a 200-plus-member high-level official delegation, also the largest-ever U.S. official delegation, to Beijing.12 These unprecedented high-level dialogues turned out to be innovative measures for the two nations to address a broad range of controversial issues of mutual and global concerns. At the first round, for instance, the key agenda items were climate change, energy cooperation, global financial crisis, arms control, security for Chinese-held U.S. treasury bonds, Chinese currency exchange rate, international economic and financial system reform, and market access. At the second round meetings, the two sides discussed the overall, strategic, and long-term aspects of U.S.-China relations and reached agreements on 26 specific agendas such as energy, environment, science and technology, customs, health, and law enforcement cooperation.13 In addition to these high-level dialogues, China and the United States have also established more than 60 other regular “Track-II” dialogues at various levels and areas of mutual concern in the last 30 years, especially the last decade.14 There are also numerous informal dialogues and meetings between the two sides covering practically all areas of mutual concern. At this point, most of these dialogues are still at their “water-testing” stage. The two sides still hold strong suspicions against each other. Each side is protective of its vital interests. The dialogues are opportunities for the two sides to learn about the other side’s positions on the key issues. It will be a long time before the two sides can upgrade these dialogues to a higher level where the two can take each other as partners and take coordinated and cooperative action on important issues of the day. Nevertheless, as Chinese Premier Wen Jiabao puts, “dialogue is better than confrontation.”15 U.S. Secretary of State Clinton and Treasury Secretary Geithner echo the Chinese Premier with a little strategic touch on the U.S.-China relationship: “Simply put, few global problems can be solved by the United States or China alone. And few can be solved without the United States and China together.”16 These regular meetings will allow the two sides to “explain” their positions on controversial issues, if not to solve them. These deliberate efforts set the U.S.-China power transition apart from the past ones. In addition to these dialogues, China and the United States have also established “hot lines.” In February 2008, the two sides signed an agreement to establish direct phone lines between the Pentagon and Chinese Defense Ministry.17 In April 2008, Chinese Defense Minister Liang Guanglie and U.S. Defense Secretary Robert Gates made a 30-minute phone call.18 Third, the U.S. embracement of China as a responsible stakeholder opens the door for China to make changes to the existing international system from within, presumably through negotiation but not as a disgruntled revolutionary seeking destruction of this system from outside.19 Fourth, although China wants to change the existing international order, it does not have a sound alternative design to replace it. In recent years, China has put forward a “harmonious world” construct as a Chinese vision for a new international order. Yet as the analysis in the following pages shows, this harmonious world construct does not measure up to a workable design for a new world order. It will help to improve the existing international order and may “modify” U.S. international conduct, but its implementation does not require a war with the United States or the destruction of the U.S.-led international system. Finally, the power transition theory points out that “a wise challenger, growing in power through internal development, would wait to threaten the existing international order until it was as powerful as the dominant nation and its allies, for surely it would seem foolish to attack while weaker than the enemy.”20 A recent excellent analysis of the power transition theory reinforces this view by showing convincingly that the upstart, believing its development would eventually turn it into the “top dog” among the great powers, would try to avoid premature confrontation, even as it approaches parity, with the hegemon.21 It is more logical, and empirically evident, that the dominant power rather than the upstart is more likely to initiate a fight. This is clearly the case with China, whose leaders have sworn to use strategy rather than force to win the contest. In addition, as two well-established nuclear powers and extensively-connected economic growth engines, a calculated war between the United States and China is unthinkable (even Mearsheimer has to accept this). Thus, with the United States expected to uphold its military superiority well into the mid-century, the possibility of China using force to change the world (replacing the U.S. presence everywhere) is highly unlikely. Deadly contest for change is not an option for China. The risk of war between the United States and China will be more likely a miscalculated or unwanted fight over China’s unsettled problems in the Western Pacific (more discussion of this aspect in the following pages).

## 2NC

### 2NC K

#### All of our solvency arguments are *net offense*---legalism creates the façade that the executive is being constrained while allowing the government to do as it pleases under the guise of constraint---this swells executive power and turns the case

Osborn 8 Timothy Kaufman is the Baker Ferguson Professor of Politics and Leadership at Whitman College; from 2002-06 as president of the American Civil Liberties of Washington; and he recently completed a term on the Executive Council of the American Political Science Association. Theory & Event > Volume 11, Issue 2

The examples cited in this section suggest not the formation of an utterly lawless regime, but, rather, within an order that continues to understand itself in terms of the categories provided by liberal contractarianism, the more insidious creation, multiplication, and institutionalization of what David Dyzenhaus calls "grey holes." Such holes are "spaces in which there are some legal constraints on executive action...but the constraints are so insubstantial that they pretty well permit government to do as it pleases."40 As such, they are more harmful to the rule of law than are outright dictatorial usurpations, first, because the provision of limited procedural protections masks the absence of any real constraint on executive power; and, second, because location of the authority to create such spaces within the Constitution implies that, in the last analysis, they bear ex ante authorization by the people. When created, in other words, they may receive but they do not require ratification, whether by Congress or by those whom its members are said to represent. What this means in effect is that the second Bush administration has dispensed with Jefferson's stipulation that extra-constitutional executive acts (or, rather, acts that Jefferson deemed to be outside those constitutionally permitted) require ex post facto ratification; and, in addition, that it has dispensed with Locke's contention that, however unlikely, at least in principle, specific exercises of extra-legal prerogative power (or, rather, acts that Locke deemed to be outside those legally permitted) are properly subject to revolutionary rejection. What one finds in the second Bush administration, then, is a denial of both models of accountability, combined with an aggressive commitment to the constitution of a security state that is liberal only in name. As it extends its reach, perfection of that state renders the prospect of popular repudiation of prerogative power ever more chimerical, and, indeed, renders recognition of the problematic character of its exercise ever less likely.

#### Their method is bad – (1) it’s rooted in tyrannaphobia (2) the state is hijacked by elites who control decision making and normalize an authoritarian state that wages war on populations – debate should focus on how cultural elements combat normalization of violence

Giroux 13 Henry A. is a social critic and educator, and the author of many books. He currently holds the Global Television Network Chair in English and Cultural Studies at McMaster University, Ontario, Monthly Review, Volume 65, Issue 01 (May)

In addition, as the state is hijacked by the financial-military-industrial complex, the “most crucial decisions regarding national policy are not made by representatives, but by the financial and military elites.”53 Such massive inequality and the suffering and political corruption it produces point to the need for critical analysis in which the separation of power and politics can be understood. This means developing terms that clarify how power becomes global even as politics continues to function largely at the national level, with the effect of reducing the state primarily to custodial, policing, and punishing functions—at least for those populations considered disposable. The state exercises its slavish role in the form of lowering taxes for the rich, deregulating corporations, funding wars for the benefit of the defense industries, and devising other welfare services for the ultra-rich. There is no escaping the global politics of finance capital and the global network of violence it has produced. Resistance must be mobilized globally and politics restored to a level where it can make a difference in fulfilling the promises of a global democracy. But such a challenge can only take place if the political is made more pedagogical and matters of education take center stage in the struggle for desires, subjectivities, and social relations that refuse the normalizing of violence as a source of gratification, entertainment, identity, and honor. War in its expanded incarnation works in tandem with a state organized around the production of widespread violence. Such a state is necessarily divorced from public values and the formative cultures that make a democracy possible. The result is a weakened civic culture that allows violence and punishment to circulate as part of a culture of commodification, entertainment, distraction, and exclusion. In opposing the emergence of the United States as both a warfare and a punishing state, I am not appealing to a form of left moralism meant simply to mobilize outrage and condemnation. These are not unimportant registers, but they do not constitute an adequate form of resistance .What is needed are modes of analysis that do the hard work of uncovering the effects of the merging of institutions of capital, wealth, and power, and how this merger has extended the reach of a military-industrial-carceral and academic complex, especially since the 1980s. This complex of ideological and institutional elements designed for the production of violence must be addressed by making visible its vast national and global interests and militarized networks, as indicated by the fact that the United States has over 1,000 military bases abroad.54 Equally important is the need to highlight how this military-industrial-carceral and academic complex uses punishment as a structuring force to shape national policy and everyday life. Challenging the warfare state also has an important educational component. C. Wright Mills was right in arguing that it is impossible to separate the violence of an authoritarian social order from the cultural apparatuses that nourish it. As Mills put it, the major cultural apparatuses not only “guide experience, they also expropriate the very chance to have an experience rightly called ‘our own.’”55 This narrowing of experience shorn of public values locks people into private interests and the hyper-individualized orbits in which they live. Experience itself is now privatized, instrumentalized, commodified, and increasingly militarized. Social responsibility gives way to organized infantilization and a flight from responsibility. Crucial here is the need to develop new cultural and political vocabularies that can foster an engaged mode of citizenship capable of naming the corporate and academic interests that support the warfare state and its apparatuses of violence, while simultaneously mobilizing social movements to challenge and dismantle its vast networks of power. One central pedagogical and political task in dismantling the warfare state is, therefore, the challenge of creating the cultural conditions and public spheres that would enable the U.S. public to move from being spectators of war and everyday violence to being informed and engaged citizens.Unfortunately, major cultural apparatuses like public and higher education, which have been historically responsible for educating the public, are becoming little more than market-driven and militarized knowledge factories. In this particularly insidious role, educational institutions deprive students of the capacities that would enable them not only to assume public responsibilities, but also to actively participate in the process of governing. Without the public spheres for creating a formative culture equipped to challenge the educational, military, market, and religious fundamentalisms that dominate U.S. society, it will be virtually impossible to resist the normalization of war as a matter of domestic and foreign policy. Any viable notion of resistance to the current authoritarian order must also address the issue of what it means pedagogically to imagine a more democratically oriented notion of knowledge, subjectivity, and agency and what it might mean to bring such notions into the public sphere. This is more than what Bernard Harcourt calls “a new grammar of political disobedience.”56 It is a reconfiguring of the nature and substance of the political so that matters of pedagogy become central to the very definition of what constitutes the political and the practices that make it meaningful. Critical understanding motivates transformative action, and the affective investments it demands can only be brought about by breaking into the hardwired forms of common sense that give war and state-supported violence their legitimacy. War does not have to be a permanent social relation, nor the primary organizing principle of everyday life, society, and foreign policy. The war of all-against-all and the social Darwinian imperative to respond positively only to one’s own self-interest represent the death of politics, civic responsibility, and ethics, and set the stage for a dysfunctional democracy, if not an emergent authoritarianism. The existing neoliberal social order produces individuals who have no commitment, except to profit, disdain social responsibility, and loosen all ties to any viable notion of the public good. This regime of punishment and privatization is organized around the structuring forces of violence and militarization, which produce a surplus of fear, insecurity, and a weakened culture of civic engagement—one in which there is little room for reasoned debate, critical dialogue, and informed intellectual exchange. Patricia Clough and Craig Willse are right in arguing that we live in a society “in which the production and circulation of death functions as political and economic recovery.”57 The United States understood as a warfare state prompts a new urgency for a collective politics and a social movement capable of negating the current regimes of political and economic power, while imagining a different and more democratic social order. Until the ideological and structural foundations of violence that are pushing U.S. society over the abyss are addressed, the current warfare state will be transformed into a full-blown authoritarian state that will shut down any vestige of democratic values, social relations, and public spheres. At the very least, the U.S. public owes it to its children and future generations, if not the future of democracy itself, to make visible and dismantle this machinery of violence while also reclaiming the spirit of a future that works for life rather than death—the future of the current authoritarianism, however dressed up they appear in the spectacles of consumerism and celebrity culture. It is time for educators, unions, young people, liberals, religious organizations, and other groups to connect the dots, educate themselves, and develop powerful social movements that can restructure the fundamental values and social relations of democracy while establishing the institutions and formative cultures that make it possible. Stanley Aronowitz is right in arguing that: the system survives on the eclipse of the radical imagination, the absence of a viable political opposition with roots in the general population, and the conformity of its intellectuals who, to a large extent, are subjugated by their secure berths in the academy [and though] we can take some solace in 2011, the year of the protester…it would be premature to predict that decades of retreat, defeat and silence can be reversed overnight without a commitment to what may be termed “a long march” through the institutions, the workplaces and the streets of the capitalist metropoles.58 The current protests among young people, workers, the unemployed, students, and others are making clear that this is not—indeed, cannot be—only a short-term project for reform, but must constitute a political and social movement of sustained growth, accompanied by the reclaiming of public spaces, the progressive use of digital technologies, the development of democratic public spheres, new modes of education, and the safeguarding of places where democratic expression, new identities, and collective hope can be nurtured and mobilized. Without broad political and social movements standing behind and uniting the call on the part of young people for democratic transformations, any attempt at radical change will more than likely be cosmetic.

#### Legalism is epistemologically flawed and violent.

Dossa ‘99 Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

Law's imperial reach, it massive authority, in liberal politics is a **brute**, recurring **fact**. In Law's Empire, Dworkin attests to its scope and power with candour: "We live in and by the law. It makes us what we are" (vii). But he fails to appreciate that law equally traduces others, it systematically unmakes them. For Dworkin, a militant liberal legalist, law is the insiders' domain: legal argument has to be understood internally from the "judge's point of view"; sociological or historical readings are irrelevant and "perverse".2 Praising the decencies of liberal law is necessary in this world: rule of law, judicial integrity, fairness, justice are integral facets of tolerable human life. Lawfulness is and ought to be part of any decent regime of politics. But law's rhetoric on its own behalf systematically scants law's violent, dark underside, it skillfully masks law's commerce with destruction and death**.** None of this is visible from the internalist standpoint, and Dworkin's liberal apologia serves to mystify the gross reality of law's empire. In liberal political science, law's presumed, Olympian impartiality, is thus not a contested notion. Liberals still presuppose as a matter of course the juristic community's impartiality and neutrality, despite empirical evidence to the contrary.3 One consequence of the assumed sanctity of the judicial torso within the body politic, has been that law's genealogy, law's chronological disposition towards political and cultural questions, have simply not been of interest or concern to most liberal scholars. A further result of this attitude is the political science community's nearly total ignorance of liberal law's complicity in western imperialism, and in shaping western attitudes to the lands and cultures of the conquered natives. Liberal jurisprudence's subterranean life, its invidious consciousness is, however, not an archaic, intermittent annoyance as sensitive liberals are inclined to think: indeed law is as potent now as it has been in last two centuries in articulating a dismissive image of the native Other.

#### Sequencing DA – alt has to come first or movements get sapped

Nagin 5 Tomiko Brown, Visiting Associate Professor, University of Virginia School of Law, “ELITES, SOCIAL MOVEMENTS, AND THE LAW: THE CASE OF AFFIRMATIVE ACTION,” Columbia Law Review, 105 Colum. L. Rev. 1436

Those seeking to have an impact on the political and legal orders should not root a mass movement in the courts;instead, affirmative litigation about constitutional rights should be anchored upon and preceded by a mass movement.Efforts to achieve fundamental change shouldbegin with the target constituency and be waged initially outside of the confines of institutionalized politics.Law should be understood as a tactic in an ongoing political struggle, where the struggle is the main event and favorable legal outcomes are its byproducts. There is a crucially important temporal component to this view. Legal claims can be tactically useful in a political strategy for achieving change - butonly after social movements lay the groundworkfor legal change. Social movements must first create political pressure that frames issues in a favorable manner, creates cultural norm shifts, and affects public opinion; these norm shifts then increase the likelihood that courts will reach outcomes favored by lawyers. [437](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n437) Again, my claims find support in the history of the mid-twentieth-century civil rights movement. This narrative posits an intimate relationship between the sociopolitical dynamics within black client communities and the success (or failure) of civil rights lawyers' litigation campaigns for rights. The postwar civil rights movement confirms that the moral suasion of participatory democratic groups of nonlawyers, and typically nonelites, was integral to law's movement from a Jim Crow regime to a [\*1523] constitutional order in which formal equality was the norm. During the past three decades, historians who have analyzed social change have discovered that small groups of inexpert individuals can be the leading edge of a social movement, especially when they work in coalition with those who traditionally wield influence in society. [438](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n438)Through their commitment to a social cause, ordinary people with no insider knowledge of the technical aspects of the broad issue on which they are mobilizing can create circumstances in which those with actual power (political, economic, and, ultimately, legal power) are persuaded to act in their favor.

#### Aff gets lost in the details of specifics like \_\_\_\_\_ policy which ignores broader systemic criticism and normalizes war on terror

Saas, 12 \*\*William O. Pf Department of Communication Arts and Sciences at the Pennsylvania State University. symploke > Volume 20, Numbers 1-2

How might one critique this massive network of violence that has become so enmeshed in our contemporary geo-socio-political reality? Is there any hope for reversing the expansion of executive violence in the current political climate, in which the President enjoys minimal resistance to his most egregious uses of violence? How does exceptional violence become routine? Answers to these broad and difficult questions, derived as they are from the disorientingly vast and hyper-accelerated retrenchment of our current political situation, are best won through the broad strokes of what Slavoj Žižek calls "systemic" critique. For Žižek, looking squarely at interpersonal or subjective violences (e.g., torture, drone strikes), drawn as we may be by their gruesome and immediate appeal, distorts the critic's broader field of vision. For a fuller picture, one must pull one's critical focus back several steps to reveal the deep, objective structures that undergird the spectacular manifestations of everyday, subjective violence (Žižek 2008, 1-2). Immediately, however, one confronts the limit question of Žižek's mandate: how does one productively draw the boundaries of a system without too severely dampening the force of objective critique? For practical purposes, this essay leaves off discussion of neoliberal economic domination, vital as it may be to a full accounting for the U.S.' latest and most desperate expressions of state solvency.

### 2NC CP Prerequisite

#### Counterplan is a prerequisite – key to effective legislative and judicial oversight

Metzger ‘9, Gillian E. Metzger, Professor of Law @ Columbia Law School, “The Interdependent Relationship Between Internal and External Separation of Powers” 59 Emory L.J. 423, Emory Law Journal, 2009

Equally important, the relationship between internal and external separation of powers is reciprocal: Internal and external checks reinforce and operate in conjunction with one another. Congress needs information to conduct meaningful oversight of the Executive Branch. 94 Internal agency experts and watchdogs are important sources of that information, whether in the guise of [\*445] formal reports, studies, and testimony or informal conversations and leaks. 95 Procedural constraints within agencies can serve a similar function, alerting Congress to agency activities. 96 Internal mechanisms also reinforce congressional mandates by creating bodies of personnel within the Executive Branch who are committed to enforcing the governing statutory regime that sets out the parameters of their authority and regulatory responsibilities - and on whose expertise the functioning of these regulatory regimes often depends. 97 Courts equally depend on information and evidence compiled by agency personnel to review agency actions, and they have invoked this dependence to justify the requirement that agencies disclose underlying information and offer detailed explanations of their decisions. 98 Moreover, despite courts regularly intoning that "it [is] not the function of the court to probe the mental processes of Secretaries in reaching [their] conclusions," 99 judicial review of agency actions often appears to turn on judges' perceptions of the role politics played in decisionmaking by agency officials. 100 Evidence that decisions were made over the objections of career staff and agency professionals often triggers more rigorous review. 101 A particularly striking [\*446] suggestion of how internal checks can effect judicial review came in the recent Boumediene litigation. Just a few months after refusing to grant certiorari in order to allow the Combatant Status Review Tribunal process to proceed, the Court reversed course and granted review, apparently influenced by the concerns of military lawyers about how the tribunals were functioning. 102

### 2NC CP Politics NB

#### Counterplan doesn’t link to politics – external checks inherently take an adversarial form, but internal checks gain executive credibility and face less resistance – that’s Metzger

#### Executive action avoids politics

Sovacool 9 Dr. Benjamin K. Sovacool 2009 is a Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization., Kelly E. Sovacool is a Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of SingaporeArticle: Preventing National Electricity-Water Crisis Areas in the United States, Columbia Journal of Environmental Law 2009 34 Colum. J. Envtl. L. 333,

¶ Executive Orders also save time in a second sense. The President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal. Executive Orders thus save ¶ ¶ presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horsetrading and compromise such legislative activity entails.¶ ¶ 292¶ ¶ Speediness of implementation can be especially important when challenges require rapid and decisive action. After the September ¶ ¶ 11, 2001 attacks on the Pentagon and World Trade Center, for ¶ ¶ instance, the Bush Administration almost immediately passed ¶ ¶ Executive Orders forcing airlines to reinforce cockpit doors and ¶ ¶ freezing the U.S. based assets of individuals and organizations ¶ ¶ involved with terrorist groups.¶ ¶ 293¶ ¶ These actions took Congress ¶ ¶ nearly four months to debate and subsequently endorse with ¶ ¶ legislation. Executive Orders therefore enable presidents to ¶ ¶ rapidly change law without having to wait for congressional action ¶ ¶ or agency regulatory rulemaking.

### 2NC CP A2 Credibility

#### Counterplan solves US credibility and soft power

Margulies 8 Peter, Professor of Law, Roger Williams University School of Law, Maryland Law Review, 68 Md. L. Rev. 1

This model rests on two elements: transparency and tailoring. Transparency calls for dialog between the branches, within the executive branch, and with the public, to develop a sense of stake and optimize the quality of decisions. Tailoring, like the equitable tailoring that courts do to take into account the interests of parties and the [\*68] public interest, 307 requires that the lawyer seek to accommodate both the rationale and content of proposed executive action within the constitutional scheme of overlapping authority among the branches. The role conception that drives the dialogic equipoise model stems not only from the logic of the separation of powers but also from the lawyer's function in representing collective entities and the historical function of the Attorney General. Under the Model Rules, lawyers representing collective entities such as corporations must act in the best interests of the organization. 308 On significant occasions, such as when a person, like a CEO, that the lawyer would ordinarily look to for direction on the organization's behalf acts against the entity's interests, the lawyer has an obligation to uphold those interests. This institutional obligation reduces the agency costs that flow from the self-dealing or myopia of particular managers, and promotes continuity within the organization. 309 The sense of institutional obligation within the dialogic equipoise model also echoes the background understanding that existed at the founding of the function of the Attorney General, derived from English law. 310 A minimum of objectivity was part and parcel of this understanding. 311 Edmund Randolph, the first Attorney General of the United States, set the tone with opinions on the establishment of the Bank of the United States that were measured, taking into account the most cogent arguments for and against the proposal. 312 Because the model seeks to reduce the agency costs of executive overreaching, it also preserves the long-term perspective that emergencies can sometimes obscure. Transparency can help prevent the loss of executive power and credibility that can follow in the wake of executive overreaching. Transparency also preserves the legitimacy and international reputation of the United States by displaying the executive's confidence that it can rally others to its cause and respond [\*69] to their concerns. This is what the drafters of the Declaration of Independence had in mind when they claimed "a decent Respect [for] the Opinions of Mankind." 313 Maintaining reputation allows the United States to exercise "soft power" 314 that will often be more effective than brute force. 315 In this fashion, a dialogic equipoise model enhances long-term stability and aids in refining current policies. Moreover, transparency does not necessarily frustrate timely action, including the use of force when that is necessary. In the Cuban Missile Crisis, for example, the Administration engaged in a wide and vigorous internal debate and subsequently consulted with foreign capitals and international organizations. 316 The destroyer deal between the United States and Britain featured a robust internal debate. Most recently, dialog with Congress and the United Nations preceded the decision by the United States to intervene militarily in Afghanistan after September 11. Government attorneys should urge dialog and advise the President of the adverse consequences attending a lack of transparency. Just as dialog yields results that preserve American leverage, tailoring an executive response will have similar benefits. Courts use tailoring to ensure that extraordinary remedies such as injunctions serve the public interest and respect the rights of the parties.

### 2NC CP A2 Precedent

#### Legal norms fail and are not unique to congress – the WPR proves. Executive compliance with international norms SETS A LEGAL PRECEDENT

Twomey 13, Trinity College Dublin, (Laura, Setting a Global Precedent: President Obama's Codification of Drone Warfare, Cambridge Journal of International and Comparative Law, 14 March 2013, http://www.cjicl.org.uk/index.php/cjicl-blog/setting-a-global-precedent-president-obamas-codification-of-drone-warfare, da 7-31-13) PC

It is clear that, as the first State to deploy remote targeting technology in a non international armed conflict, the legal framework forged by the US during President Obama's second term will set significant precedent for the future practice of the estimated 40 States developing their own drone technology. On 7 March 2013, members of the European Parliament expressed deep concern about the “unwelcome precedent” the programme sets, citing its “destabilising effect on the international legal framework” that “destroys ... our common legal heritage.” This 'destabilising effect' arises from the classified and seemingly amorphous substantive legal basis for the programme and the apparent lack of procedural standards in place. It remains to be seen if the classified 'rulebook' will be released for public scrutiny, and allay these concerns. Reliance on international law in world order is based on consent, consensus, good faith and, crucially in this instance, reciprocity. The US programme may harbour short term gains in the pursuit of al-Qaeda operatives, however, if the aforementioned substantive legal justifications continue to be invoked, it risks engendering long term disadvantages. Pursuing this policy encourages other States to adopt similar policies. Administration officials have cited particular concern about setting precedent for Russia, Iran and China, all of which are developing their own remote targeting technology. It is therefore suggested that the Administration should take this opportunity to codify the rules, clarify terms where ambiguity may currently allow for broader interpretations, and to bring its regulations in line with the existing framework of international law. This legal framework should then be made available to the public, with covert operational necessities redacted. This could set a valuable legal precedent, of particular importance at this turning point wherein international law must adapt to the 21st century model of warfare, a model which lacks a clear enemy and a demarcated battlefield.

### China Adv

#### No India/Pakistan escalation- crises will be resolved through negotiations

Alagappa 9, Distinguished Senior Fellow at the East-West Center, PhD in International Affairs from the Fletcher School of Law and Diplomacy, 2009 (Muthiah, “Nuclear Weapons Reinforce Security and Stability in 21st Century Asia”, Vol 4 No 1)

The stabilizing effect of nuclear weapons may be better illustrated in India-Pakistan relations, as the crises between these two countries during the 1999–2002 period are often cited as demonstrating nuclear weapon-induced instability. Rather than simply attribute these crises to the possession of nuclear weapons, a more accurate and useful reading would ground them in Pakistan’s deliberate policy to alter the status quo through military means on the premise that the risk of escalation to nuclear war would deter India from responding with full-scale conventional retaliation; and in India’s response, employing compellence and coercive diplomacy strategies. In other words, particular goals and strategies rather than nuclear weapons per se precipitated the crises. Further, the outcomes of these two crises revealed the limited utility of nuclear weapons in bringing about even a minor change in the territorial status quo and highlighted the grave risks associated with offensive strategies. Recognition of these limits and the grave consequences in part contributed to the two countries’ subsequent efforts to engage in a comprehensive dialogue to settle the many disputes between them. The crises also led to bilateral understandings and measures to avoid unintended hostilities. Though it is too soon to take a long view, it is possible to argue that, like the Cuban missile crisis in 1962, the 1999 and 2001–02 crises between India and Pakistan mark a watershed in their strategic relations: the danger of nuclear war shifted their focus to avoiding a major war and to finding a negotiated settlement to bilateral problems. Large-scale military deployments along the common border, Pakistan-supported insurgent activities in India, and cross-border terrorism continue; and the two countries regularly conduct large-scale military exercises and test nuclear-capable missiles that have each other’s entire territory within range. Despite these activities, the situation has become relatively less tense; stability with the ability to absorb shocks even like that created by the November 26terrorist attack in Mumbai has begun to characterize the bilateral relationship.

## 1NR

### Circumvention Card

#### Plan will be circumvented – Committee will take too long to decide – or if it’s fast they’ll just rubber stamp the president when he asks for launch

Kistiakowsky – Former VP, NAS and Chemistry, Princeton – ‘76

GB, Are several decision-makers better than one? Bulletin of the Atomic Scientists Mar 1976 Google Books

I am convinced that the long-term consequences of our present policy are so grim that a "no-first-use" agreement—coupled with certain measures to agreed-upon disengagement of nuclear and conventional forces, as in Europe—should be entered into. However, would the proposal of the FAS Council be a significant move in this direction? I seriously doubt so for the following reasons. If our country is unfortunate enough to elect a President who turns out to be trigger-happy, the requirement of Congressional approval will be circumvented**—**as has been its sole Constitutional authority to declare all wars. Moreover, the proposed restraint, if in force, might make an adversary more likely to gamble and, thus, it might create the pretext and justification for a rash Presidential act. But let's assume that our voters will be wise enough not to put into office such a candidate and that our future Presidents will abide by the letter of the resolution. In case of emergency the proposal calls for securing approval of some Congressional committee chairmen (tor example. Armed Services and Foreign Relations) as well as of the majority and minority leaders. But put yourself into the place of the opposition party members, who are traditionally not informed about the details of foreign policy except in some ex post-facto briefings. It seems rather unrealistic to assume that the appearance on the books of the proposed requirement would change these rather basic traditions, and lead to key members of the opposition party being fully informed on a continuing and current basis about what goes on and why the Administration acts as it does in the arena of foreign policy. Not having this prior knowledge, how could the Congressional leaders make what might become the most fatal political decision of all times without a thorough investigation to the situation as presented to them and without an exploration of the alternatives? These absolutely essential preliminaries to a considered decision would take time measured in days, if not weeks, hardly filling an emergency situation. But would you want them to act hastily? The way the foreign Relations Committee did in 1975 when they endorsed the assault on Cambodia that President Ford authorized upon the capture of the freighter Mayaguez? What did this endorsement accomplish besides eliminating the opportunity for a highly justified Congressional enquiry into the affair?.

### Politics Overview

#### Economic collapse turns Chinese relations and war

Mead 9(Walter Russell, Henry A. Kissinger Senior Fellow in U.S. Foreign Policy – Council on Foreign Relations, “Only Makes You Stronger”, The New Republic, 2-4, http://www.tnr.com/politics/story.html?id=571cbbb9-2887-4d81-8542-92e83915f5f8&p=2)

The greatest danger both to U.S.-China relations and to American power itself is probably not that China will rise too far, too fast; it is that the current crisis might end China's growth miracle. In the worst-case scenario, the turmoil in the international economy will plunge China into a major economic downturn. The Chinese financial system will implode as loans to both state and private enterprises go bad. Millions or even tens of millions of Chinese will be unemployed in a country without an effective social safety net. The collapse of asset bubbles in the stock and property markets will wipe out the savings of a generation of the Chinese middle class. The political consequences could include dangerous unrest--and a bitter climate of anti-foreign feeling that blames others for China's woes. (Think of Weimar Germany, when both Nazi and communist politicians blamed the West for Germany's economic travails.) Worse, instability could lead to a vicious cycle, as nervous investors moved their money out of the country, further slowing growth and, in turn, fomenting ever-greater bitterness. Thanks to a generation of rapid economic growth, China has so far been able to manage the stresses and conflicts of modernization and change; nobody knows what will happen if the growth stops. India's future is also a question. Support for global integration is a fairly recent development in India, and many serious Indians remain skeptical of it. While India's 60-year-old democratic system has resisted many shocks, a deep economic recession in a country where mass poverty and even hunger are still major concerns could undermine political order, long-term growth, and India's attitude toward the United States and global economic integration. The violent Naxalite insurrection plaguing a significant swath of the country could get worse; religious extremism among both Hindus and Muslims could further polarize Indian politics; and India's economic miracle could be nipped in the bud. If current market turmoil seriously damaged the performance and prospects of India and China, the current crisis could join the Great Depression in the list of economic events that changed history, even if the recessions in the West are relatively short and mild. The United States should stand ready to assist Chinese and Indian financial authorities on an emergency basis--and work very hard to help both countries escape or at least weather any economic downturn. It may test the political will of the Obama administration, but the United States must avoid a protectionist response to the economic slowdown. U.S. moves to limit market access for Chinese and Indian producers could poison relations for years. For billions of people in nuclear-armed countries to emerge from this crisis believing either that the United States was indifferent to their well-being or that it had profited from their distress could damage U.S. foreign policy far more severely than any mistake made by George W. Bush. It's not just the great powers whose trajectories have been affected by the crash. Lesser powers like Saudi Arabia and Iran also face new constraints. The crisis has strengthened the U.S. position in the Middle East as falling oil prices reduce Iranian influence and increase the dependence of the oil sheikdoms on U.S. protection. Success in Iraq--however late, however undeserved, however limited--had already improved the Obama administration's prospects for addressing regional crises. Now, the collapse in oil prices has put the Iranian regime on the defensive. The annual inflation rate rose above 29 percent last September, up from about 17 percent in 2007, according to Iran's Bank Markazi. Economists forecast that Iran's real GDP growth will drop markedly in the coming months as stagnating oil revenues and the continued global economic downturn force the government to rein in its expansionary fiscal policy. All this has weakened Ahmadinejad at home and Iran abroad. Iranian officials must balance the relative merits of support for allies like Hamas, Hezbollah, and Syria against domestic needs, while international sanctions and other diplomatic sticks have been made more painful and Western carrots (like trade opportunities) have become more attractive. Meanwhile, Saudi Arabia and other oil states have become more dependent on the United States for protection against Iran, and they have fewer resources to fund religious extremism as they use diminished oil revenues to support basic domestic spending and development goals. None of this makes the Middle East an easy target for U.S. diplomacy, but thanks in part to the economic crisis, the incoming administration has the chance to try some new ideas and to enter negotiations with Iran (and Syria) from a position of enhanced strength. Every crisis is different, but there seem to be reasons why, over time, financial crises on balance reinforce rather than undermine the world position of the leading capitalist countries. Since capitalism first emerged in early modern Europe, the ability to exploit the advantages of rapid economic development has been a key factor in international competition. Countries that can encourage--or at least allow and sustain--the change, dislocation, upheaval, and pain that capitalism often involves, while providing their tumultuous market societies with appropriate regulatory and legal frameworks, grow swiftly. They produce cutting-edge technologies that translate into military and economic power. They are able to invest in education, making their workforces ever more productive. They typically develop liberal political institutions and cultural norms that value, or at least tolerate, dissent and that allow people of different political and religious viewpoints to collaborate on a vast social project of modernization--and to maintain political stability in the face of accelerating social and economic change. The vast productive capacity of leading capitalist powers gives them the ability to project influence around the world and, to some degree, to remake the world to suit their own interests and preferences. This is what the United Kingdom and the United States have done in past centuries, and what other capitalist powers like France, Germany, and Japan have done to a lesser extent. In these countries, the social forces that support the idea of a competitive market economy within an appropriately liberal legal and political framework are relatively strong. But, in many other countries where capitalism rubs people the wrong way, this is not the case. On either side of the Atlantic, for example, the Latin world is often drawn to anti-capitalist movements and rulers on both the right and the left. Russia, too, has never really taken to capitalism and liberal society--whether during the time of the czars, the commissars, or the post-cold war leaders who so signally failed to build a stable, open system of liberal democratic capitalism even as many former Warsaw Pact nations were making rapid transitions. Partly as a result of these internal cultural pressures, and partly because, in much of the world, capitalism has appeared as an unwelcome interloper, imposed by foreign forces and shaped to fit foreign rather than domestic interests and preferences, many countries are only half-heartedly capitalist. When crisis strikes, they are quick to decide that capitalism is a failure and look for alternatives. So far, such half-hearted experiments not only have failed to work; they have left the societies that have tried them in a progressively worse position, farther behind the front-runners as time goes by. Argentina has lost ground to Chile; Russian development has fallen farther behind that of the Baltic states and Central Europe. Frequently, the crisis has weakened the power of the merchants, industrialists, financiers, and professionals who want to develop a liberal capitalist society integrated into the world. Crisis can also strengthen the hand of religious extremists, populist radicals, or authoritarian traditionalists who are determined to resist liberal capitalist society for a variety of reasons. Meanwhile, the companies and banks based in these societies are often less established and more vulnerable to the consequences of a financial crisis than more established firms in wealthier societies. As a result, developing countries and countries where capitalism has relatively recent and shallow roots tend to suffer greater economic and political damage when crisis strikes--as, inevitably, it does. And, consequently, financial crises often reinforce rather than challenge the global distribution of power and wealth. This may be happening yet again. None of which means that we can just sit back and enjoy the recession. History may suggest that financial crises actually help capitalist great powers maintain their leads--but it has other, less reassuring messages as well. If financial crises have been a normal part of life during the 300-year rise of the liberal capitalist system under the Anglophone powers, so has war. The wars of the League of Augsburg and the Spanish Succession; the Seven Years War; the American Revolution; the Napoleonic Wars; the two World Wars; the cold war: The list of wars is almost as long as the list of financial crises. Bad economic times can breed wars. Europe was a pretty peaceful place in 1928, but the Depression poisoned German public opinion and helped bring Adolf Hitler to power. If the current crisis turns into a depression, what rough beasts might start slouching toward Moscow, Karachi, Beijing, or New Delhi to be born? The United States may not, yet, decline, but, if we can't get the world economy back on track, we may still have to fight.

#### Economic decline spurs proliferation

Burrows and Windram 94 (William & Robert, Critical Mass, p. 491-492) LL

Economics is in many respects proliferation’s catalyst. As we have noted, economic desperation drives Russia and some of the former Warsaw Pact nations to peddle weapons and technology. The possibility of considerable profits or at least balanced international payments also prompts Third World countries like China, Brazil, and Israel to do the same. Economics, as well as such related issues as overpopulation, drive proliferation just as surely as do purely political motives. Unfortunately, that subject is beyond the scope of this book. Suffice it to say that, all things being equal, well-of, relatively secure societies like today’s Japan are less likely to buy or sell superweapon technology than those that are insecure, needy, or desperate. Ultimately, solving economic problems, especially as they are driven by population pressure, is the surest way to defuse proliferation and enhance true national security.

#### Expanding visas solves science diplomacy

Pickering and Agre 10- \*former under secretary of State from 1997 to 2000 and chairs the advisory council of the Civilian Research and Development Foundation, \*\* director of the Johns Hopkins Malaria Research Institute and president of the American Association for the Advancement of Science

Thomas and Peter, Baltimore Sun, “Leverage Science Diplomacy Now to Boost U.S. Foreign Policy,” Baltimore Sun, Lexis

In 1979, a science and technology agreement between the United States and China paved the way for bilateral scientific cooperation that continues to benefit American science and society more broadly.¶ Now, science diplomacy may help America open a door toward improved relations with Pyongyang, too. In December, six Americans representing leading scientific organizations sat down with their North Korean counterparts. The meeting took place on the heels of U.S. Special Envoy Stephen Bosworth's first official bilateral meeting with North Korea.¶ Science, an international enterprise that relies on a lively exchange of ideas and data, can help build trust and expand understanding when government-to-government contacts may be strained. The North Korea visit, plus the first-ever U.S. science envoys, represent a fine beginning to a new era of international research cooperation. But the White House, the State Department and Congress must do far more to bolster science diplomacy.¶ In particular, the U.S. government should quickly and significantly increase the number of H1-B visas being approved for specialized foreign workers such as doctors, scientists and engineers. Their contributions are critical to improving human welfare as well as our economy. Foreign scientists working or studying in U.S. universities also become informal goodwill ambassadors for America globally - an important benefit in the developing world, where senior scientists and engineers often enter national politics.¶ More broadly, we urgently need to expand and deepen links between the U.S. and foreign scientific communities to advance solutions to common challenges. Climate change, sustainable development, pandemic disease, malnutrition, protection for oceans and wildlife, national security and innovative energy technologies all demand solutions that draw on science and technology.¶ Fortunately, U.S. technological leadership is admired worldwide, suggesting a way to promote dialogue with countries where we otherwise lack access and leverage. A June 2004 Zogby International poll commissioned by the Arab American Institute found that only 11 percent of Moroccans surveyed had a favorable overall view of the United States - but 90 percent had a positive view of U.S. science and technology. Only 15 percent of Jordanians had a positive overall view, but 83 percent registered admiration for U.S. science and technology. Similarly, Pew polling data from 43 countries show that favorable views of U.S. science and technology exceed overall views of the United States by an average of 23 points.¶ The recent mission to North Korea exemplified the vast potential of science for U.S. diplomacy. Within the scientific community, after all, journals routinely publish articles co-written by scientists from different nations, and scholars convene frequent conferences to extend those ties. Science demands an intellectually honest atmosphere, peer review and a common language for professional discourse. Basic values of transparency, vigorous inquiry and respectful debate are all inherent to science. Nations that cooperate on science strengthen the same values that support peaceful conflict resolution and improved public safety. U.S. and Soviet nongovernmental organizations contributed to a thaw in the Cold War through scientific exchanges, with little government support other than travel visas.

#### Extinction

Fedoroff 8 **-** Science and Technology Adviser to the Secretary of State and the Administrator of USAID (Nina, Testimony Before the House Science Subcommittee on Research and Science Education, 4/2, <http://www.state.gov/g/oes/rls/rm/102996.htm>

Science by its nature facilitates diplomacy because it strengthens political relationships, embodies powerful ideals, and creates opportunities for all. The global scientific community embraces principles Americans cherish: transparency, meritocracy, accountability, the objective evaluation of evidence, and broad and frequently democratic participation. Science is inherently democratic, respecting evidence and truth above all.¶ Science is also a common global language, able to bridge deep political and religious divides. Scientists share a common language. Scientific interactions serve to keep open lines of communication and cultural understanding. As scientists everywhere have a common evidentiary external reference system, members of ideologically divergent societies can use the common language of science to cooperatively address both domestic and the increasingly trans-national and global problems confronting humanity in the 21st century. There is a growing recognition that science and technology will increasingly drive the successful economies of the 21st century.¶ Science and technology provide an immeasurable benefit to the U.S. by bringing scientists and students here, especially from developing countries, where they see democracy in action, make friends in the international scientific community, become familiar with American technology, and contribute to the U.S. and global economy. For example, in 2005, over 50% of physical science and engineering graduate students and postdoctoral researchers trained in the U.S. have been foreign nationals. Moreover, many foreign-born scientists who were educated and have worked in the U.S. eventually progress in their careers to hold influential positions in ministries and institutions both in this country and in their home countries. They also contribute to U.S. scientific and technologic development: According to the National Science Board’s 2008 Science and Engineering Indicators, 47% of full-time doctoral science and engineering faculty in U.S. research institutions were foreign-born.¶ Finally, some types of science – particularly those that address the grand challenges in science and technology – are inherently international in scope and collaborative by necessity. The ITER Project, an international fusion research and development collaboration, is a product of the thaw in superpower relations between Soviet President Mikhail Gorbachev and U.S. President Ronald Reagan. This reactor will harness the power of nuclear fusion as a possible new and viable energy source by bringing a star to earth. ITER serves as a symbol of international scientific cooperation among key scientific leaders in the developed and developing world – Japan, Korea, China, E.U., India, Russia, and United States – representing 70% of the world’s current population..¶ The recent elimination of funding for FY08 U.S. contributions to the ITER project comes at an inopportune time as the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project had entered into force only on October 2007. The elimination of the promised U.S. contribution drew our allies to question our commitment and credibility in international cooperative ventures. More problematically, it jeopardizes a platform for reaffirming U.S. relations with key states. It should be noted that even at the height of the cold war, the United States used science diplomacy as a means to maintain communications and avoid misunderstanding between the world’s two nuclear powers – the Soviet Union and the United States. In a complex multi-polar world, relations are more challenging, the threats perhaps greater, and the need for engagement more paramount.¶ *Using Science Diplomacy to Achieve National Security Objectives*¶ The welfare and stability of countries and regions in many parts of the globe require a concerted effort by the developed world to address the causal factors that render countries fragile and cause states to fail. Countries that are unable to defend their people against starvation, or fail to provide economic opportunity, are susceptible to extremist ideologies, autocratic rule, and abuses of human rights. As well, the world faces common threats, among them climate change, energy and water shortages, public health emergencies, environmental degradation, poverty, food insecurity, and religious extremism. These threats can undermine the national security of the United States, both directly and indirectly. Many are blind to political boundaries, becoming regional or global threats.¶ The United States has no monopoly on knowledge in a globalizing world and the scientific challenges facing humankind ¶ are enormous. Addressing these common challenges demands common solutions and necessitates scientific cooperation, common standards, and common goals. We must increasingly harness the power of American ingenuity in science and technology through strong partnerships with the science community in both academia and the private sector, in the U.S. and abroad among our allies, to advance U.S. interests in foreign policy.¶ There are also important challenges to the ability of states to supply their populations with sufficient food. The still-growing human population, rising affluence in emerging economies, and other factors have combined to create unprecedented pressures on global prices of staples such as edible oils and grains. Encouraging and promoting the use of contemporary molecular techniques in crop improvement is an essential goal for US science diplomacy.¶ An essential part of the war on terrorism is a war of ideas. The creation of economic opportunity can do much more to combat the rise of fanaticism than can any weapon. The war of ideas is a war about rationalism as opposed to irrationalism. Science and technology put us firmly on the side of rationalism by providing ideas and opportunities that improve people’s lives. We may use the recognition and the goodwill that science still generates for the United States to achieve our diplomatic and developmental goals. Additionally, the Department continues to use science as a means to reduce the proliferation of the weapons’ of mass destruction and prevent what has been dubbed ‘brain drain’. Through cooperative threat reduction activities, former weapons scientists redirect their skills to participate in peaceful, collaborative international research in a large variety of scientific fields. In addition, new global efforts focus on improving biological, chemical, and nuclear security by promoting and implementing best scientific practices as a means to enhance security, increase global partnerships, and create *sustainability.*

### A2 Lost Democrats

#### Piecemeal will pass – bipart support.

Stiles 10-31. [Andrew, political reporter, "The Piecemeal Movement" National Review -- www.nationalreview.com/article/362676/piecemeal-movement-andrew-stiles/page/0/1]

Senator Marco Rubio (R., Fla.) isn’t the only member of the Gang of Eight talking about a piecemeal approach to immigration reform, which appears to be the preference of House Republicans.¶ Even Democrats who once insisted that anything less than a large, comprehensive bill was a nonstarter are beginning show signs of flexibility. “I don’t like that approach but it may be the only approach,” Senator Dick Durbin (D., Ill.), referring to the idea of multiple bills, told Politico on Wednesday.¶ Earlier this week, Rubio shocked many observers by appearing to disavow the Gang of Eight bill, calling for a step-by-step approach in the House and even coming out against the procedural maneuvering that could lead to a conference committee, which most conservatives strongly oppose.¶ Although Rubio’s announcement was politically significant and garnered a lot of attention, it may not have much impact on the immigration-reform debate. Many supporters of the Gang of Eight bill think it won’t.¶ So does Senator Chuck Schumer (D., N.Y.), who said back in August that he would not oppose a step-by-step approach in the House, which would likely involve passing a series of individual bills focusing on issues such as border security, interior enforcement, guest-worker visas, and, potentially, a pathway to citizenship for some illegal immigrants.¶ “We would much prefer a big comprehensive bill, but any way that the House can get there is okay by us,” Schumer told CNN, noting that the House Judiciary Committee had already approved a number of bills that are “very similar” to corresponding provisions in the Gang of Eight legislation.¶ Even President Obama has said he was open to a piecemeal approach on immigration reform, telling Telemundo in September, “I’m less concerned about process, I’m more interested in making sure it gets done.”

#### They say Obama has lost the democrats – prefer ISSUE specific evidence- your Politico evidence is about healthcare, but Obama has the support of the democrats on immigration -

#### Yes piecemeal – Reid support

The Hill 11-13-13. thehill.com/blogs/blog-briefing-room/news/190181-reid-stunned-about-boehners-immigration-comments

"This is about trying to do this in a way that the American people and our members can absorb," Boehner said, arguing the immigration system is too complex to address quickly. ¶ In the morning, a group of teenagers approached Boehner at a Capitol Hill diner and questioned why the Speaker wouldn’t act on immigration. Their family members, they said, have previously faced deportation. ¶ “I’m trying to find a way to get this thing done. It’s, as you know, not easy. It’s not going to be an easy path forward, but I’ve made it clear since the day after the election that it’s time to get this done,” Boehner said. A video of the exchange was recorded.¶ Reid accused Boehner of sending mixed signals, Fusion reports.¶ "I mean, this House of Representatives might just as well not exist,” he said. “They don't do anything.” ¶ The Senate passed the Gang of Eight legislation in June, but Boehner has since rejected that measure’s reforms.¶ Reid said he’s open to negotiating with Boehner if the House passes piece-meal legislation addressing immigration-related issues individually.¶ "I don't like it,” he said. “But if they pass something, we can at least go to conference.”

#### Yoru national Journal evidence cites a ton of examples from LAST YEAR – not talking about Obama PC key to keep Dems on board

Skocpol and Jacobs 10. [Theda, Victor S. Thomas Professor of Government and Sociology at Harvard, former Director of the Center for American Political Studies, Lawrence, Walter F. and Joan Mondale Chair for Political Studies and Director of the Center for the Study of Politics and Governance in the Hubert H. Humphrey Institute and Department of Political Science at the University of Minnesota, “Reaching for a New Deal: Ambitious governance, economic meltdown and polarized politics in Obama’s first two years” Russell Sage Foundation -- October]

Of necessity, Obama’s White House has repeatedly caucused with Democratic House Speaker Nancy Pelosi and Democratic Senate Majority Leader Harry Reid, looking for ways to coordinate agendas and move key bills through the many hurdles that mark today’s legislative process, especially in the Senate. Even though the watching public might not understand why Democrats spend so much time negotiating among themselves, or why the President can’t just tell Congress to ―get it done,‖ the early Obama administration understandably devoted much effort to prodding and cajoling Congress in consultation with key Congressional Democrats. This happened not merely because Obama is a former Senator and thinks in legislative terms, and not only because his former Chief of Staff, Rahm Emanuel, is a seasoned wheeler-dealer from the House of Representatives (Bai 2010). More than that, Obama and his White House aides new that the 111th Congress is probably their only chance to further big legislative reforms. To take advantage of Congressional Democratic majorities that are sure to shrink, they have had to work week by week, month by month with the Congressional leaders to assemble fragile and shifting coalitions. Congressional sausage-making involving the President has been confusing and dispiriting for the public to watch, but the alternative would have been for an ambitious President Obama not to try for big legislative reforms. How can a leader who wants to use government to make America stronger not make such attempts?

### A2 HC

#### Obamacare fight is contained – plus no vote.

Sargent 11-15. [Greg, political blogger, “Dems leaders struggle to contain the damage” Washington Post -- http://www.washingtonpost.com/blogs/plum-line/wp/2013/11/15/dems-leaders-struggle-to-contain-the-damage/]

And, indeed, with the total of defections among House Dems at 39, it’s still seems unlikely, at least as of now, that there will be a vote on any legislative fix in the Senate.¶ For the time being, this puts us back where we’ve always been. We’re probably not getting any legislative fix from Congress, which means the only fix we’re likely going to get is the administrative one Obama has put forth. And even that may not do much, if insurers don’t go along. It is certainly possible more problems will arise, and that another epic Democratic meltdown could unfold. The larger story remains that Dems are in the midst of an extended gut-check moment, in which they will hopefully remember that this isn’t about Obama; it’s about the policy upon which they’ve staked so much.¶ But in the last couple of days Dem leaders — and Obama — have managed to contain, at least to some degree, the full scale rebellion that seemed to be looming. And now we’re again stuck waiting for the Obama administration to fix the website, and waiting to see whether the policy works over the long haul, which is what really matters.

#### Obama’s solution solved

Beutler 11-14. [Brian, political writer, “The president strikes back: Insurance companies get their justified comeuppance” Salon -- www.salon.com/2013/11/14/the\_president\_strikes\_back\_insurance\_companies\_get\_their\_justified\_comeuppance/]

If your health insurance carrier has canceled your plan in anticipation of the launch of the Affordable Care Act, the administrative fix President Obama announced Thursday doesn’t guarantee you can get it back. But setting aside logistical hurdles, it loosens regulations to allow insurance companies to reinstate the plans for another year, if they so choose — and if they first fully apprise you of your other options, including expanded benefits and the potential availability of premium support, on the exchanges. This solution combines a clever p.r. stunt, a stalling tactic, an act of retribution, the genuine possibility of transition assistance for some, and a large political and substantive gamble. It bears the hallmarks of desperation and frustration and determination, but it just might work. The idea isn’t to retroactively fulfill the promise he made to everyone whose plans have been canceled, but to demonstrate to the public that there’s now nothing in law requiring carriers to dump policyholders or uphold their cancelation notices, so that the public takes its concerns and grievances directly to the carriers. That would alleviate pressure on Democratic lawmakers to vote under duress for legislation that would undermine the Affordable Care Act more dramatically. Carriers and state regulators will now have to decide how to respond. And herein lies both promise and peril. From a theoretical vantage point, insurers could decide to reinstate all of the plans, none of the plans, or some of the plans. Logistical, regulatory and financial considerations will control the actual outcome. But the optimal scenario is that people whose plans don’t get renewed will blame insurers, and that of the people whose plans do get renewed, a healthy portion and distribution will learn of the other options available to them and try their luck in the exchanges. Neither piece of that scenario is guaranteed to materialize. That could mean higher premiums next year and an ongoing political crisis for Dems. But it constitutes both a gamble — a doubling down, if you will — on the law itself, and a reprisal against rapacious insurers who tried to capitalize on the Obamacare launch at the expense of their customers and good public policy. The fix Obama announced changes the rules for insurers mid-game, and many of them will not be happy about it. The nation’s largest health insurance trade association, AHIP, has already warned that the move could “destabilize the market and result in higher premiums for consumers.” But setting aside the merits, Obama’s remedy is a justified comeuppance for carriers who defaulted beneficiaries into obscenely expensive plans, which they characterized as “comparable” to the canceled coverage, without apprising them of their options, and blamed the whole disruption on Obamacare. It’s a scolding reminder to particular insurance companies that their lack of integrity exacerbated a problem that might have been containable if they hadn’t acted with such avarice. They are now reaping the whirlwind. Moreover, if Obama didn’t believe that, on a level playing field, the exchanges will prove more attractive than the old, underwritten market, he probably wouldn’t have done this. It’s a statement of confidence in his signature initiative. The immediate response on Capitol Hill is confused but promising. Republicans don’t know exactly what to say — Sen. Bob Corker, R-Tenn, called it a “good move” and “a step in the right direction”! — but I’d expect them to converge rapidly toward unified condemnation. Many Democrats say they’re satisfied. The most politically vulnerable of them are relieved, appreciative of a helpful first step, but not completely assuaged. The question now is whether it will allay their concerns enough that they’ll stall underhanded Congressional action long enough for the administration to get Healthcare.gov fixed. I imagine Obama’s great hope right now is that it does.

#### Health care helps not hurts Obama.

Beutler 11-12. [Brian, political writer, “GOP about to hurt itself again!: New ploy to kill Obamacare will blow up” Salon -- www.salon.com/2013/11/12/gop\_about\_to\_hurt\_itself\_again\_new\_ploy\_to\_kill\_obamacare\_will\_blow\_up/]

Starting on Jan. 1, votes to repeal Obamacare will become votes to take health insurance away from a lot of people. Just how many people will depend on when the votes take place (assuming they take place at all), and when Healthcare.gov is finally up and running. But repeal votes will cease to be abstractions. They’ll be deeply relevant to hundreds of thousands of people. And because politics don’t always obey the laws of entropy, it’s safe to assume that Democrats will characterize past votes for repealing Obamacare as if they’d taken place in 2014. Which is why the GOP’s latest tactical assault on Obamacare merits so much attention. It underscores how unviable the repeal platform will be by the time Republicans have the power to enact it. And it even suggests repealers have so successfully blinded themselves to the positive consequences of the Affordable Care Act that they can’t see how badly they’re now undermining their own campaign. Like many other Republican attacks on Obamacare, this one is subterfuge — a proposal that sounds great but in reality would plant the seeds of the law’s destruction. The real goal is to deny Obamacare marketplaces across the country the critical mass and demographic balance they’ll need to function properly. But it’s dressed up in focus-grouped legislation called the Keep Your Health Plan Act. The Keep Your Health Plan Act clumsily addresses a real moral conundrum created by the failure of Healthcare.gov. The Obama administration timed regulations that have resulted in millions of insurance policy cancellations to coincide with the opening of marketplaces where the people receiving notices could shop for alternatives. But the marketplaces are practically inaccessible in most states. As currently implemented, Obamacare is causing people to lose their existing plans without providing them means to acquire new ones. The Keep Your Health Plan Act would genuinely address this problem, by superseding the administration’s efforts to fix Healthcare.gov. Republicans are selling it as a fix that will allow people whose insurance policies have been canceled to keep their old plans. In reality it would allow carriers to rescind cancellation notices and honor existing policies outside of the exchanges for another year. That’s easier said than done. It would be a huge logistical challenge. But to the extent that it’s possible, it would create an incentive for insurers to extend only plans for low risk beneficiaries who might be disinclined to enter the new system. By jumping the gun, though, they’ve revealed that their purpose isn’t to alleviate the bottleneck created by the website, which might still be fixed in time for the administration to keep its end of the bargain. The timing gives the game away. If it were December, and Healthcare.gov weren’t working, and people whose plans had been canceled were facing the real prospect of a coverage gap, the moral logic of the Keep Your Health Plan Act would be harder to assail. But House Republicans plan to hold the vote this week, a month ahead of the effective deadline to apply for coverage that begins January 1. And since Republicans aren’t about to stand up and admit that they’re engaging in misdirection and sabotage, they’re left with one plausible argument: that changes in federal healthcare policy shouldn’t cause anyone anywhere to lose health insurance they already have. But that’s exactly what repealing the ACA would do. The Keep Your Health Plan Act would be immensely damaging to Obamacare if it ever became law, and preventing it from becoming law will require Senate Democrats and President Obama to sustain real political damage over the next few weeks. But looking ahead, it will be useful for them to have Republicans on the record against forcing people off of their insurance. Keep Your Health Plan would be consistent with the broader repeal campaign if Obamacare really provided no benefits. And if you’re cocooned in an impenetrable conservative information bubble, it must seem like that’s the case. But, even if you ignore Medicaid, which is expanding on a somewhat distinct path, the law’s already providing tangible benefits to tens of thousands of people. If Healthcare.gov is working in two weeks, that number will swell into the millions. And at that point the Keep Your Health Plan Act and H.R. 45 (PDF), which passed the House in May, will be incompatible. If it’s wrong under any circumstances to make changes in law that result in people losing their health insurance, as Republicans are suddenly positing, then the beginning of a new year has no special meaning. There’s no principled distinction between legally rescinding health insurance policies that commenced before Jan. 1 and rescinding health insurance policies that commence after Jan. 1. Unless they let go of their repeal obsession, Republicans will find themselves explicitly in favor of the latter, but not the former. That won’t fly, particularly so long as the GOP is unable to coalesce around an alternative plan that matches or bests the ACA’s coverage expansion. Obamacare is driving policy cancelations right now, but it at least creates a coverage guarantee for those affected. Repeal without replace would impose a greater burden without providing any counterweight. If they pass the Keep Your Health Plan Act this week, House Republicans will see their stylized sympathy for people whose policies have been canceled come into tension with their explicit desire to take Obamacare benefits away from many of the same people, and millions more. These conflicting positions underscore why it’s so imperative for the administration to get Healthcare.gov up and running. Once it works, it won’t just serve as a portal connecting the uninsured with decent coverage. It will propel the repeal campaign into its wincing final throes.

### Links

#### You have conceded Uniqueness, which controls the direction of the link – Rubin says piecemeal measures like high skilled will PASS NOW because stakeholders are coming on board

#### High skilled reform and DREAM will pass but not a lock --- could be derailed.

The Hill 10-22-13. <http://thehill.com/blogs/hillicon-valley/technology/329747-silicon-valley-readies-all-out-push-for-immigration-reform>

The tech industry is beginning a full-throttle push for immigration reform now that the government shutdown fight is over. ¶ Silicon Valley groups and top executives like Facebook CEO Mark Zuckerberg are planning a flurry of events and media campaigns aimed at pressuring the House to vote on immigration bills before the end of the year.¶ ADVERTISEMENT¶ “Despite the public perception of immigration reform being dead or on the back burner, we believe there’s an opportunity to make progress this calendar year,” said Peter Muller, director of government relations at Intel. ¶ “We think there is an opportunity — there’s a chance — for bills to move to the floor and be considered by the House in the next month or two, and that’s the final step to getting us to a final product.”¶ The renewed push for action will include “fly-in” trips to Washington, print and social media campaigns and even a “hackathon” event in Silicon Valley that will be headlined by big names in the industry.¶ The political advocacy group co-founded by Zuckerberg is also ramping up its efforts.¶ FWD.us is co-sponsoring a trip to Capitol Hill next week with a diverse coalition of groups that support immigration reform, including the U.S. Chamber of Commerce, Bibles Badges and Businesses, and the Partnership for a New American Economy, an advocacy group co-chaired by New York City Mayor Michael Bloomberg, Microsoft CEO Steve Ballmer, News Corp. CEO Rupert Murdoch and other top executives.¶ Roughly 200 representatives are expected to canvass Capitol Hill early next week and meet with lawmakers, chiefly House Republicans, to discuss the need for immigration reform, according to FWD.us Executive Director Todd Schulte. ¶ “The fly-in is an important thing to look at, where you have a couple hundred people come into town that highlight the broad support for immigration reform,” Schulte said. ¶ Next month, Zuckerberg, LinkedIn co-founder Reid Hoffman, Dropbox CEO Drew Houston and Groupon founder Andrew Mason will be on hand at a “DREAMer Hackathon” event hosted by FWD.us that’s intended to put the spotlight on what they say is the urgent need for comprehensive immigration reform. ¶ The event — which will take place at LinkedIn’s Mountain View, Calif., headquarters — represents a pivot for the tech industry. In previous years, tech companies had pushed Congress to focus solely on reforming the immigration rules for highly skilled and educated foreign workers.¶ Young immigrants who came to the United States illegally with their families, often called “Dreamers” in relation to the Development, Relief, and Education for Alien Minors (DREAM) Act, will build digital tools and applications at the “hackathon” event that help promote FWD.us’ advocacy efforts for immigration reform. The projects will include building digital tools that help immigration reform supporters tell their stories or contact Congress, according to FWD.us.¶ Zuckerberg, Hoffman and the other tech executives will advise these illegal immigrants as they work on their projects during the hackathon and provide feedback. ¶ “We think it’s a great opportunity to highlight the potential of ‘Dreamers’ and why we need comprehensive immigration reform,” Schulte said. “By having these incredible kids coming together with other programmers, we’re not only going to highlight exactly why our nation needs to fix our broken immigration system, we’re going to help create better advocacy to make that happen.”¶ Back in Washington, the Consumer Electronics Association (CEA), one of the country’s largest tech trade groups, is planning its own lobbying blitz for immigration reform.¶ “We’re going to keep the pressure on,” said Veronica O’Connell, vice president of congressional affairs at the CEA. “We are committed as an association and as an industry to keep up the momentum as much as we can and work until it’s done.”¶ Tech representatives acknowledge privately that moving the needle on immigration reform in the House this year will be a challenge, and that work is expected to spill over into 2014. ¶ But some argue immigration reform could be a winning issue for House Republicans at a time when they need to repair their party’s image.¶ “House Republicans need a win right now. They need to have something positive to say they’re for,” said a tech lobbyist. “They’re trying to turn attention away from what’s happened, and this could be one of those things.” ¶ Tech representatives said they see encouraging signs in the House, where top Republicans are attempting to craft legislation that deals with the thorniest piece of the debate: how to deal with the millions of immigrants living in the country illegally. ¶ While the legislation does not cover the industry’s main priority in the immigration fight — securing more green cards and visas for high-skilled foreign workers — tech representatives believe it will give discussions around immigration reform a jolt in the House. ¶ Industry representatives are looking forward to seeing legislation from House Majority Leader Eric Cantor (R-Va.) that would offer a path to citizenship to young immigrants.¶ Rep. Darrell Issa (R-Calif.) has also started work on a bill that would deal with the immigrants living in the U.S. illegally, and has been briefing stakeholders on it for feedback, according to three people familiar with the matter. It’s unclear when Issa will put the bill forward, sources say, but his aim is to jump-start a discussion in the House about the divisive issue. ¶ A spokeswoman for Issa declined to comment. ¶ The House Judiciary Committee has already approved a set of four immigration bills that address topics ranging from an agricultural guest-worker program to E-Verify improvements. A tech industry-backed bill by Issa, the SKILLS Visa Act, was also among the immigration bills approved by the committee. ¶ It’s unclear what Judiciary Committee Chairman Rep. Bob Goodlatte’s (R-Va.) next move will be on immigration reform. A Judiciary Committee aide said in a statement that reforming the nation’s broken immigration policy remains a priority for the panel. ¶ Intel’s Muller said in the meetings he’s had with House Republicans, members have expressed an “interest and willingness” to fix the system. ¶ “Putting the pieces together in a way to build a majority is going to be a challenge and it’s tough, but I think our meetings have told us that there’s a willingness and interest in a majority of the majority to move forward and try to figure this out,” he said.

#### Your link evidence is awful and talking about a doctrine shift -

#### Plan tanks capital and derails the agenda – empirics prove

Kriner ’10 Douglas L. Kriner, assistant professor of political science at Boston University, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### Military-industrial complex causes political backlash- NFU decreases their role and budgets

Guangqian and Yu- World Security Institute- ‘9

Peng Guangqian (editor-in-chief of Strategic Sciences) and Rong Yu (Institute of International Strategy and Development), China Security, Vol. 5 No. 1 Winter 2009, pp. 78-87, World Security Institute, Nuclear No-First-Use Revisited

Another challenge to the NFU movement is that some nuclear powers have invested so heavily in the first-use option that the sunk cost has become a barrier to changing course. In fact, instead of diminishing the role of nuclear weapons, some nuclear countries have sought to increase their role in conflicts. The United States, for instance, added the role of deterring terrorist attacks and other weapons of mass destruction for its nuclear weapons.11 For these purposes, it is conceivable that tactical nuclear weapons would be the nuclear weapons of choice. Tactical nuclear weap ons are usually of shorter range and smaller tonnage, deployed as artillery, landmines, short-range nuclear and penetration nuclear bombs. These weapons are closely related to first-use policy, as they are designed for field use, and would be deployed close to front lines of conflict. Due to the uncertainty and risks facing the forward-deployed nuclear weapons, the authority to employ nuclear weapons will be commissioned to lower-level field commanders instead of being centrally controlled. Even if the authority still rests with high-level leaders, in time of crisis, the risk of error launch or unauthorized launch cannot be ruled out.12 In addition, the US Ballistic Missile Defense (BMD) system also makes it easier for the United States to use nuclear weapons first. In 2001, as a prelude to deploying the BMD system, Washington backed out of the Anti-Ballistic Missile (ABM) Treaty. This ironically reminded us of President Richard Nixon’s words in 1972. When justifying the need to sign the ABM treaty, Nixon said that “If you have a shield, it is easier to use the sword.” 13 Back then, in order to secure “mutually assured destruction” and establish a “balance of terror,” the Soviet Union and the United States agreed to refrain from building a “shield” so that neither side could easily “use the sword.” Today, with the gradual shaping of the American shield, offensive action is far easier. The rationale is simple. If the United States does not have foolproof confidence to erase the adversary’s nuclear arsenal in a first strike, it will have to deliberate on the possibility of a counterattack. However, should the United States possess the strategic defense capabilities, its first strike would leave only a few nuclear weapons available for the adversary to launch a retaliatory counterattack, which would be within the capacity of its missile defense system to intercept; a second strike would then eliminate the remainder of the adversary’s nuclear force. It is apparent that, with the BMD system, US decision-makers would be greatly emboldened when facing the choice of launching a pre-emptive or even preventative nuclear attack. Therefore, for states that possess large numbers of tactical nuclear weapons and have established nuclear doctrines and postures tailored for first use of nuclear weapons, the cost invested may be highly prohibitive to considering alternative policies. A credible NFU pledge would require such states to make substantial changes to their first-use oriented arsenals, delegation of authority and force deployment. As a domestic player, the military-industrial complex involved in the development and production of nuclear weapons would be opposed to any decline in the role of nuclear weapons in national security strategy and would form an obstacle to NFU policy.

#### Link alone turns case – NFU puts the cart before the horse and causes political fights that prevent any other progress on the nuclear agenda – that undermines US credibility for non-proliferation efforts

Halperin-senior advisor to the Open Society Institute-10/09

[Survival](http://www.informaworld.com/smpp/title~db%3Dall~content%3Dt713659919), Volume [51](http://www.informaworld.com/smpp/title~db%3Dall~content%3Dt713659919~tab%3Dissueslist~branches%3D51#v51), Issue [5](http://www.informaworld.com/smpp/title~db%3Dall~content%3Dg915362691) October 2009 , pages 17 - 46

Scott Sagan makes a persuasive case for no first use, arguing that such a declaration would contribute to the American objectives of preventing the use of nuclear weapons by states or terrorist groups and preventing further proliferation. He also makes the case that such a declaration would not reduce the credibility of the American deterrent but rather might increase the credibility of a non-nuclear response.¶ As Sagan notes, these arguments are not new. In fact I presented a similar proposal and many, if not all, of the same arguments in a paper I published almost 50 years ago.[1](http://www.informaworld.com/smpp/section?content=a915329759&fulltext=713240928#EN0001) It is useful to ask why no previous president acted on this sensible recommendation and whether President Obama should now make this commitment. Sagan discusses some of the objections to an explicit commitment not to use nuclear weapons first, but he fails to convey the depth of the opposition and the fundamental nature of the objection.¶ Opponents of no first use make the basic argument that we should not make any 'promise' to a potential adversary that might make it easier for an opponent to plan an effective military action. During the Cold War it was precisely the policy of the United States and its NATO allies to threaten first use in the belief that the Soviet Union had conventional superiority in Europe and would attack if it could be sure that the West would not respond with nuclear weapons. Even now, despite the vast global American conventional superiority, there are places - the Russian border with Georgia, the Taiwan Strait, deep inside Iran where its nuclear facilities are located - where the United States might find it hard to prevail with conventional forces and where the threat to use nuclear weapons first might, it is argued, still be credible and necessary.¶ Sagan and I agree that there is a clear response to this argument: the threat to use nuclear weapons in these situations is not credible and the implication that nuclear weapons are necessary reduces the credibility of the conventional deterrent. This response, however, does not deal with the very serious domestic political storm a president would confront, even today, were he to make such a promise.¶ Such a storm would result from a very different view of nuclear weapons held by many who are deeply sceptical that stigmatising nuclear weapons will prevent their further proliferation. Opponents of no first use, including many associated with Democratic presidents, believe that such a no-firstuse promise will increase the political cost of using nuclear weapons only for the United States, undermining the credibility of the US deterrent, and especially the extended deterrent. There is no doubt that some allies would be nervous if the United States made a no-first-use pledge even after extended consultations. Such discussions, as Sagan notes, would be necessary especially with NATO allies and Japan. Critics are not likely to feel that influencing Indian nuclear doctrine, as Sagan discusses, is sufficiently important to overcome their objections, particularly given the importance that they attach to extended deterrence.¶ Obama has stated that he believes it is in the American interest to reduce reliance on nuclear weapons. Indeed, his commitment to seek a world free of nuclear weapons carries the clear implication that we can meet all of our security challenges, short of nuclear threats, without reliance on nuclear weapons. However, there are other proposals to pursue this objective which would be as effective as a declaratory no-first-use policy and which might produce less controversy.¶ In his Prague speech, in addition to announcing support for the long-term objective of a world free of nuclear weapons, Obama committed himself in the short run to four other measures which have long been debated and which advance the same objectives as the no-first-use proposal. These are: reducing the role of nuclear weapons in US national security strategy, negotiating a new Strategic Arms Reduction Treaty (START) with Russia, immediately and aggressively pursuing US ratification of the Comprehensive Test-Ban Treaty (CTBT), and starting negotiations on a verifiable end to the production of fissionable material for weapons purposes. **This ambitious agenda will require all the attention and political capital the president can reasonably devote to this issue. Under the circumstances, no first use can and should be put off for another day**.¶ Seeking three treaties on nuclear arms control in his first term will not be easy. The Senate looks ready to ratify the new START and the proposal for a ban on fissile-material production for weapons purposes has not engendered much opposition as of yet. The CTBT, however, is another story. Republican orthodoxy on nuclear weapons emphasises unequivocal support for ballistic-missile defence and virulent opposition to no first use and the test ban. The opposition to both stems from the same source. Opponents of the treaty seek new nuclear weapons with new capabilities for a variety of pre-emptive and preventive purposes. They worry about the Russian development of new nuclear weapons and argue that the Kremlin has a different view of what is prohibited under the treaty and will, in any case, cheat. They doubt that US ratification of the CTBT will help prevent proliferation. *No first use can and should be put off for another day* Winning the CTBT debate and ultimately gaining the 67 votes in the Senate necessary to permit US ratification of the treaty is far from assured, but it is possible. The president is committed to the CTBT and not yet to no first use. In any case, I would argue that ratification of the CTBT and a vigorous effort to secure the other ratifications necessary to bring the treaty into force is the more important, and promising, effort to stigmatise nuclear weapons.