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#### Restrictions on authority prohibit- the aff is a condition

William **Conner 78**,former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. **Properly interpreted,** **the "conditions" that had been imposed by plaintiff's** Board of Directors and by the Venezuelan Cabinet **were not "restrictions" or "limitations"** up**on** the **authority of** plaintiff's **agents but rather conditions precedent to the granting of authority**. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

**Vote neg
limits and ground- anything can indirectly affect war powers--also makes the topic bidirectional because conditions can enhance executive power**

### 1NC 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>)

The shamelessness of the endeavor is impressive—a far cry, in many ways, from the CIA’s secretive Cold War–era assassination plots. Obama has succeeded in anchoring a legal infrastructure for state-sponsored assassinations on foreign soil while trumpeting it, in broad daylight, as a framework for accountability. Peppered with allusions to the Constitution and to “the law” more generally, the call for transparency instead appears to provide an Orwellian foil for a remarkable expansion of executive powers. Existing laws, domestic or international, are proving a hopelessly inadequate framework with which to hold the Obama administration accountable for arbitrary assassinations abroad. No doubt it is tempting to turn to the Constitution, the Universal Declaration of Human Rights, and other relevant legal documents as a litmus test for the validity of government actions. Many progressive media outlets have a tendency to seize on international law, especially, as a straightforward barometer of injustice: this is particularly true in the case of the Israel-Palestine conflict, as an editorial in the current issue of Jacobin points out. Both domestic and international legal systems often do afford a certain clarity in diagnosing excesses of state power, as well as a certain amount of leverage with which to pressure the states committing the injustices. To hope, however, that legal systems alone can redress gross injustices is naive. Many leftists—and not just “bloodless liberals”—feel obliged to retain faith in laws and courts as a lifeline against oppression, rather than as mere instruments of that same oppression. Even Marx, when he was subjected, along with fellow Communist League exiles, to a mass show trial in Prussian courts in the 1850s, was convinced that providing sufficient evidence of his innocence would turn the case against his accuser, Wilhelm Stieber, a Prussian secret agent who reportedly forged his evidence against the communists. In his writings, Marx expressed his disillusionment with all bourgeois institutions, including the courts; in practice, he hoped that the law would serve him justice. Richard Evans highlights this tension in his insightful review of Jonathan Sperber’s Karl Marx: A Nineteenth-Century Life, published in the most recent London Review of Books. “Naively forgetting,” writes Evans, “what they had said in the Manifesto – that the law was just an instrument of class interests – Marx and Engels expected [their evidence against Stieber] to lead to an acquittal, but the jury found several of the defendants guilty, and Stieber went unpunished.” Marx’s disappointment is all too familiar. It is familiar from situations of international conflict, illustrated by Obama’s drone strikes justifications; it is evident, too, when a police officer shoots dead an unarmed Bronx teenager in his own bathroom, and the charge of manslaugher—not murder—brought against the officer is dropped for procedural reasons by the presiding judge. This is hardly the first such callous ruling by a New York court in police violence cases; the last time charges were brought against an NYPD officer relating to a fatal shooting on duty, in 2007, they were also dropped. Dozens of New Yorkers have died at the hands of the police since then, and Ramarley Graham’s case was the first that even came close to a criminal conviction—only to be dropped for ludicrous reasons. Yet New York’s stop-and-frisk opponents are still fighting their battle out in the courts. In recent months, many activists have invested their hopes for fairer policing in a civil class action suit, Floyd, et. al. vs. City of New York, which may just convict the NYPD of discrimination despite the odds. District court judge Shira Scheindlin, profiled in this week’s New Yorker, has gained a reputation for ruling against the NYPD in stop-and-frisk cases, even when it has meant letting apparently dangerous criminals off the hook. In coming weeks, she is likely to do the same for the landmark Floyd case, in what may be a rare affirmation of constitutional law as a bulwark against state violence and for civil liberties. Even if the city wins the case, the spotlight that stop-and-frisk opponents have shined on the NYPD has already led to a 51 percent drop in police stops in the first quarter of this year. Still, when the powerful choose the battlefield and write the laws of war, meeting them on their terms is a dangerous game.

#### Legality is what 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

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#### The Executive Branch of the United States should ban signature strikes carried out by Remotely-Piloted Vehicles and create a national security court housed within the executive branch and “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.

#### 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

#### A “national security court” improve oversight, accountability, and congressional review of targeted killing – comparatively better than external restraints

Katyal ’13, Neal Katyal, Professor of Law @ Georgetown, NW Times “Who Will Mind the Drones?” February 20, 2013, <http://www.nytimes.com/2013/02/21/opinion/an-executive-branch-drone-court.html?_r=0>

In the wake of revelations about the Obama administration’s drone program politicians from both parties have taken up the idea of creating a “drone court” within the federal judiciary, which would review executive decisions to target and kill individuals. But the drone court idea is a mistake. It is hard to think of something less suitable for a federal judge to rule on than the fast-moving and protean nature of targeting decisions. Fortunately, a better solution exists: a “national security court” housed within the executive branch itself. Experts, not generalists, would rule; pressing concerns about classified information would be minimized; and speedy decisions would be easier to reach. There is, of course, a role for federal courts in national security. In 2006, I argued and won Hamdan v. Rumsfeld, a Supreme Court case that struck down President George W. Bush’s use of military tribunals at Guantánamo Bay. But military trials are a far cry from wartime targeting decisions. And the Foreign Intelligence Surveillance Court, which reviews administration requests to collect intelligence involving foreign agents inside the country and which some have advocated as a model for the drone court, is likewise appropriately housed within the judicial system — it rules on surveillance operations that raise questions much like those in Fourth Amendment “search and seizure” cases, a subject federal judges know well. But there is no true precedent for interposing courts into military decisions about who, what and when to strike militarily. Putting aside the serious constitutional implications of such a proposal, courts are simply not institutionally equipped to play such a role. There are many reasons a drone court composed of generalist federal judges will not work. They lack national security expertise, they are not accustomed to ruling on lightning-fast timetables, they are used to being in absolute control, their primary work is on domestic matters and they usually rule on matters after the fact, not beforehand. Even the questions placed before the FISA Court aren’t comparable to what a drone court would face; they involve more traditional constitutional issues — not rapidly developing questions about whether to target an individual for assassination by a drone strike. Imagine instead that the president had an internal court, staffed by expert lawyers to represent both sides. Those lawyers, like the Judge Advocate General’s Corps in the military, would switch sides every few years, to develop both expertise as repeat players and the ability to understand the other point of view. The adjudicator would be a panel of the president’s most senior national security advisers, who would issue decisions in writing if at all possible. Those decisions would later be given to the Congressional intelligence committees for review. Crucially, the president would be able to overrule this court, and take whatever action he thought appropriate, but would have to explain himself afterward to Congress. Such a court would embed accountability and expertise into the drone program. With a federal drone court, it would simply be too easy for a president or other executive-branch official to point his finger at a federal judge for the failure to act. With an internal court, it would be impossible to avoid blame. It’s true that a court housed within the executive branch might sound nefarious in today’s “Homeland” culture — if Alexander Hamilton celebrated the executive, in Federalist No. 70, for its “decision, activity, secrecy and dispatch,” some now look at those same qualities with skepticism, if not fear. In contrast, advocates of a drone court say it would bring independent, constitutional values of reasoned decision making to a process that is inherently murky. But simply placing a drone court in the judicial branch is not a guaranteed check. The FISA Court’s record is instructive: between 1979 and 2011 it rejected only 11 out of more than 32,000 requests — making the odds of getting a request rejected, around 1 in 3,000, approximately the same as those of being struck by lightning in one’s lifetime. What reason does the FISA Court give us to think that judges are better than specialists at keeping executive power in check? The written decisions of an internal national security court, in contrast, would be products of an adversarial system (unlike the FISA Court), and later reviewed by Congressional intelligence committees. If members of Congress saw troublesome trends developing, it could push legislation to constrain the executive. That is something a federal judge cannot do. One of our Constitution’s greatest virtues is that it looks to judges as a source of reasoned, practical, rights-minded decision making. But judges should be left to what they know. A national security court inside the executive branch may not be a perfect solution, but it is a better way to balance the demands of secrecy and speed with those of liberty and justice.

#### 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

### 1NC DA

#### Insiders think TPA will pass but strong Obama push is key

Economist 2/7 “Harry Reid Threatens To Impoverish The World By At Least $600 Billion A Year” FEB. 7, 2014

http://www.businessinsider.com/harry-reid-threatens-to-impoverish-the-world-by-at-least-600-billion-a-year-2014-2

Mr Obama has never been an ardent free-trader, yet his second term got off to a promising start. The Trans-Pacific Partnership, a deal with large Pacific-rim economies, is close to completion; America and Japan are hammering out the rules for farm goods. European and American trade wonks continue to meet regularly, hoping to wrap up a "next-generation" trade agreement as early as next year.¶ To make all this happen Mr Obama needs "trade promotion authority" (usually known as "fast-track"), which would let him negotiate deals and then present them to Congress for a simple yes-or-no vote, with no chance for lawmakers to rewrite the details. Without such authority, America's trading partners cannot take the White House seriously as a negotiator. Fast-track was last granted to George W. Bush in 2002 and expired in 2007. Since Republicans are generally pro-trade and Democrats are generally loyal to Mr Obama, most people in Washington at first assumed that Congress would give it to him without a fuss.¶ But with elections looming and lawmakers in a populist mood, that is far from certain. Late last year roughly half the members of the House wrote to Mr Obama declaring their opposition to fast-track; most were from his own party. In early January a bipartisan group of senators introduced a fast-track bill. Mr Obama spoke up for it in his state-of-the-union address, but only in passing and in mercantilist terms. The aim is "to protect our workers, protect our environment and open new markets to new goods stamped 'Made in the USA'," he said; without mentioning that cheap imports raise living standards.¶ Barely had he left the podium when Mr Reid mugged him. Answering questions from reporters, he reiterated his opposition to fast-track and advised its backers "not [to] push this right now". Insiders doubt that Mr Reid would kill the bill outright. Haggling in the Senate may yield a new version with enough about labour standards and the environment to satisfy the protectionists. If so, Mr Reid will probably allow a vote, and the bill should pass. The White House remains publicly optimistic.¶ Yet damage is already being done. Michael Froman, Mr Obama's trade representative, says negotiations have not been affected by the politicking in Washington. However, even if Mr Reid's rebellion was partly for show (his seat is at risk in 2016), it still worries America's trade partners. Shinzo Abe, Japan's prime minister, may be reluctant to offend voters at home for the sake of a trade deal that America's legislators might promptly torpedo. Similarly, the French, who have been a constant pain in talks between America and Europe, could argue that since America's leaders seem determined to attach conditions to a fast-track bill, France's demands for carve-outs deserve consideration, too.¶ At home meanwhile, Democratic opposition could harden. Some lawmakers may see an opportunity to put daylight between themselves and their Republican foes ahead of November's elections. With corporate profits looking healthy and wages still stagnant almost five years into the recovery, some may be tempted to portray Republican backing for free trade as support for fat-cat corporations.¶ Mr Reid's surprise rebuke suggests that Mr Obama needs to communicate better with his allies. And if he wishes to prevent two of the most promising trade deals in a decade from unravelling, he will need to make a far more full-throated case for the benefits of free exchange.

#### 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.

#### TPA is critical to US economic growth and restoring America’s free trade credibility – Obama PC is key

Riley and Kim 4/16 Bryan Riley is Jay Van Andel Senior Analyst in Trade Policy and Anthony B. Kim is a Senior Policy Analyst in the Center for International Trade and Economics at The Heritage Foundation.

www.heritage.org/research/reports/2013/04/advancing-trade-freedom-key-objective-of-trade-promotion-authority-renewal

Trade Promotion Authority (TPA) has been a critical tool for advancing free trade and spreading its benefits to a greater number of Americans. TPA, also known as “fast track” authority, is the legislative power Congress grants to the President to negotiate reciprocal trade agreements. Provided the President observes certain statutory obligations under TPA, Congress agrees to consider implementing those trade pacts without amending them.¶ More than a decade has passed since TPA was last renewed in 2002, and its authority expired in 2007. Reinstituting TPA may well be the most important legislative action on trade for both Congress and the President in 2013 given the urgency of restoring America’s credibility in advancing open markets and securing greater benefits of two-way trade for Americans. As the case for timely reinstallation of an effective and practical TPA is stronger than ever, the quest for renewing TPA should be guided by principles that enhance trade freedom, a vital component of America’s economic freedom.¶ Emerging TPA Renewal Debates¶ Both House Ways and Means Committee chairman David Camp (R–MI) and Senate Finance Committee chairman Max Baucus (D–MT) have announced plans to pursue TPA legislation. However, many lawmakers have correctly pointed out that a proactive push from President Obama is critical, given that trade bills have been a thorny issue for many Democrats in recent years.¶ Historically, it has been common practice, although not formally required, to have the President request that Congress provide renewed TPA. In fact, except for President Obama, every President since Franklin Roosevelt has either requested or received trade negotiating authority.[1]¶ After four years of informing Congress it would seek TPA at “the appropriate time,” early this year the Obama Administration finally indicated its interest in working with Congress to get TPA done. The President’s 2013 trade agenda offered the Administration’s most forward-leaning language yet, specifying that “to facilitate the conclusion, approval, and implementation of market-opening negotiating efforts, we will also work with Congress on Trade Promotion Authority.”[2]¶ In the 2002 Bipartisan Trade Promotion Authority Act, Congress—whose role in formulating U.S. trade policy includes defining trade negotiation objectives—made it clear that¶ [t]he expansion of international trade is vital to the national security of the United States. Trade is critical to the economic growth and strength of the United States and to its leadership in the world. Stable trading relationships promote security and prosperity.… Leadership by the United States in international trade fosters open markets, democracy, and peace throughout the world.[3]

#### Decline collapses power projection – leads to nuclear war

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

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

### 1NC Solvency

#### Can’t solve – a lot of your internal link authors hate drones period – distinction between signature strikes and TK isn’t perceived – means you can’t solve Pakistan or Norms

#### The military will shift to JSOC – increased frequency and severity of strikes turns the case and prevents accountability – the squo is comparatively better

Kaplan 13 – Slate columnist on foreign policy (Fred, "The Drones Are in the Details," http://www.slate.com/articles/news\_and\_politics/war\_stories/2013/03/john\_brennan\_wants\_the\_pentagon\_to\_take\_command\_of\_the\_cia\_s\_drone\_strike.html)

Shifting control of drone strikes from the CIA to the military essentially means shifting authority for those drone strikes from Title 50 to Title 10. It places them under the rubric of “traditional military activities”—and the standards and practices of U.S. armed forces. One implication of this is that it will be harder to justify drone strikes in areas where U.S. troops are not openly at war. It also means that if a president contemplates stretching the limits of Title 10—that is, if he or she considers drone strikes outside war zones—the military’s lawyers will get involved, and they tend to be more scrupulous than CIA lawyers (who, after all, deal with overseas covert actions, which often skirt, or ignore, U.S. law). One pertinent provision of Title 10 is that, in order for U.S. armed forces to operate on foreign soil, they must get permission of the local government. If the military controlled drone strikes, they couldn’t be ordered without this permission. However, there are two ways around these strictures. First, there have been occasions when presidents—including President Obama—have simply (and legally) declared that certain members of the armed forces are, for the moment, acting under Title 50. Most notably, when Navy SEALs raided Osama Bin Laden’s compound in Pakistan, they were declared to be under CIA command. Therefore, they did not need the Pakistanis’ permission to cross the border. The same abracadabra could be recited for drone operators. Or maybe the president wouldn’t even have to go that far. SEALs, like Delta Force and other “shadow” forces, are part of the Joint Special Operations Command. JSOC is part of the armed forces; it therefore falls under Title 10. However, under an executive order signed by President George W. Bush (and still in effect), it has authority to conduct secret operations against al-Qaida and affiliated terrorist networks worldwide. So, if control of drone strikes is shifted from the CIA to the military and the military decides to assign the mission to JSOC, the strikes might be as frequent and far-flung as ever—maybe even more so, since Bush’s executive order allows JSOC to conduct its operations without consulting or notifying Congress. (By contrast, under Title 50, the CIA has to tell the congressional intelligence committees about its covert operations.)

#### Plan's restrictions causes a shift to the CIA.

Alston 11 President and Fellows of Harvard College. All Rights Reserved. Harvard National Security Journal 2011 Harvard National Security Journal 2 Harv. Nat'l Sec. J. 283 The CIA and Targeted Killings Beyond Borders Philip Alston John Norton Pomeroy Professor of Law, New York University School of Law. The author was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010. lexis

But the most significant problem by far with double-hatting is its impact in terms of accountability. Already in 2003, Colonel Kathryn Stone had noted that "[w]hen the CIA and SOF operate together on the battlefield, the legal distinctions regarding operating authorities and procedures, and accountability, can become blurred." n247 In Singer's view one of the motivations for the practice was to avoid accountability. He argues that the CIA was given operational responsibilities because "no one wanted to have a public debate about the use of force in a third country" and this could be avoided by secretly using the CIA instead. The result, he says, is to flout "the intent, if not the letter, of the most important legal codes that originally divided out roles in realms of policy and war." n248 A recent Congressional study also concludes that one of the actual objectives of the "unprecedented use of U.S. SOF in clandestine and covert roles as well as being assigned to the CIA" is precisely to blur the boundaries of responsibility and accountability. n249 This deliberate undermining of the distinction between intelligence gathering and operational activities has grave implications in terms of both domestic and international accountability. Domestically, DOD and especially JSOC foreign killing operations are subject to virtually no meaningful accountability, and the same applies to the CIA.

#### 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.

#### OPEs. The DOD will define their activities as OPEs to escape oversight

Kibbe 12 \* Jennifer D. Associate Professor of Government, Franklin & Marshall College. Journal of National Security Law & Policy, 5 J. Nat'l Security L. & Pol'y 373

It was clear in June 2009 that some members of Congress sensed that SOF were conducting unacknowledged missions that were falling through the oversight cracks. In its report on the Intelligence Authorization Act for FY 2010, the HPSCI noted "with concern" that "in categorizing its clandestine activities, DOD frequently labels them as "Operational Preparation of the Environment' (OPE) to distinguish particular operations as traditional military activities and not as intelligence functions. The Committee observes, though, that overuse of this term has made the distinction all but meaningless." 49 HPSCI further complained that, "while the purpose of many such operations is to gather intelligence [which would mean they are not covert actions], DOD has shown a propensity to apply the OPE label where the slightest nexus of a theoretical, distant military operation might one day exist. Consequently, these activities often escape the scrutiny of the intelligence committees, and the congressional defense committees cannot be expected to exercise oversight outside of their jurisdiction." 50

#### Executive lawyers will teach the Executive how to blow off the plan

Shane 12 \*Peter M. Jacob E. Davis and Jacob E. Davis II Chair in Law, The Ohio State University Moritz School of Law. From 1978 to 1981, served in the Office of Legal Counsel, U.S. Department of Justice. Journal of National Security Law & Policy, 5 J. Nat'l Security L. & Pol'y 507

Yet, the ideological prism of presidentialism can bend the light of the law so that nothing is seen other than the claimed prerogatives of the sitting chief executive. Champions of executive power - even skilled lawyers who should know better - wind up asserting that, to an extraordinary extent, the President as a matter of constitutional entitlement is simply not subject to legal regulation by either of the other two branches of government. [\*511] Government attorneys must understand their unique roles as both advisers and advocates. In adversarial proceedings before courts of law, it may be fine for each of two contesting sides, including the government, to have a zealous, and not wholly impartial, presentation, with the judge acting as a neutral decisionmaker. But in their advisory function, government lawyers must play a more objective, even quasi-adjudicative, role. They must give the law their most conscientious interpretation. If they fail in that task, frequently there will be no one else effectively situated to do the job of assuring diligence in legal compliance. Government lawyers imbued with the ideology of presidentialism too easily abandon their professional obligations as advisers and too readily become ethically blinkered advocates for unchecked executive power. Jack Goldsmith headed the Office of Legal Counsel (OLC) for a little less than ten months in 2003-2004. Of the work done by some government attorneys and top officials after 9/11, he said they dealt with FISA limitations on warrantless surveillance by the National Security Agency (NSA) "the way they dealt with other laws they didn't like: they blew through them in secret based on flimsy legal opinions that they guarded closely so no one could question the legal basis for the operations." 7 He describes a 2003 meeting with David Addington, who was Counsel and later Chief of Staff to Vice President Dick Cheney, in which Addington denied the NSA Inspector General's request to see a copy of OLC's legal analysis in support of the NSA surveillance program. Before Goldsmith arrived at OLC, "not even NSA lawyers were allowed to see the Justice Department's legal analysis of what NSA was doing." 8

#### The President can easily use the Covert Action Statute to justify any imminent threat

Lawfare 12 Legality of U.S. Government’s Targeted Killing Program under Domestic Law, http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/legality-of-targeted-killing-program-under-u-s-domestic-law/

Nevertheless, Bradley and Goldsmith explain, even if Congress did not authorize the U.S. government’s targeted killing program with the AUMF, the President could in theory act against terrorists presenting an imminent threat under the Covert Action Statute (CAS), 50 U.S.C. §413b. The CAS is potentially an important authorizing authority, as its scope extends beyond that of the AUMF, namely in that it is not limited to those terrorist groups linked to the September 11, 2001 attacks. In other ways, though, the CAS may be narrower than the AUMF. For instance, Robert Chesney sets forth the argument that the CAS merely authorizes that which is otherwise lawful under Article II, and thus does not expand the scope of the President’s authority.

#### 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.

### 1NC Modeling

#### Drone arms race inevitable

USA Today 13 (1/9, http://www.usatoday.com/story/news/world/2013/01/08/experts-drones-basis-for-new-global-arms-race/1819091/, “Experts: Drones basis for new global arms race”, AB)

The success of U.S. drones in Iraq and Afghanistan has triggered a global arms race, raising concerns the remotely piloted aircraft could fall into unfriendly hands, military experts say. The number of countries that have acquired or developed drones expanded to more than 75, up from about 40 in 2005, according to the Government Accountability Office, the investigative arm of Congress. Iran and China are among the countries that have fielded their own systems. "People have seen the successes we've had," said Lt. Gen. Larry James, the Air Force's deputy chief of staff for intelligence, surveillance and reconnaissance. The U.S. military has used drones extensively in Afghanistan, primarily to watch over enemy targets. Armed drones have been used to target terrorist leaders with missiles that are fired from miles away.

#### US tech sales and economic benefits make prolif inevitable

CRG 12 (The Centre for Research on Globalization (CRG) is an independent research and media organization based in Montreal, a registered non-profit organization in the province of Quebec, Canada, “Mapping Drone Proliferation: UAVs in 76 Countries,” September 18, <http://www.globalresearch.ca/mapping-drone-proliferation-uavs-in-76-countries>)

The report goes on: “Currently, there are over 50 countries developing more than 900 different UAV systems. This growth is attributed to countries seeing the success of the United States with UAVs in Iraq and Afghanistan and deciding to invest resources into UAV development to compete economically and militarily in this emerging area.”¶ While the report fails to highlight the danger of growing drone proliferation to global peace and security it does emphasize the danger of drone proliferation to “US interests”. The report states that “the use of UAVs by foreign parties to gather information on U.S. military activities has already taken place” and “the significant growth in the number of countries that have acquired UAVs, including key countries of concern, has increased the threat to the United States.”¶ Despite this, the report states “the U.S. government has determined that selected transfers of UAV technology support its national security interests”, thus highlighting the contradiction at the heart of current arms control measures. ‘Private sector representatives’ told the reports authors that “UAVs are one of the most important growth sectors in the defense industry and provide significant opportunities for economic benefits if U.S. companies can remain competitive in the global UAV market.”

#### Even with the tech, China won’t use drones offensively

* Fear international backlash
* Don’t want to set precedent for US drone us in East Asia
* Domestic political constraints

Erickson and Strange 13 (Andrew Erickson, associate professor at the Naval War College, Associate in Research at Harvard University's Fairbank Centre, Austin Strange, researcher at the Naval War College's China Maritime Studies Institute, graduate student at Zhejiang University, “China Has Drones. Now How Will it Use Them?” Foreign Affairs, May 29, 2013, <http://www.nationmultimedia.com/opinion/China-has-drones-Now-how-will-it-use-them-30207095.html>)

Indeed, the time to fret about when China and other authoritarian countries will acquire drones is over: they have them. The question now is when and how they will use them. But as with its other, less exotic military capabilities, Beijing has cleared only a technological hurdle -- and its behavior will continue to be constrained by politics.¶ China has been developing a drone capacity for over half a century, starting with its reverse engineering of Soviet Lavochkin La-17C target drones that it had received from Moscow in the late 1950s. Today, Beijing’s opacity makes it difficult to gauge the exact scale of the program, but according to Ian Easton, an analyst at the Project 2049 Institute, by 2011 China’s air force alone had over 280 combat drones. In other words, its fleet of unmanned aerial vehicles is already bigger and more sophisticated than all but the United States’; in this relatively new field Beijing is less of a newcomer and more of a fast follower. And the force will only become more effective: the Lijian (“sharp sword” in Chinese), a combat drone in the final stages of development, will make China one of the very few states that have or are building a stealth drone capacity.¶ This impressive arsenal may tempt China to pull the trigger. The fact that a Chinese official acknowledged that Beijing had considered using drones to eliminate the Burmese drug trafficker, Naw Kham, made clear that it would not be out of the question for China to launch a drone strike in a security operation against a nonstate actor. Meanwhile, as China’s territorial disputes with its neighbors have escalated, there is a chance that Beijing would introduce unmanned aircraft, especially since India, the Philippines, and Vietnam distantly trail China in drone funding and capacity, and would find it difficult to compete. Beijing is already using drones to photograph the Senkaku/Diaoyu Islands it disputes with Japan, as the retired Chinese Major General Peng Guangqian revealed earlier this year, and to keep an eye on movements near the North Korean border.¶ Beijing, however, is unlikely to use its drones lightly. It already faces tremendous criticism from much of the international community for its perceived brazenness in continental and maritime sovereignty disputes. With its leaders attempting to allay notions that China's rise poses a threat to the region, injecting drones conspicuously into these disputes would prove counterproductive. China also fears setting a precedent for the use of drones in East Asian hotspots that the United States could eventually exploit. For now, Beijing is showing that it understands these risks, and to date it has limited its use of drones in these areas to surveillance, according to recent public statements from China's Defence Ministry. What about using drones outside of Chinese-claimed areas? That China did not, in fact, launch a drone strike on the Myanmar drug criminal underscores its caution. According to Liu Yuejin, the director of the anti-drug bureau in China's Ministry of Public Security, Beijing considered using a drone carrying a 20-kilogram TNT payload to bomb Kham's mountain redoubt in northeast Myanmar. Kham had already evaded capture three times, so a drone strike may have seemed to be the best option. The authorities apparently had at least two plans for capturing Kham. The method they ultimately chose was to send Chinese police forces to lead a transnational investigation that ended in April 2012 with Kham's capture near the Myanmar-Laos border. The ultimate decision to refrain from the strike may reflect both a fear of political reproach and a lack of confidence in untested drones, systems, and operators. The restrictive position that Beijing takes on sovereignty in international forums will further constrain its use of drones. China is not likely to publicly deploy drones for precision strikes or in other military assignments without first having been granted a credible mandate to do so. The gold standard of such an authorisation is a resolution passed by the UN Security Council, the stamp of approval that has permitted Chinese humanitarian interventions in Africa and anti-piracy operations in the Gulf of Aden. China might consider using drones abroad with some sort of regional authorisation, such as a country giving Beijing explicit permission to launch a drone strike within its territory. But even with the endorsement of the international community or specific states, China would have to weigh any benefits of a drone strike abroad against the potential for mishaps and perceptions that it was infringing on other countries' sovereignty - something Beijing regularly decries when others do it. The limitations on China's drone use are reflected in the country's academic literature on the topic. The bulk of Chinese drone research is dedicated to scientific and technological topics related to design and performance. The articles that do discuss potential applications primarily point to major combat scenarios -such as a conflagration with Taiwan or the need to attack a US aircraft carrier - which would presumably involve far more than just drones. Chinese researchers have thought a great deal about the utility of drones for domestic surveillance and law enforcement, as well as for non-combat-related tasks near China's contentious borders. Few scholars, however, have publicly considered the use of drone strikes overseas. Yet there is a reason why the United States has employed drones extensively despite domestic and international criticism: it is much easier and cheaper to kill terrorists from above than to try to root them out through long and expensive counterinsurgency campaigns. Some similar challenges loom on China's horizon. Within China, Beijing often considers protests and violence in the restive border regions, such as Xinjiang and Tibet, to constitute terrorism. It would presumably consider ordering precision strikes to suppress any future violence there. Even if such strikes are operationally prudent, China's leaders understand that they would damage the country's image abroad, but they prioritise internal stability above all else. Domestic surveillance by drones is a different issue; there should be few barriers to its application in what is already one of the world's most heavily policed societies. China might also be willing to use stealth drones in foreign airspace without authorisation if the risk of detection were low enough; it already deploys intelligence-gathering ships in the exclusive economic zones of Japan and the United States, as well as in the Indian Ocean. Still, although China enjoys a rapidly expanding and cutting-edge drone fleet, it is bound by the same rules of the game as the rest of the military's tools. Beyond surveillance, the other non-lethal military actions that China can take with its drones are to facilitate communications within the Chinese military, support electronic warfare by intercepting electronic communications and jamming enemy systems, and help identify targets for Chinese precision strike weapons, such as missiles. Beijing's overarching approach remains one of caution - something Washington must bear in mind with its own drone programme.

#### No impact to drone arms race – multiple checks

* Narrow application
* Diplomatic and political costs
* State defenses
* Deterrence checks

Singh 12 (Joseph Singh is a researcher at the Center for a New American Security. “Betting Against a Drone Arms Race,” http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/)

Bold predictions of a coming drones arms race are all the rage since the uptake in their deployment under the Obama Administration. Noel Sharkey, for example, argues in an August 3 op-ed for the Guardian that rapidly developing drone technology — coupled with minimal military risk — portends an era in which states will become increasingly aggressive in their use of drones. As drones develop the ability to fly completely autonomously, Sharkey predicts a proliferation of their use that will set dangerous precedents, seemingly inviting hostile nations to use drones against one another. Yet, the narrow applications of current drone technology coupled with what we know about state behavior in the international system lend no credence to these ominous warnings. Indeed, critics seem overly-focused on the domestic implications of drone use. In a June piece for the Financial Times, Michael Ignatieff writes that “virtual technologies make it easier for democracies to wage war because they eliminate the risk of blood sacrifice that once forced democratic peoples to be prudent.” Significant public support for the Obama Administration’s increasing deployment of drones would also seem to legitimate this claim. Yet, there remain equally serious diplomatic and political costs that emanate from beyond a fickle electorate, which will prevent the likes of the increased drone aggression predicted by both Ignatieff and Sharkey. Most recently, the serious diplomatic scuffle instigated by Syria’s downing a Turkish reconnaissance plane in June illustrated the very serious risks of operating any aircraft in foreign territory. States launching drones must still weigh the diplomatic and political costs of their actions, which make the calculation surrounding their use no fundamentally different to any other aerial engagement. This recent bout also illustrated a salient point regarding drone technology: most states maintain at least minimal air defenses that can quickly detect and take down drones, as the U.S. discovered when it employed drones at the onset of the Iraq invasion, while Saddam Hussein’s surface-to-air missiles were still active. What the U.S. also learned, however, was that drones constitute an effective military tool in an extremely narrow strategic context. They are well-suited either in direct support of a broader military campaign, or to conduct targeted killing operations against a technologically unsophisticated enemy. In a nutshell, then, the very contexts in which we have seen drones deployed. Northern Pakistan, along with a few other regions in the world, remain conducive to drone usage given a lack of air defenses, poor media coverage, and difficulties in accessing the region. Non-state actors, on the other hand, have even more reasons to steer clear of drones: – First, they are wildly expensive. At $15 million, the average weaponized drone is less costly than an F-16 fighter jet, yet much pricier than the significantly cheaper, yet equally damaging options terrorist groups could pursue. – Those alternatives would also be relatively more difficult to trace back to an organization than an unmanned aerial vehicle, with all the technical and logistical planning its operation would pose. – Weaponized drones are not easily deployable. Most require runways in order to be launched, which means that any non-state actor would likely require state sponsorship to operate a drone. Such sponsorship is unlikely given the political and diplomatic consequences the sponsoring state would certainly face. – Finally, drones require an extensive team of on-the-ground experts to ensure their successful operation. According to the U.S. Air Force, 168 individuals are needed to operate a Predator drone, including a pilot, maintenance personnel and surveillance analysts. In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology. Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team. Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones. What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use. Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best. Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations. Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

#### No Senkaku or Asian conflict- empirically denied, economic interdependence checks, and China avoids nationalism.

Carlson ’13(Allen Carlson is an Associate Professor in Cornell University’s Government Department. He was granted his PhD from Yale University’s Political Science Department. His undergraduate degree is from Colby College. In 2005 his Unifying China, Integrating with the World: Securing Chinese Sovereignty in the Reform Era was published by Stanford University Press. He has also written articles that appeared in the Journal of Contemporary China, Pacific Affairs, Asia Policy, and Nations and Nationalism. In addition, he has published monographs for the National Committee on U.S.-China Relations and the East-West Center Washington. Carlson was a Fulbright-Hays scholar at Peking University during the 2004-2005 academic year. In 2005 he was chosen to participate in the National Committee’s Public Intellectuals Program, and he currently serves as an adviser to Cornell’s China Asia Pacific Studies program and its East Asia Program. Carlson is currently working on a project exploring the issue of nontraditional security in China’s emerging relationship with the rest of the international system. His most recent publications are the co-edited Contemporary Chinese Politics: New Sources, Methods and Field Strategies (Cambridge University Press, 2010) and New Frontiers in China’s Foreign Relations (Lexington, 2011). China Keeps the Peace at Sea China Keeps the Peace at Sea Why the Dragon Doesn't Want War Allen Carlson February 21, 2013

At times in the past few months, China and Japan have appeared almost ready to do battle over the **Senkaku** (Diaoyu) Islands --which are administered by Tokyo but claimed by both countries -- and to ignite a war that could be bigger than any since World War II. Although Tokyo and Beijing have been shadowboxing over the territory for years, the standoff reached a new low in the fall, when the Japanese government nationalized some of the islands by purchasing them from a private owner. The decision set off a wave of violent anti-Japanese demonstrations across China. In the wake of these events, the conflict quickly reached what political scientists call a state of equivalent retaliation -- a situation in which both countries believe that it is imperative to respond in kind to any and all perceived slights. As a result, it may have seemed that armed engagement was imminent. **Yet,** months later,nothing has happened. And **despite** their **aggressive posturing** in the disputed territory, **both** sides **now show** glimmers of willingness to dial down hostilities and to reestablish stability**.** Some analysts have cited North Korea's recent nuclear test as a factor in the countries' reluctance to engage in military conflict. They argue that the detonation, and Kim Jong Un's belligerence, brought China and Japan together, unsettling them and placing their differences in a scarier context. Rory Medcalf, a senior fellow at the Brookings Institution, explained that "the nuclear test gives the leadership in both Beijing and Tokyo a chance to focus on a foreign and security policy challenge where their interests are not diametrically at odds." The nuclear test, though, is a red herring in terms of the conflict over the disputed islands. In truth, the roots of the conflict -- and the reasons it has not yet exploded -- are much deeper. Put simply, **China** cannot afford military conflict **with** any of its **Asian neighbors.** It is not that China believes it would lose such a spat; the country increasingly enjoys strategic superiority over the entire region, and it is difficult to imagine that its forces would be beaten in a direct engagement over the islands, in the South China Sea or in the disputed regions along the Sino-Indian border. However**, Chinese officials see** thateven the most pronounced victory would be outweighed by the collateral damagethat such a use of force would cause **to Beijing's** two most fundamental national interests **--** economic **growth and preventing the escalation of** radical **nationalist sentiment at home.** These constraints, rather than any external deterrent**, will keep** Xi Jinping, **China's new leader, from** authorizing the use of deadly **force** in the Diaoyu Islands theater. For over three decades, **Beijing has promoted** peace and stability **in Asia** to facilitate conditions amenable to **China's** **economic** **development**. The origins of the policy can be traced back to the late 1970s, when Deng Xiaoping repeatedly contended that to move beyond the economically debilitating Maoist period, China would have to seek a common ground with its neighbors. Promoting cooperation in the region would allow China to spend less on military preparedness, focus on making the country a more welcoming destination for foreign investment, and foster better trade relations. All of this would strengthen the Chinese economy. Deng was right. Today, China's economy is second only to that of the United States. The fundamentals of Deng's grand economic strategy are still revered in Beijing. But any war in the region would erode the hard-won, and precariously held, political capital that China has gained in the last several decades. It would also disrupt trade relations, complicate efforts to promote the yuan as an international currency, and send shock waves through the country's economic system at a time when it can ill afford them. There is thus little reason to think that China is readying for war with Japan. At the same time, the specter of rising Chinese nationalism, **although** often seen as **a promoter of conflict**, further limits the prospects for armed engagement. This is because Beijing will try to discourage nationalism if it fears it may lose control or be forced by popular sentiment to take an action it deems unwise. **Ever since** the **Tiananmen Square** massacre put questions about the Chinese Communist Party's right to govern before the population, **successive generations of Chinese leaders have carefully negotiated a balance** between promoting nationalist sentiment and preventing it from boiling over. In the process, they cemented the legitimacy of their rule. A war with Japan could easily upset that balance by inflaming nationalism that could blow back against China's leaders. Consider a hypothetical scenario in which a uniformed Chinese military member is killed during a firefight with Japanese soldiers. Regardless of the specific circumstances, the casualty would create a new martyr in China and, almost as quickly, catalyze popular protests against Japan. Demonstrators would call for blood, and if the government (fearing economic instability) did not extract enough, citizens would agitate against Beijing itself. Those in Zhongnanhai, the Chinese leadership compound in Beijing, would find themselves between a rock and a hard place. It is possible that Xi lost track of these basic facts during the fanfare of his rise to power and in the face of renewed Japanese assertiveness. It is also possible that the Chinese state is more rotten at the core than is understood. That is, party elites believe that a diversionary war is the only way to hold on to power -- damn the economic and social consequences. But Xi does not seem blind to the principles that have served Beijing so well over the last few decades. Indeed, although he recently warned unnamed others about infringing upon China's "national core interests" during a foreign policy speech to members of the Politburo, he also underscored China's commitment to "never pursue development at the cost of sacrificing other country's interests" and to never "benefit ourselves at others' expense or do harm to any neighbor." Of course, wars do happen -- and still could in the East China Sea. Should either side draw first blood through accident or an unexpected move, Sino-Japanese relations would be pushed into terrain that has not been charted since the middle of the last century. However, understanding that war would be a no-win situation, China has avoided rushing over the brink. This relative restraint seems to have surprised everyone. But it shouldn't. Beijing will continue to disagree with Tokyo over the sovereign status of the islands, and will not budge in its negotiating position over disputed territory. However, it cannot take the risk of going to war over a few rocks in the sea. On the contrary, in the **coming months it will quietly** seek a way to **shelve the dispute in return for** securing **regional stability**, facilitating economic development, and keeping a lid on the Pandora's box of rising nationalist sentiment. The ensuing peace, while unlikely to be deep, or especially conducive to improving Sino-Japanese relations, will be enduring.

#### No modeling – no international treaty or precedent

#### No modeling US military posture- the “copycat” argument is flawed

Boot 2011 (Max Boot, Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations in New York, leading military historian and foreign-policy analyst, “We Cannot Afford to Stop Drone Strikes,” Commentary Magazine, October 9, 2011, [http://www.commentarymagazine.com/2011/10/09/drone-arms-race/)](http://www.commentarymagazine.com/2011/10/09/drone-arms-race/%29)

“The problem is that we’re creating an international norm” — asserting the right to strike preemptively against those we suspect of planning attacks, argues Dennis M. Gormley, a senior research fellow at the [University of Pittsburgh](http://www.commentarymagazine.com/2011/10/09/drone-arms-race/) and author ofMissile Contagion, who has called for tougher export controls on American drone technology. “The copycatting is what I worry about most.”¶ This is a familiar trope of liberal critics who are always claiming we should forego “X” weapons system or capability, otherwise our enemies will adopt it too. We have heard this with regard to ballistic missile defense, ballistic missiles, nuclear weapons, chemical and biological weapons, land mines, exploding bullets, and other fearsome weapons. Some have even suggested the U.S. should abjure the first use of nuclear weapons–and cut down our own arsenal–to encourage similar restraint from Iran.¶ The argument falls apart rather quickly because it is founded on a false premise: that other nations will follow our example. In point of fact, Iran is hell-bent on getting nuclear weapons no matter what we do; China is hell-bent on getting drones; and so forth. Whether and under what circumstances they will use those weapons remains an open question–but there is little reason to think self-restraint on our part will be matched by equal self-restraint on theirs. Is Pakistan avoiding nuking India because we haven’t used nuclear weapons since 1945? Hardly. The reason is that India has a powerful nuclear deterrent to use against Pakistan. If there is one lesson of history it is a strong deterrent is a better upholder of peace than is unilateral disarmament–which is what the New York Times implicitly suggests.¶ Imagine if we did refrain from drone strikes against al-Qaeda–what would be the consequence? If we were to stop the strikes, would China really decide to take a softer line on Uighurs or Russia on Chechen separatists? That seems unlikely given the viciousness those states already employ in their battles against ethnic separatists–which at least in Russia’s case already includes the suspected [assassination](http://www.independent.co.uk/news/world/europe/former-chechen-rebel-boss-assassinated-in-dubai-1657758.html) of Chechen leaders abroad. What’s the difference between sending a hit team and sending a drone?

### 1NC Pakistan

#### Casualties are way down and drones are far more precise

Michael Cohen 13, Fellow at the Century Foundation, 5/23/13, “Give President Obama a chance: there is a role for drones,” The Guardian, http://www.theguardian.com/commentisfree/2013/may/23/obama-drone-speech-use-justified

Drone critics have a much different take. They are passionate in their conviction that US drones are indiscriminately killing and terrorizing civilians. The Guardian's own Glenn Greenwald argued recently that no "minimally rational person" can defend "Obama's drone kills on the ground that they are killing The Terrorists or that civilian deaths are rare". Conor Friedersdorf, an editor at the Atlantic and a vocal drone critic, wrote last year that liberals should not vote for President Obama's re-election because of the drone campaign, which he claimed "kills hundreds of innocents, including children," "terrorizes innocent Pakistanis on an almost daily basis" and "makes their lives into a nightmare worthy of dystopian novels". ¶ I disagree. Increasingly it appears that arguments like Friedersdorf makes are no longer sustainable (and there's real question if they ever were). Not only have drone strikes decreased, but so too have the number of civilians killed – and dramatically so. ¶ This conclusion comes not from Obama administration apologists but rather, Chris Woods, whose research has served as the empirical basis for the harshest attacks on the Obama Administration's drone policy. ¶ Woods heads the covert war program for the Bureau of Investigative Journalism (TBIJ), which maintains one of three major databases tabulating civilian casualties from US drone strikes. The others are the Long War Journal and the New America Foundation (full disclosure: I used to be a fellow there). While LWJ and NAJ estimate that drone strikes in Pakistan have killed somewhere between 140 and 300 civilians, TBIJ utilizes a far broader classification for civilians killed, resulting in estimates of somewhere between 411-884 civilians killed by drones in Pakistan. The wide range of numbers here speaks to the extraordinary challenge in tabulating civilian death rates. ¶ There is little local reporting done on the ground in northwest Pakistan, which is the epicenter of the US drone program. As a result data collection is reliant on Pakistani news reporting, which is also dependent on Pakistani intelligence, which has a vested interest in playing up the negative consequences of US drones. ¶ When I spoke with Woods last month, he said that a fairly clear pattern has emerged over the past year – far fewer civilians are dying from drones. "For those who are opposed to drone strikes," says Woods there is historical merit to the charge of significant civilian deaths, "but from a contemporary standpoint the numbers just aren't there." ¶ While Woods makes clear that one has to be "cautious" on any estimates of casualties, it's not just a numeric decline that is being seen, but rather it's a "proportionate decline". In other words, the percentage of civilians dying in drone strikes is also falling, which suggests to Woods that US drone operators are showing far greater care in trying to limit collateral damage. ¶ Woods estimates are supported by the aforementioned databases. In Pakistan, New America Foundation claims there have been no civilian deaths this year and only five last year; Long War Journal reported four deaths in 2012 and 11 so far in 2013; and TBIJ reports a range of 7-42 in 2012 and 0-4 in 2013. In addition, the drop in casualty figures is occurring not just in Pakistan but also in Yemen. ¶ These numbers are broadly consistent with what has been an under-reported decline in drone use overall. According to TBIJ, the number of drone strikes went from 128 in 2010 to 48 in 2012 and only 12 have occurred this year. These statistics are broadly consistent with LWJ and NAF's reporting. In Yemen, while drone attacks picked up in 2012, they have slowed dramatically this year. And in Somalia there has been no strike reported for more than a year. ¶ Ironically, these numbers are in line with the public statements of CIA director Brennan, and even more so with Senator Dianne Feinstein of California, chairman of the Select Intelligence Committee, who claimed in February that the numbers she has received from the Obama administration suggest that the typical number of victims per year from drone attacks is in "the single digits".¶ Part of the reason for these low counts is that the Obama administration has sought to minimize the number of civilian casualties through what can best be described as "creative bookkeeping". The administration counts all military-age males as possible combatants unless they have information (posthumously provided) that proves them innocent. Few have taken the White House's side on this issue (and for good reason) though some outside researchers concur with the administration's estimates.¶ Christine Fair, a professor at Georgetown University has long maintained that civilian deaths from drones in Pakistan are dramatically overstated. She argues that considering the alternatives of sending in the Pakistani military or using manned aircraft to flush out jihadists, drone strikes are a far more humane method of war-fighting.

#### Backlash is inevitable

Groves, senior research fellow – Institute for International Studies @ Heritage, 1/25/’13

(Steven, “The U.S. Should Ignore U.N. Inquiry Into Drone Strikes,” http://blog.heritage.org/2013/01/25/the-u-s-should-ignore-u-n-inquiry-into-drone-strikes/)

Various international legal academics and human rights activists have regularly made these and other similar allegations ever since the Obama Administration stepped up the drone program in 2009. While drone strikes cannot be viewed alone as an effective counterterrorism strategy, the Administration has repeatedly defended the legality of the program. Emmerson and his fellow U.N. special rapporteurs Philip Alston and Christof Heyns have repeatedly demanded that the U.S. provide more information on drone strikes—and the U.S. has repeatedly complied, issuing public statement after public statement defending every aspect of the drone program. Public statements detailing the legality and propriety of the drone program have been made by top Administration officials, including State Department Legal Adviser Harold Koh, Attorney General Eric Holder, Deputy National Security Advisor John Brennan, General Counsel for the Department of Defense Jeh Johnson, and CIA General Counsel Stephen Preston. Increased transparency will, of course, be deemed by human rights activists as insufficient where their true goal is to stop the U.S. drone program in its entirety. Unless and until the U.S. can somehow promise that no civilian casualties will result from drone strikes, such strikes will be considered violations of international law. Ignoring the U.N. probe will not make it go away, but the Obama Administration should not be so naive as to expect that its cooperation will substantively alter the investigation’s findings and conclusions.

#### Drones not the greatest threat for the people of the FATA

Rogers 13 Christopher Rogers, Pakistan Field Fellow with the Campaign for Innocent Victims in Conflict (CIVIC). Program Officer, Regional Policy Initiative, Open Society Foundations, Congressional Progressive Caucus Peace and Security Taskforce: Ad Hoc Hearing on Drones, 5-8

Having spoken to many people from this region, I have seen that drones are by no means the only, or even the greatest threat faced by the people of FATA. FATA is under siege, and has for decades been economically, socially, and politically isolated. Average income is less than 250 dollars per year. Less than one in five are literate. There are no courts, no elected local government. Militancy has filled this vacuum and the ensuing conflict has displaced hundreds of thousands, led to the detention of thousands more, and caused an untold number of civilian deaths. People in FATA are caught between militants and the Pakistani military, dealing with the destruction of their traditional tribal structures, and an absentee government. It is against this backdrop that the United States is conducting drone strikes, which have killed two to three thousand people over the past several years, in communities that already feel abandoned and extremely vulnerable.

#### Even after relations declined - Pakistan protests but it still clears its airspace

Gray 13 Christine Gray, Professor of International Law, University of Cambridge. *Current Legal Problems*, Targeted Killings: Recent US Attempts to Create a Legal Framework (2013), pp. 1–32

According to newspaper reports, the USA followed the practice of notifying Pakistan of its intention to carry out a targeted killing.70 The CIA would send a fax to the ISI (the Pakistan intelligence service) once a month, outlining areas and targets for drone attacks. The ISI would acknowledge receipt of the fax, without saying anything express about consent, but Pakistan would clear the airspace. However, after relations between the USA and Pakistan deteriorated following a series of incidents in 2011 and 2012, the practice changed. Today the ISI apparently no longer acknowledges receipt of the CIA faxes. But the USA says that Pakistan still clears its airspace. There are newspaper reports of divisions in the US administration on this issue. US State Department Legal Adviser Harold Koh is said to have expressed some concerns about the adequacy of the consent.71 In private there may have been consent, or possibly just acquiescence, by the Pakistani government, but the public picture is different.

#### Pakistan’s nukes are super secure-this is the most objective account

**Jaspal, South Asian Strategic Stability Institute advisor, 2013**

(Zafar, “Pakistan’s nuclear weapons safety and security”, 2-23, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/columns/23-Feb-2013/pakistan-s-nuclear-weapons-safety-and-security>, ldg)

The nature of debate; the conspiracy theories hatched against Pakistan’s nuclear programme and, above all, the fear of nuclear or radiological terrorist attacks necessitate serious analysis of the subject, i.e. the safety and security of Pakistan’s nuclear weapons. As the book reflects the biased approach that is immensely lacking scientific research, the following discussion is an attempt to present briefly the realistic-cum-objective account of the puzzle. Since the very beginning, Pakistan’s nuclear programme has been facing negligible internal and significant external opposition. In reality, the internal nuclear abolitionists have miserably failed to cultivate their viewpoint in the Pakistani society. The people of Pakistan have simply rejected their judgment about the demerits or repercussions of nuclear weapons in the strategic environment of South Asia. They have vehemently supported the nuclear programme and defied the malicious propaganda unleashed to hinder Islamabad’s pursuit to acquire indigenous nuclear weapons capability. Concurrently, the Government of Pakistan had constituted and implemented both short and long term policies to develop the country’s nuclear deterrence capability, particularly after India’s nuclear explosion in Rajasthan on May 18, 1974. Moreover, it has been intelligently addressing the security challenges to its nuclear infrastructure. Therefore, there has been no recorded incident of sabotage or theft of the Pakistani nuclear material to date. Needles to say, Pakistan has institutionalised highly-secured systems, which has been improved gradually to thwart internal and external security challenges to its nuclear infrastructure and arsenals, since the very beginning of the nuclear weapons programme. Immediately, after the nuclear weapons test in May 1998, the Government of Pakistan announced its National Command Authority (NCA), which comprises the Employment Control Committee, the Development Control Committee and Strategic Plans Division (SPD) - the secretariat of the Authority. The periodic meetings of the NCA, and briefings organised by the SPD, reveal that a range of overt and covert measures were adopted to guard the country’s nuclear programme. A few of the explicit measures are spelled out in the following paragraphs. First, the SPD works on behalf of the NCA, which increases its role in the nuclear decision-making. The Director General heads the SPD and is the focal person to ensure the safety and security of both the civilian and military component of the country’s nuclear programme. In addition, the separate strategic forces commands had been raised in all the three services. The services retain training, technical and administrative control over their strategic forces. Second, the custodians of the programme had established a Security Division, which today has more than 20,000 trained personnel to guard the arsenal. These trained soldiers are far superior to the terrorists. They are capable of guarding both nuclear weapons and sensitive nuclear facilities from terrorist syndicate sabotage attempts and external powers’ incursions into the nuclear weapons locations. Third, the NCA decided that nuclear weapons would not be stored at one place and very few people know about their locations. One can count these people on fingers who exactly know about the location of nuclear arsenals. The SPD introduced a very rigorous vetting process for the nuclear establishment, i.e. personal reliability programme for military personals and human reliability programme for the civilians to prevent insiders’ link with the terrorist groups. The officers, who are trusted with the weapons location information, ought to be under continuous surveillances by the intelligence agency, which is directly reporting to the high-ups of the secretariat. This methodology, certainly, conceals the location of the nuclear arsenals and also ensures the integrity of the employs. Fourth, the critics of Pakistan’s nuclear arsenals safety apparatus have failed to comprehend that its nukes are not maintained on a hair-trigger alert and, in times of peace, its nuclear warheads are maintained separately from their non-nuclear assemblies. This approach prevents accidental or unauthorised use of nuclear weapons. Fifth, the SPD has developed a foolproof security system such as Permissive Action Link system, which is modelled after the one used in the US. It electronically locks the nuclear weapons. The SPD also relies on a range of other measures, including dual key system. Sixth, Pakistan’s Parliament legislated an Act - the Export Control on Goods, Technologies, Material and Equipment Related to Nuclear and Biological Weapons and their Delivery Systems Act - in September 2004. The purpose of this Act is to further strengthen control on the export of sensitive technologies, particularly those related to nuclear and biological weapons and their means of delivery. Seventh, Pakistan established a Strategic Export Control Division (SECDIV), in the Ministry of Foreign Affairs, in April 2007. Its purpose is to further tighten control over exports by monitoring and implementing the Export Control Act of 2004. Eighth, to prevent the possibility of theft and sabotage during the transportation of sensitive nuclear materials, effective measures have been instituted to fulfil international obligations under the UNSCR 1540. Side by side, it has been ensured that specialist vehicles and tamper-proof containers are provided for the transportation of nuclear materials that are escorted by military personnel. Nevertheless, Islamabad is very actively participating in the international arrangements to prevent any nuclear or radiological terrorism. For instance, Pakistan was among the first countries that submitted a report to the UN to fulfil its obligations under the UNSCR 1540. Further, it joined the US sponsored Container Security Initiative (CSI) in March 2006 and the Global Initiative to Combat Nuclear Terrorism (GICNT) in 2007. Also, it is part of the Nuclear Security Summit (NSS) process - an initiative taken by President Barack Obama that has led to two successful summits in 2010 and 2012 held at Washington DC and Seoul. Pakistan participated in the two summits and made significant contributions in supporting the global efforts towards nuclear safety and security. Former Prime Minister Yousuf Raza Gilani, in his speech at the Seoul Summit in March 2012, had categorically stated: “Pakistan has taken effective measures, which are the most important part of its efforts to enhance nuclear security…….We have been implementing a nuclear security action plan in cooperation with the IAEA, which reinforces physical protection of nuclear medical centres and civilian nuclear plants. Pakistan has established nuclear security training centres to act as a regional and international hub to train people. “Pakistan had been deploying special nuclear material portals at key entry and exit points to detect, deter and prevent illicit trafficking of nuclear and radioactive materials…….Together, we have taken steps to create a secure world that will not live under the fear of nuclear terrorist attacks. We firmly believe that nuclear material must never fall into the hands of terrorists.” Islamabad, despite its reliable nuclear safety and security arrangements, unfortunately, confronts the joint opposition of its own nationalists, who do not miss a single opportunity (even today) to criticise, malign, and desist the positive developmental trajectory of the national nuclear weapons programme. They frequently spell out negative hypothetical scenarios and recommend the ruling elite to roll-back the country’s nuclear weapon programme without taking into account India’s fatting military muscle. Ironically, they deliberately or inadvertently ignore the trends in the South Asian strategic environment. In the same vein, there are numerous Western analysts, who are continuously highlighting similar unfounded fears mainly to malign Pakistan. They overlook the measures that it has taken over more than one decade to ensure the safety and security of its nuclear assets. In short, one can conclude that either these analysts have a nefarious agenda to soften the state’s defensive fence, or maybe they lack the strategic vision to understand the indispensability of nuclear weapons for the military security of Pakistan. As a final word, the national consensus on Pakistan’s nuclear programme and the institutionalised structure of the NCA and its secretariat constituted vigilant custodians of the country’s nuclear programme. These safety and security arrangements manifest that neither terrorist networks, nor any external power is capable to seize its nuclear weapons. Hence, the physical-protection systems at the Pakistani nuclear facilities are well-built. There are custodial safeguards, and thereby these facilities are not accessible to unauthorised outsiders and under constant monitoring process.

#### No nuclear terrorism—no capability nor intent reject their alarmism

* Many reasons to doubt both the capability and interest of terrorists getting nuclear devices
* Dangers of a loose nuke from Russia is far over-stated
* Even if a terrorist group got a nuclear weapon using it would be very difficult
* Terrorists and connections between rogue states is exaggerates
* Iran and North Korea are not going to give terrorists nukes because their arsenals are small
* What can go wrong will go wrong—multiple intensifying and compounding probability make terrorist failure inevitable
* Their evidence uses worst case scenarios which is alarmist and false
* Insider documents within Al-Qaeda show they don’t want nuclear weapons and prefer convention weapons
* Their evidence about them wanting nukes is wrong the 90s and out of date
* Even if they did want a nuke it was only to deter a U.S. invasion

Gavin 10—Francis J. Gavin is Tom Slick Professor of International Affairs and Director of the Robert S. Strauss Center for International Security and Law, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin [International Security, Vol. 34, No. 3 (Winter 2009/10), pp. 7–37, the President and Fellows of Harvard College and the Massachusetts Institute of Technology, “Same As It Ever Was Nuclear Alarmism, Proliferation, and the Cold War”, http://www.mitpressjournals.org/doi/pdf/10.1162/isec.2010.34.3.7]

Nuclear Terrorism. The possibility of a terrorist nuclear attack on the United States is widely believed to be a grave, even apocalyptic, threat and a likely possibility, a belief supported by numerous statements by public officials. Since the collapse of the Soviet Union, “the inevitability of the spread of nuclear terrorism” and of a “successful terrorist attack” have been taken for granted.48 Coherent policies to reduce the risk of a nonstate actor using nuclear weapons clearly need to be developed. In particular, the rise of the Abdul Qadeer Khan nuclear technology network should give pause.49 But again, the news is not as grim as nuclear alarmists would suggest. Much has already been done to secure the supply of nuclear materials, and relatively simple steps can produce further improvements. Moreover, there are reasons to doubt both the capabilities and even the interest many terrorist groups have in detonating a nuclear device on U.S. soil. As Adam Garfinkle writes, “The threat of nuclear terrorism is very remote.”50 Experts disagree on whether nonstate actors have the scientific, engineering, financial, natural resource, security, and logistical capacities to build a nuclear bomb from scratch. According to terrorism expert Robin Frost, the danger of a “nuclear black market” and loose nukes from Russia may be overstated. Even if a terrorist group did acquire a nuclear weapon, delivering and detonating it against a U.S. target would present tremendous technical and logistical difficulties.51 Finally, the feared nexus between terrorists and rogue regimes may be exaggerated. As nuclear proliferation expert Joseph Cirincione argues, states such as Iran and North Korea are “not the most likely sources for terrorists since their stockpiles, if any, are small and exceedingly precious, and hence well-guarded.”52 Chubin states that there “is no reason to believe that Iran today, any more than Sadaam Hussein earlier, would transfer WMD [weapons of mass destruction] technology to terrorist groups like al-Qaida or Hezbollah.”53 Even if a terrorist group were to acquire a nuclear device, expert Michael Levi demonstrates that effective planning can prevent catastrophe: for nuclear terrorists, what “can go wrong might go wrong, and when it comes to nuclear terrorism, a broader, integrated defense, just like controls at the source of weapons and materials, can multiply, intensify, and compound the possibilities of terrorist failure, possibly driving terrorist groups to reject nuclear terrorism altogether.” Warning of the danger of a terrorist acquiring a nuclear weapon, most analyses are based on the inaccurate image of an “infallible tenfoot-tall enemy.” This type of alarmism, writes Levi, impedes the development of thoughtful strategies that could deter, prevent, or mitigate a terrorist attack: “Worst-case estimates have their place, but the possible failure-averse, conservative, resource-limited five-foot-tall nuclear terrorist, who is subject not only to the laws of physics but also to Murphy’s law of nuclear terrorism, needs to become just as central to our evaluations of strategies.”54 A recent study contends that al-Qaida’s interest in acquiring and using nuclear weapons may be overstated. Anne Stenersen, a terrorism expert, claims that “looking at statements and activities at various levels within the al-Qaida network, it becomes clear that the network’s interest in using unconventional means is in fact much lower than commonly thought.”55 She further states that “CBRN [chemical, biological, radiological, and nuclear] weapons do not play a central part in al-Qaida’s strategy.”56 In the 1990s, members of al-Qaida debated whether to obtain a nuclear device. Those in favor sought the weapons primarily to deter a U.S. attack on al-Qaida’s bases in Afghanistan. This assessment reveals an organization at odds with that laid out by nuclear alarmists of terrorists obsessed with using nuclear weapons against the United States regardless of the consequences. Stenersen asserts, “Although there have been various reports stating that al-Qaida attempted to buy nuclear material in the nineties, and possibly recruited skilled scientists, it appears that al-Qaida central have not dedicated a lot of time or effort to developing a high-end CBRN capability.... Al-Qaida central never had a coherent strategy to obtain CBRN: instead, its members were divided on the issue, and there was an awareness that militarily effective weapons were extremely difficult to obtain.”57 Most terrorist groups “assess nuclear terrorism through the lens of their political goals and may judge that it does not advance their interests.”58 As Frost has written, “The risk of nuclear terrorism, especially true nuclear terrorism employing bombs powered by nuclear fission, is overstated, and that popular wisdom on the topic is significantly fiawed.”59

#### No risk of nuclear terrorism – technically impossible\*\*\*

Michael, Professor Nuclear Counterprolif and Deterrence at Air Force Counterprolif Center, ’12 (George, March, “Strategic Nuclear Terrorism and the Risk of State Decapitation” Defence Studies, Vol 12 Issue 1, p 67-105, T&F Online)

Despite the alarming prospect of nuclear terrorism, the obstacles to obtaining such capabilities are formidable. There are several pathways that terrorists could take to acquire a nuclear device. Seizing an intact nuclear weapon would be the most direct method. However, neither nuclear weapons nor nuclear technology has proliferated to the degree that some observers once feared. Although nuclear weapons have been around for over 65 years, the so-called nuclear club stands at only nine members. 72 Terrorists could attempt to purloin a weapon from a nuclear stockpile; however, absconding with a nuclear weapon would be problematical because of tight security measures at installations.¶ Alternatively, a terrorist group could attempt to acquire a bomb through an illicit transaction, but there is no real well-developed black market for illicit nuclear materials. Still, the deployment of tactical nuclear weapons around the world presents the risk of theft and diversion. 73 In 1997, the Russian General, Alexander Lebed, alleged that 84 ‘suitcase’ bombs were missing from the Russian military arsenal, but later recanted his statements. 74 American officials generally remain unconvinced of Lebed’s story insofar as they were never mentioned in any Soviet war plans. 75 Presumably, the financial requirements for a transaction involving nuclear weapons would be very high, as states have spent millions and billions of dollars to obtain their arsenals. 76 Furthermore, transferring such sums of money could raise red flags, which would present opportunities for authorities to uncover the plot. When pursuing nuclear transactions, terrorist groups would be vulnerable to sting operations. 77¶ Even if terrorists acquired an intact nuclear weapon, the group would still have to bypass or defeat various safeguards, such as permissive action links (PALs), and safing, arming, fusing, and firing (SAFF) procedures. Both US and Russian nuclear weapons are outfitted with complicated physical and electronic locking mechanisms. 78 Nuclear weapons in other countries are usually stored partially disassembled, which would make purloining a fully functional weapon very challenging. 79¶ Failing to acquire a nuclear weapon, a terrorist group could endeavor to fabricate its own Improvised Nuclear Device (IND). For years, the US government has explored the possibility of a clandestine group fabricating a nuclear weapon. The so-called Nth Country Experiment examined the technical problems facing a nation that endeavored to build a small stockpile of nuclear weapons. Launched in 1964, the experiment sought to determine whether a minimal team –in this case, two young American physicists with PhDs and without nuclear-weapons design knowledge –could design a workable nuclear weapon with a militarily significant yield. After three man-years of effort, the two novices succeeded in a hypothetical test of their device. 80 In 1977, the US Office of Technology Assessment concluded that a small terrorist group could develop and detonate a crude nuclear device without access to classified material and without access to a great deal of technological equipment. Modest machine shop facilities could be contracted for purposes of constructing the device. 81¶ Numerous experts have weighed in on the workability of constructing an IND. Hans Bethe, the Nobel laureate who worked on the Manhattan Project, once calculated that a minimum of six highly-trained persons representing the right expertise would be required to fabricate a nuclear device. 82 A hypothetical scenario developed by Peter Zimmerman, a former chief scientist for the Arms Control and Disarmament Agency, and Jeffrey G. Lewis, the former executive director of the Managing the Atom Project at Harvard University’s Belfer Center for Science and International Affairs, concluded that a team of 19 persons could build a nuclear device in the United States for about $10 million. 83¶ The most crucial step in the IND pathway is acquiring enough fissile material for the weapon. According to some estimates, roughly 25 kilograms of weapons-grade uranium or 8 kilograms of weapons-grade plutonium would be required to support a self-sustaining fission chain reaction. 84 It would be virtually impossible for a terrorist group to create its own fissile material. Enriching uranium, or producing plutonium in a nuclear reactor, is far beyond the scope of any terrorist organization. 85 However, the International Atomic Energy Agency (IAEA), which maintains a database, confirmed 1,562 incidents of smuggling encompassing trade in nuclear materials or radioactive sources. Fifteen incidents involved HEU or plutonium. 86 Be that as it may, according to the IAEA, the total of all known thefts of HEU around the world between 1993 and 2006 amounted to less than eight kilograms, far short of the estimated minimum 25 kilograms necessary for a crude improvised nuclear device. 87 An amount of fissile material adequate for a workable nuclear device would be difficult to procure from one source or in one transaction. However, terrorists could settle on less demanding standards. According to an article in Scientific American, a nuclear device could be fabricated with as little as 60 kilograms of HEU (defined as concentrated to levels of 20 percent for more of the uranium 235 isotope). 88 Although enriching uranium is well nigh impossible for terrorist groups, approximately 1,800 tons of HEU was created during the Cold War, mostly by the United States and the Soviet Union. 89 Collective efforts, such as the Cooperative Threat Reduction program, the G-8 Partnership against the Spread of Weapons of Mass Destruction, and the Nuclear Suppliers Group, have done much to secure nuclear weapons and fissile materials, but the job is far from complete. 90 And other problems are on the horizon. For instance, the number of nuclear reactors is projected to double by the end of the century, though many, if not most, will be fueled with low-enriched uranium (LEU). With this development, comes the risk of diversion as HEU and plutonium stockpiles will be plentiful in civilian sectors. 91¶ Plutonium is more available around the world than HEU and smuggling plutonium would be relatively easy insofar as it commonly comes in two-pound bars or gravel-like pellets. 92 Constructing an IND from plutonium, though, would be much more challenging insofar as it would require the more sophisticated implosion-style design that would require highly trained engineers working in well-equipped labs. 93 But, if an implosion device does not detonate precisely as intended, then it would probably be more akin to a radiological dispersion device, rather than a mushroom. Theoretically, plutonium could be used in a gun-assembly weapon, but the detonation would probably result in an unimpressive fizzle, rather than a substantial explosion with a yield no greater than 10 to 20 tons of TNT, which would still be much greater than one from a conventional explosive. 94¶ But even assuming that fissile material could be acquired, the terrorist group would still need the technical expertise to complete the required steps to assemble a nuclear device. Most experts believe that constructing a gun-assembly weapon would pose no significant technological barriers. 95 Luis Alvarez once asserted that a fairly high-level nuclear explosion could be occasioned just by dropping one piece of weapons-grade uranium onto another. He may, however, have exaggerated the ease with which terrorists could fabricate a nuclear device. 96¶ In sum, the hurdles that a terrorist group would have to overcome to build or acquire a nuclear bomb are very high. If states that aspire to obtain nuclear capability face serious difficulties, it would follow that it would be even more challenging for terrorist groups with far fewer resources and a without a secure geographic area in which to undertake such a project. The difficulty of developing a viable nuclear weapon is illustrated by the case of Saddam Hussein’s Iraq, which after 20 years of effort and over ten billion dollars spent, failed to produce a functional bomb by the time the country was defeated in the 1991 Gulf War. 97 Nevertheless, the quality of a nuclear device for a non-state entity would presumably be much lower as it would not be necessary to meet the same quality standards of states when fabricating their nuclear weapons. Nor would the device have to be weaponized and mated with a delivery system.¶ In order to be successful, terrorists must succeed at each stage of the plot. With clandestine activities, the probability of security leaks increases with the number of persons involved. 98 The plot would require not only highly competent technicians, but also unflinching loyalty and discipline from the participants. A strong central authority would be necessary to coordinate the numerous operatives involved in the acquisition and delivery of the weapon. Substantial funding to procure the materials with which to build a bomb would be necessary, unless a weapon was conveyed to the group by a state or some criminal entity. 99 Finally, a network of competent and dedicated operatives would be required to arrange the transport of the weapon across national borders without detection, which could be challenging considering heightened security measures, including gamma ray detectors. 100 Such a combination of steps spread throughout each stage of the plot would be daunting. 101¶ As Matthew Bunn and Anthony Wier once pointed out, in setting the parameters of nuclear terrorism, the laws of physics are both kind and cruel. In a sense, they are kind insofar as the essential ingredients for a bomb are very difficult to produce. However, they are also cruel in the sense that while it is not easy to make a nuclear bomb, it is not as difficult as believed once the essential ingredients are in hand. 102 Furthermore, as more and more countries undergo industrialization concomitant with the diffusion of technology and expertise, the hurdles for acquiring these ingredients are now more likely to be surmounted, though HEU is still hard to procure illicitly. In a global economy, dual-use technologies circulate around the world along with the scientific personnel who design and use them. 103 And although both the US and Russian governments have substantially reduced their arsenals since the end of the Cold War, many warheads remain. 104 Consequently, there are still many nuclear weapons that could fall into the wrong hands.

## 2NC

### 2NC 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 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.

#### Nations respond to behavior and usage -- not legal standards

Roberts 13 (Kristin, When the Whole World Has Drones, National Journal, 21 March 2013, http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321, da 8-1-13) PC

But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions. A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs. Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists. The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses.

#### Restraint on constitutional grounds captures the precedent—comparative ev

Atkinson ‘13 – JD NYU, National Security Division, Department of Justice (L. Rush, Vanderbilt Law Review, forthcoming issue, “The Fourth Amendment’s National Security Exception”, http://ssrn.com/abstract=2226404)

When identifying constitutional parameters for the executive, it is particularly instructive to look at historical moments when the executive is restrained. When congressional prohibition draws executive power to its “ebb,” for example, one can identify the executive’s core inextinguishable powers.47 Constitutional boundaries are similarly discernible in some cases where the executive branch **limits its own** conduct. Specifically, the executive’s self-restraint is precedential when it stems from a sense of constitutional obligation.48 Such fealty towards the Constitution might be unprompted by judicial command or legislative action, and there may be no record as obvious as a judicial opinion or legislative bill. Nevertheless, where a discernible opinio juris has shaped executive action, such legal opinion should be considered both for its persuasive power and a historical understanding about what protections the Constitution establishes.49

### 2NC Politics NB

#### 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.

#### True for Obama

Ramsey 12 (MICHAEL D. RAMSEY, is Professor of Law at the University of San Diego School of Law, “THE FEDERALIST SOCIETY NATIONAL LAWYERS CONVENTION--2011: MEET THE NEW BOSS: CONTINUITY IN PRESIDENTIAL WAR POWERS?” Summer, 2012, Harvard Journal of Law & Public Policy, LexisNexis, KB)

Thus there has been an escalation in the use of unconstitutional executive war power under President Obama, yet there has not been an outcry against him resembling the outcry against the Bush Administration, which was routinely attacked for exceeding the limits of executive power. n29 Although some voices have been raised against President Obama's claims of executive power, n30 they have been marginalized. They have not [\*871] been taken up by the mainstream in the manner of similar criticisms of President Bush. My speculation is that there is an identification by legal and media elites with the establishment Democratic Party that makes it difficult for these criticisms to gain traction in the way they did in the Bush Administration.¶ I think this makes it easier for Democratic presidents than for Republican presidents to unconstitutionally extend executive power. Thus Obama's policies, which are much more deserving of constitutional criticism, do not generate the popular pushback that we saw, perhaps unjustifiably, against President Bush. In any event, what is most striking about executive war power under President Obama is not the commonly recognized continuity as compared to the prior administration, but rather the increased disregard of constitutional limits.

#### Helps his agenda

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

It is also important not to lose sight of a centrally important fact: Presidents frequently support imposition of internal mechanisms that substantially constrain the Executive Branch and even sometimes adopt such measures voluntarily - on their own or at the initiative of an agency. 43 Politics is a partial explanation for this, but another causal factor is that Presidents are [\*434] judged on their ability to govern effectively. 44 Terry Moe has argued that such presidential performance accountability leads to core dynamics of Executive Branch centralization and politicization, as a President wants "an institutional system responsive to his needs as a political leader. He values organizational competence, to be sure, but what he seeks is "responsive competence,' not neutral competence." 45 Yet a President's political accountability may also lead him to support administrative structures that are more independent. As David Barron recently noted, sometimes "[a] system for making regulatory policy that is administrative in orientation may itself serve a given President's agenda" - a situation Barron contends existed under President Franklin Roosevelt, who sought to "bulk[] up the regulatory state." 46 Presidents may also find that responsiveness and competence conflict. In a recent study, David Lewis concluded that programs run by expert professional administrators perform better on the whole than those run by political appointees. 47 Presidents may well be willing to forego politicization or centralization and opt for a form of administration they can less easily control if they believe that doing so will yield more effective performance. Finally, Presidents may also conclude that internal constraints are in fact essential to ensure their ability to control administration by providing a mechanism that can limit on-the-ground discretion of agency officials. 48

#### The Obama administration doesn’t care about the power – they care about whether Congress gets to decide it

Greenwald 11 Glenn, Salon, 12-1

Let’s be very clear, though, about what the “veto threat” is and is not. All things considered, I’m glad the White House is opposing this bill rather than supporting it. But, with a few exceptions, the objections raised by the White House are not grounded in substantive problems with these powers, but rather in the argument that such matters are for the Executive Branch, not the Congress, to decide. In other words, the White House’s objections are grounded in broad theories of Executive Power. They are not arguing: it is wrong to deny accused Terrorists a trial. Instead they insist: whether an accused Terrorist is put in military detention rather than civilian custody is for the President alone to decide. Over and over, the White House’s statement emphasizes Executive power as the basis for its objections to Levin/McCain: Broadly speaking, the detention provisions in this bill micromanage the work of our experienced counterterrorism professionals, including our military commanders, intelligence professionals, seasoned counterterrorism prosecutors, or other operatives in the field. These professionals have successfully led a Government-wide effort to disrupt, dismantle, and defeat al-Qa’ida and its affiliates and adherents over two consecutive Administrations. The Administration believes strongly that it would be a mistake for Congress to overrule or limit the tactical flexibility of our Nation’s counterterrorism professionals. It’s certainly possible that the administration is simply offering these Executive Power arguments as a fig leaf to hide their more politically difficult substantive objections to expanding the War on Terror. But that seems unlikely in the extreme, given that — as I have documented — most of these powers are ones expressly claimed and used already by the Obama administration. Does anyone believe that the same President who kills his own citizens without a whiff of due process or transparency is suddenly so concerned about the imperatives of due process? Indeed, Marcy Wheeler has repeatedly suggested that, in some important respects, Levin/McCain could actually limit Executive Power beyond what the Obama DOJ has seized, and for that reason, has mixed feelings about the Udall amendment to remove it: As I have repeatedly described, I have very mixed feelings about the debate over Detainee Provisions set to pass the Senate tonight or tomorrow. I view it as a fight between advocates of martial law and advocates of relatively unchecked Presidential power. And as I’ve pointed out, the SASC compromise language actually limits Presidential power as it has been interpreted in a series of secret OLC opinions. I’m willing to believe that there is genuine White House opposition to having the military detain and imprison U.S. citizens on U.S. soil, and that’s commendable if true (though it’s a sign of just how extremist our government is that we’re grateful for that). Indeed, the Obama administration has opted for civilian trials for accused Terrorists captured on U.S. soil (outside of Padilla, so, too, did the Bush DOJ, and even Padilla was eventually charged). But by and large the White House’s objections are not to these powers but — explicitly — to the idea that Congress rather than the President can dictate how they are exercised. The White House isn’t defending due process or limited war; it’s defending broad Executive prerogatives to prosecute the war without Congressional interference. In that regard, the “debate” over this bill has taken on the standard vapid, substance-free, anti-democratic form that shapes most Washington debates. Even Democratic opponents of the bill, such as Mark Udall, have couched their opposition in these Executive Power arguments: that it’s better for National Security if the CIA, the Pentagon and the DOJ decides what is done with Terrorists, not Congress.

### A2 Perm – Do Both: Politics

#### Congress will use the plan to blame Obama and steal credit

Williams 2K DOUGLAS R. Associate Professor of Law, Saint Louis University School of Law. Saint Louis University Public Law Review, 19 St. Louis U. Pub. L. Rev. 75

There are number of reasons to question this logic. First, it is precisely on issues "of particular local interest" that legislators are unlikely to delegate, preferring instead to push for the favored position in order to gain credit. 127 Delegation is most likely the product of intense conflict among constituencies - a circumstance in which a delegation allows legislators to blame agencies for adverse constituent effects, while at the same time claiming credit for delivering the goods to benefited constituencies.

### A2 Rollback: Future Pres

#### Just because future presidents could doesn’t mean they will – you have to prove whoever wins will kills the CP

#### No impact – CP solves for the remainder of Obama’s administration which is enough for our net benefits to outweigh

#### XOs are binding on future administrations and cause follow-on

Duncan, Associate Professor of Law at Florida A&M, Winter 2010

(John C., “A Critical Consideration of Executive Orders,” 35 Vt. L. Rev. 333, Lexis)

Executive orders can serve the purpose of allowing the President to generate favorable publicity, such as when President Clinton signed an executive order on ethics, n493 and when President George W. Bush signed the first of a series of executive orders to launch his Faith-Based and Community Initiatives. n494 While these orders pay off political debts and thus may seem trivial, they nevertheless create bothinfrastructural and regulatory precedents for future administrations. Hence, they create an avenue for key constituencies of each administration to influence the executive structure as a whole without necessarily permitting that influence to extend to arenas of reserved for Congress. That is, while the President can act more swiftly and precisely to satisfy political commitments, the impact of his action will fall considerably short of analogous congressional action. This in turn serves to satisfy selected constituencies without giving them undue power via the presidency.

Executive orders have even served to create presidential commissions to investigate and research problems, and have been instrumental in solving remedial issues. n495 Commission reports that result from such orders can in [\*398] turn put pressure on Congress toenact legislation to respond to those problems. President Franklin Roosevelt pursued this process when he issued a report of the Committee on Economic Security studying financial insecurity due to "unemployment, old age, disability, and health." n496 This report led to the Social Security Act. n497

**Political barriers check – new, stronger constituencies**

**Branum 2** [Tara L Associate, Fulbright & Jaworski L.L.P “President or King? The Use and Abuse of Executive Orders in Modern America” Journal of Legislation

Congressmen and private citizens besiege the President with demands  [\*58]  that action be taken on various issues. [n273](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n273) To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. [n274](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n274) Many werecontroversial and the needfor the policies he instituted was debatable. [n275](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n275) Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. [n276](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n276) A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

### A2 Circumvention

#### Political checks are more effective than legal checks on the executive. The president’s search for credibility with the public limits behavior.

Huq 12 + Aziz Z. Assistant Professor of Law, University of Chicago Law School. University of Chicago Law Review, Spring, 79 U. Chi. L. Rev. 777

Instead, PV claim, the main reason Presidents are not "all-powerful" is political checks (p 61). 43 PV's account of political checks is grounded in a view of the President as an agent of the public. 44 In this principal-agent model, the public (which is the principal) has imperfect information as to whether the President (the agent) is "well-motivated" in the sense of "choosing the policies that voters [\*788] would choose if they knew what the executive knows" (p 130). The public will therefore deny the President rewards such as reelection unless it receives a credible signal that the President is "well-motivated." Hence, Presidents need to build their "credibility" with the public by demonstrating good motives. The search for credibility induces limits on executive behavior (pp 122-24, 129-33). To maintain credibility, a well-motivated executive cannot rely on demonstrating good outcomes, for there is an imperfect correlation between policy choices and outcomes. Instead, the well-motivated executive must take actions that would be unfeasibly costly if it had undesirable motives (p 123). For example, a well-motivated executive will share power with political adversaries and disclose information to demonstrate its bona fides, 45 while an ill-motivated executive would find these actions too costly. Paradoxically then, it is the very breadth of presidential discretion that induces a need to sustain popular trust, which in turn leads to actions that limit the exercise of executive power (pp 150-53). 46

#### Presidential overrule + A2 presidential overrule

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

At this point, unitary executivists blush. How can such an entity not be under the direct control of the President? Even if direct presidential control of the Director is constitutionally compelled (and there are good reasons to think it is), that would not mean the Director is unconstitutional. It would merely make the Director's decisions subject to presidential overrule. An overruling [\*2338] might be appropriate because the Director might make a mistake or might not be attuned to particular foreign-policy consequences, or because her lack of political accountability might dispose her toward adventurism. The downside of incorporating a presidential-overrule mechanism is that it may politicize the Director. The Director might fear being overruled and tailor opinions accordingly. But that dark scenario is unlikely to unfold - a rational Director would appreciate the myriad reasons why a President's formal power would not be exercised, such as fear of publicity and lack of expertise. 89 Yet the formality trap looms far larger in executive power debates than it should. We do not clamor for legislation to restrict federal courts from issuing advisory opinions simply because they are the only ones to have announced this restriction on their jurisdiction. So too we do not clamor for legislation to prevent Congress from easily declaring war simply because it could. Instead, in both cases we rely on obvious internal checks. Here, too, publicity, expertise, and good judgment will make it structurally difficult for the President to overrule the Director in many instances. Government has confronted a similar problem before. The Ethics in Government Act of 1978 created something akin to a Director of Adjudication, albeit in the form of a prosecutor instead of a judge. 90 The Independent Counsel lacked accountability and was often insensitive to a decision's long-term cost. 91 Congress eventually let these powers return to the Justice Department. But the Department then issued regulations creating Special Prosecutors removed from the day-to-day control and influence of political actors. 92 Special Prosecutors are free to conduct their investigations and, after deciding on particular courses of action, must present their proposals to the Attorney General, who retains a veto power.

#### Overrule must inform Congress

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

Critics relied on the formality trap, arguing that internal regulations would falter under the Attorney General's veto power. In response, the regulations required the Attorney General to notify Congress if he interfered with a Special Prosecutor. As a result, lines of accountability were preserved, so much that the [\*2339] Attorney General could be held responsible for trying to bury an investigation. Thus, the matter would receive political, though perhaps not public, oversight. Similarly, a presidential overruling of the Director of Adjudication could trigger reporting to Congress. Congress, though unlikely to begin legislating after a single override (for reasons offered in Part I), could use formal pressures of oversight hearings and informal pressures through the media to demand some accountability. While the executive would therefore be accountable to the other branches, instead of directly to the public, these mechanisms would nevertheless function as a valuable constraint. Over time, a culture of compliance might emerge, in which Presidents would not second-guess the opinions of the Director except in extreme instances.

#### Presidential override not bad – creates political accountability

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

A possible lesson to draw from these incidents is that internal constraints ultimately are of limited effect in checking aggrandized presidential authority. That conclusion seems unduly pessimistic. Instances also exist in which internal resistance played an important role in constraining the Bush [\*425] Administration's efforts to push its policy beyond legal limits. 7 Constraints that are ineffective in high-profile policy disputes may have significantly greater potency in less public and politically charged contexts - and in high-profile contexts, even internal checks with limited effect may be preferable to no checks at all. Moreover, presidential insistence on a policy position over internal resistance may not actually be an example of internal constraint failure. Instead, sometimes such insistence may exemplify the kind of constitutionally desirable direct presidential oversight of Executive Branch decisionmaking that fosters political accountability. At a minimum, no clear line separates forceful presidential assertion of regulatory priorities and presidential aggrandizement, as recent discussion of the Obama Administration's expansion of White House policy staff demonstrates. 8

#### In the world of the counterplan, the executive would run into internal checks if he bypassed decisions – this is why civil service protection solves

Hansen ‘9, Peter Raven-Hansen, Professor of Law at George Washington University, “EXECUTIVE SELF-CONTROLS: MADISON'S OTHER CHECK ON NATIONAL SECURITY INITIATIVES BY THE EXECUTIVE” St. John’s Journal of Legal Commentary, Spring 2009

First, neither the President nor the Vice President can systematically bypass such internal checks because neither actually does anything. They are only "Deciders." The President, after all, is not charged by the Constitution with executing the law, although we often say that in a sloppy paraphrase of the actual text. He's charged with "taking care that the laws be faithfully executed." 19 The Decider is inevitably dependent on others to carry out his decision. He can issue a military order ordering trial by military commission for enemy combatants, but he must use the JAG lawyers ultimately to develop the procedures by which the commissions operate and to operate the commissions. He can order surveillance, but has to use career lawyers in the Justice Department to implement FISA, or even to circumvent it to operate the Terrorist Surveillance Program. The result is that he necessarily is going to run into some of the internal checks I have described, no matter how bent he is on blowing through them.

### 2NC No Reverse Modeling

#### U.S. drone use doesn’t cause prolif – no international precedent.

Etzioni 13, Professor of International Relations @ George Washington University (Aimtai Etzioni, adviser to the Carter administration, “The Great Drone Debate”, Military Review, 4/2013, http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview\_20130430\_art004.pdf)

Other critics contend that by the United States ¶ using drones, it leads other countries into making and ¶ using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK ¶ and author of a book about drones argues that, “The ¶ proliferation of drones should evoke reﬂection on the ¶ precedent that the United States is setting by killing ¶ anyone it wants, anywhere it wants, on the basis of ¶ secret information. Other nations and non-state entities are watching—and are bound to start acting in ¶ a similar fashion.”60 Indeed scores of countries are ¶ now manufacturing or purchasing drones. There can ¶ be little doubt that the fact that drones have served ¶ the United States well has helped to popularize them. ¶ However, it does not follow that United States ¶ should not have employed drones in the hope that such a show of restraint would deter others. First ¶ of all, this would have meant that either the United ¶ States would have had to allow terrorists in hard-to-reach places, say North Waziristan, to either ¶ roam and rest freely—or it would have had to use ¶ bombs that would have caused much greater collateral damage. ¶ Further, the record shows that even when the ¶ United States did not develop a particular weapon, ¶ others did. Thus, China has taken the lead in the ¶ development of anti-ship missiles and seemingly ¶ cyber weapons as well. One must keep in mind ¶ that the international environment is a hostile ¶ one. Countries—and especially non-state actors—¶ most of the time do not play by some set of selfconstraining rules. Rather, they tend to employ ¶ whatever weapons they can obtain that will further ¶ their interests. The United States correctly does ¶ not assume that it can rely on some non-existent ¶ implicit gentleman’s agreements that call for the ¶ avoidance of new military technology by nation X ¶ or terrorist group Y—if the United States refrains ¶ from employing that technology. I am not arguing that there are no natural norms ¶ that restrain behavior. There are certainly some ¶ that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of ¶ diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of ¶ mass destruction). However drones are but one ¶ step—following bombers and missiles—in the ¶ development of distant battleﬁeld technologies. ¶ (Robotic soldiers—or future ﬁghting machines—¶ are next in line). In such circumstances, the role ¶ of norms is much more limited.

### Circumvention – CIA

#### Targeted killing regulation is impossible

Alston, professor – NYU Law, ‘11 (Philip, 2 Harv. Nat'l Sec. J. 283)

Despite the existence of a multiplicity of techniques by which the CIA might be held to account at the domestic level, the foregoing survey demonstrates that there is no evidence to conclude that any of them has functioned effective-ly in relation to the expanding practices involving targeted killings. The CIA Inspector General's Office has been unable to exact accountability and proposals to expand or strengthen his role run counter to almost all official actions taken in relation to his work. The President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board are lauded by some for their potential, but there is no indication that they scrutinize activities such as targeted killings policy or practice, and many indications that they view their role as being to support rather than monitor the intelligence community. The Privacy and Civil Liberties Oversight Board remains dormant. Congressional oversight has been seriously deficient and far from manifesting an appetite to scrutinize the CIA's targeted killings policies, a range of senior members of congress are on record as favoring a hands-off policy. And a combination of the political question doctrine, the state secrets privilege, and a reluctance to prosecute, ensure that the courts have indeed allowed the CIA to fall into a convenient legal grey hole. Finally, civil society has been largely stymied by the executive and the courts in their efforts to make effective use of freedom of information laws. All that remains is the media, and most of what they obtain through leaks come from government sources that are deliberately "spinning" the story in their own favor. Simi-lar conclusions have been reached in closely related contexts. Thus, for example, Kitrosser's survey of official responses to the warrantless wiretapping initiated after 9/11 led her to conclude that it was a shell [\*406] game, involving "an indefinite bi-partisan, cross-administration, cross-institutional pattern of accountability-avoidance." n450 In brief, at least in relation to targeted killings, the CIA enjoys almost complete impunity and is not subject to any form of meaningful internal or external accountability. Whether from the perspective of democratic theory or of interna-tional accountability for violations of the right to life, this is deeply problematic. One solution to this that has been sug-gested by some commentators is to follow the precedent set by Israel in its efforts to ensure legal oversight of its target killings programs. We turn now to examine the feasibility and desirability of pursuing such an option.

### Case

#### No risk of nuclear terrorism – technically impossible\*\*\*

Michael, Professor Nuclear Counterprolif and Deterrence at Air Force Counterprolif Center, ’12 (George, March, “Strategic Nuclear Terrorism and the Risk of State Decapitation” Defence Studies, Vol 12 Issue 1, p 67-105, T&F Online)

Despite the alarming prospect of nuclear terrorism, the obstacles to obtaining such capabilities are formidable. There are several pathways that terrorists could take to acquire a nuclear device. Seizing an intact nuclear weapon would be the most direct method. However, neither nuclear weapons nor nuclear technology has proliferated to the degree that some observers once feared. Although nuclear weapons have been around for over 65 years, the so-called nuclear club stands at only nine members. 72 Terrorists could attempt to purloin a weapon from a nuclear stockpile; however, absconding with a nuclear weapon would be problematical because of tight security measures at installations.¶ Alternatively, a terrorist group could attempt to acquire a bomb through an illicit transaction, but there is no real well-developed black market for illicit nuclear materials. Still, the deployment of tactical nuclear weapons around the world presents the risk of theft and diversion. 73 In 1997, the Russian General, Alexander Lebed, alleged that 84 ‘suitcase’ bombs were missing from the Russian military arsenal, but later recanted his statements. 74 American officials generally remain unconvinced of Lebed’s story insofar as they were never mentioned in any Soviet war plans. 75 Presumably, the financial requirements for a transaction involving nuclear weapons would be very high, as states have spent millions and billions of dollars to obtain their arsenals. 76 Furthermore, transferring such sums of money could raise red flags, which would present opportunities for authorities to uncover the plot. When pursuing nuclear transactions, terrorist groups would be vulnerable to sting operations. 77¶ Even if terrorists acquired an intact nuclear weapon, the group would still have to bypass or defeat various safeguards, such as permissive action links (PALs), and safing, arming, fusing, and firing (SAFF) procedures. Both US and Russian nuclear weapons are outfitted with complicated physical and electronic locking mechanisms. 78 Nuclear weapons in other countries are usually stored partially disassembled, which would make purloining a fully functional weapon very challenging. 79¶ Failing to acquire a nuclear weapon, a terrorist group could endeavor to fabricate its own Improvised Nuclear Device (IND). For years, the US government has explored the possibility of a clandestine group fabricating a nuclear weapon. The so-called Nth Country Experiment examined the technical problems facing a nation that endeavored to build a small stockpile of nuclear weapons. Launched in 1964, the experiment sought to determine whether a minimal team –in this case, two young American physicists with PhDs and without nuclear-weapons design knowledge –could design a workable nuclear weapon with a militarily significant yield. After three man-years of effort, the two novices succeeded in a hypothetical test of their device. 80 In 1977, the US Office of Technology Assessment concluded that a small terrorist group could develop and detonate a crude nuclear device without access to classified material and without access to a great deal of technological equipment. Modest machine shop facilities could be contracted for purposes of constructing the device. 81¶ Numerous experts have weighed in on the workability of constructing an IND. Hans Bethe, the Nobel laureate who worked on the Manhattan Project, once calculated that a minimum of six highly-trained persons representing the right expertise would be required to fabricate a nuclear device. 82 A hypothetical scenario developed by Peter Zimmerman, a former chief scientist for the Arms Control and Disarmament Agency, and Jeffrey G. Lewis, the former executive director of the Managing the Atom Project at Harvard University’s Belfer Center for Science and International Affairs, concluded that a team of 19 persons could build a nuclear device in the United States for about $10 million. 83¶ The most crucial step in the IND pathway is acquiring enough fissile material for the weapon. According to some estimates, roughly 25 kilograms of weapons-grade uranium or 8 kilograms of weapons-grade plutonium would be required to support a self-sustaining fission chain reaction. 84 It would be virtually impossible for a terrorist group to create its own fissile material. Enriching uranium, or producing plutonium in a nuclear reactor, is far beyond the scope of any terrorist organization. 85 However, the International Atomic Energy Agency (IAEA), which maintains a database, confirmed 1,562 incidents of smuggling encompassing trade in nuclear materials or radioactive sources. Fifteen incidents involved HEU or plutonium. 86 Be that as it may, according to the IAEA, the total of all known thefts of HEU around the world between 1993 and 2006 amounted to less than eight kilograms, far short of the estimated minimum 25 kilograms necessary for a crude improvised nuclear device. 87 An amount of fissile material adequate for a workable nuclear device would be difficult to procure from one source or in one transaction. However, terrorists could settle on less demanding standards. According to an article in Scientific American, a nuclear device could be fabricated with as little as 60 kilograms of HEU (defined as concentrated to levels of 20 percent for more of the uranium 235 isotope). 88 Although enriching uranium is well nigh impossible for terrorist groups, approximately 1,800 tons of HEU was created during the Cold War, mostly by the United States and the Soviet Union. 89 Collective efforts, such as the Cooperative Threat Reduction program, the G-8 Partnership against the Spread of Weapons of Mass Destruction, and the Nuclear Suppliers Group, have done much to secure nuclear weapons and fissile materials, but the job is far from complete. 90 And other problems are on the horizon. For instance, the number of nuclear reactors is projected to double by the end of the century, though many, if not most, will be fueled with low-enriched uranium (LEU). With this development, comes the risk of diversion as HEU and plutonium stockpiles will be plentiful in civilian sectors. 91¶ Plutonium is more available around the world than HEU and smuggling plutonium would be relatively easy insofar as it commonly comes in two-pound bars or gravel-like pellets. 92 Constructing an IND from plutonium, though, would be much more challenging insofar as it would require the more sophisticated implosion-style design that would require highly trained engineers working in well-equipped labs. 93 But, if an implosion device does not detonate precisely as intended, then it would probably be more akin to a radiological dispersion device, rather than a mushroom. Theoretically, plutonium could be used in a gun-assembly weapon, but the detonation would probably result in an unimpressive fizzle, rather than a substantial explosion with a yield no greater than 10 to 20 tons of TNT, which would still be much greater than one from a conventional explosive. 94¶ But even assuming that fissile material could be acquired, the terrorist group would still need the technical expertise to complete the required steps to assemble a nuclear device. Most experts believe that constructing a gun-assembly weapon would pose no significant technological barriers. 95 Luis Alvarez once asserted that a fairly high-level nuclear explosion could be occasioned just by dropping one piece of weapons-grade uranium onto another. He may, however, have exaggerated the ease with which terrorists could fabricate a nuclear device. 96¶ In sum, the hurdles that a terrorist group would have to overcome to build or acquire a nuclear bomb are very high. If states that aspire to obtain nuclear capability face serious difficulties, it would follow that it would be even more challenging for terrorist groups with far fewer resources and a without a secure geographic area in which to undertake such a project. The difficulty of developing a viable nuclear weapon is illustrated by the case of Saddam Hussein’s Iraq, which after 20 years of effort and over ten billion dollars spent, failed to produce a functional bomb by the time the country was defeated in the 1991 Gulf War. 97 Nevertheless, the quality of a nuclear device for a non-state entity would presumably be much lower as it would not be necessary to meet the same quality standards of states when fabricating their nuclear weapons. Nor would the device have to be weaponized and mated with a delivery system.¶ In order to be successful, terrorists must succeed at each stage of the plot. With clandestine activities, the probability of security leaks increases with the number of persons involved. 98 The plot would require not only highly competent technicians, but also unflinching loyalty and discipline from the participants. A strong central authority would be necessary to coordinate the numerous operatives involved in the acquisition and delivery of the weapon. Substantial funding to procure the materials with which to build a bomb would be necessary, unless a weapon was conveyed to the group by a state or some criminal entity. 99 Finally, a network of competent and dedicated operatives would be required to arrange the transport of the weapon across national borders without detection, which could be challenging considering heightened security measures, including gamma ray detectors. 100 Such a combination of steps spread throughout each stage of the plot would be daunting. 101¶ As Matthew Bunn and Anthony Wier once pointed out, in setting the parameters of nuclear terrorism, the laws of physics are both kind and cruel. In a sense, they are kind insofar as the essential ingredients for a bomb are very difficult to produce. However, they are also cruel in the sense that while it is not easy to make a nuclear bomb, it is not as difficult as believed once the essential ingredients are in hand. 102 Furthermore, as more and more countries undergo industrialization concomitant with the diffusion of technology and expertise, the hurdles for acquiring these ingredients are now more likely to be surmounted, though HEU is still hard to procure illicitly. In a global economy, dual-use technologies circulate around the world along with the scientific personnel who design and use them. 103 And although both the US and Russian governments have substantially reduced their arsenals since the end of the Cold War, many warheads remain. 104 Consequently, there are still many nuclear weapons that could fall into the wrong hands.

## 1NR

### OV

#### Your evidence is brink for us

Lahart 1/15 U.S. Economy Turns Onto Road to Wellville, U.S. Economy Turns Onto Road to Wellville, JUSTIN LAHARt, Jan. 15, 2014, http://online.wsj.com/news/articles/SB10001424052702304419104579322640716735138

The U.S. economy looks like it has reached escape velocity. But that doesn't mean it will no longer feel the gravitational pull of the 2008 financial crisis in the years to come. After years of sputtering recovery, the U.S. economy in the back half of 2013 finally started registering signs of real health. Gross domestic product accelerated. Forecasting firm Macroeconomic Advisers estimates growth should come in at a 4% annual rate when the data is released later this month. With fiscal restraint easing, and notwithstanding last week's disappointing jobs report (which most economists view as an anomaly), this may be the year the economy finally starts to feel normal. Why now and not a year ago? Or two years ago? One reason might be that it was only in 2013 that the economy as measured by GDP per capita—broadly speaking, average living standards—reached its prerecession peak. Research by Harvard University economists Carmen Reinhart and Kenneth Rogoff documents that one common characteristic of economies that have been hit by financial crises is that GDP per capita not only experiences unusually deep declines, it takes an unusually long time to recapture its old peak. It wasn't until last year's second quarter that GDP per capita breached its peak of 5½ years earlier. Not since the 1930s has the U.S. seen such a protracted downturn. Still, the U.S. can count itself lucky. With the exception of Germany, no major economy in Europe has returned to its per capita GDP peak. Given a historical tendency toward double-dip recessions after crises, those countries can't be considered out of the woods. The significance of the U.S. recovery in GDP per capita may be that in at least one sense, the economy has gotten out of the hole dug by the financial crisis, bolstering confidence. Household wealth has recovered, too: Federal Reserve data show that inflation-adjusted wealth, using the Fed's preferred price measure, regained its precrisis high in the third quarter.

#### It’s also reverse causal – absent TPA, US trade leadership collapses

Zoellick, President of World Bank Group, 1-12-’14 (Robert, “Leading from the Front on Free Trade” Wall Street Journal, http://belfercenter.ksg.harvard.edu/publication/23803/leading\_from\_the\_front\_on\_free\_trade.html)

America's commitment to free trade will be tested in 2014. After years of indifference to trade policy, the Obama administration now has an agenda. Congress must decide whether the U.S. will lead in opening markets and creating fair rules for free enterprise in a new international economy. Where will Republicans stand? The starting point will be Congress's consideration of Trade Promotion Authority, which enables the president to negotiate agreements subject to an up-or-down vote by Congress. Through TPA, Congress sets goals, procedures for working with the executive branch, and controls the details of the enabling legislation. The Obama administration has been slow to press for negotiating authority. Fortunately, Sens. Max Baucus and Orrin Hatch, the Democratic chairman and ranking Republican on trade in the Senate, respectively, and Rep. Dave Camp, Republican chairman in the House, introduced their bipartisan Trade Promotion Authority bill last Thursday. Chairman Baucus would like to move the bill through the Senate Finance Committee this month before his confirmation as ambassador to China. Successful action would offer a substantive thank you to Congress's Democratic leader on trade. The Obama administration hopes to close a Trans-Pacific Partnership (TPP) deal this year. Of the 11 other countries in this trade pact, six already have U.S. free-trade agreements, which were negotiated and passed by Republicans. TPP would add important economies—especially Japan and Vietnam—while modernizing rules and better integrating all 12 economies. In addition to the growth benefits, TPP recommits America's strategic economic interests in the Asia-Pacific, complementing the U.S. security presence. The U.S. is also combining geoeconomics with geopolitics by negotiating a Trans-Atlantic Trade and Investment Partnership (TTIP) with the European Union. Together, TPP and TTIP could forge modern trade and investment rules with major economies of western and eastern Eurasia. To offer opportunities for global trade liberalization, the U.S. is also negotiating in the World Trade Organization freer trade for services businesses and a Digital Economy compact that would update the successful Information Technology Agreement of the 1990s. These openings would be especially valuable for middle-income economies that want to boost productivity and reach high incomes through more competitive service and information industries. The economic record of America's free-trade agreements argues for expansion. America's free-trade partners account for about 45% of all U.S. exports, even though their economies amount to only 10% of global GDP. On average, in the first five years of a new free-trade agreement, U.S. exports grew three to four times as rapidly as U.S. exports to others. The U.S. has a trade surplus with its 20 free-trade partners—in manufacturing, agriculture, and services—instead of the large deficit it runs with the world. These trade agreements serve principally to bring down the barriers of other countries, because U.S. restrictions are already relatively low. U.S. free-trade agreements are also comprehensive—covering not only manufacturing and almost all agriculture, but also services, government procurement and transparency, investment and intellectual property, as well as dispute resolution. These trade agreements encourage others to move toward greater compatibility with the U.S. economy and legal framework. Republicans have provided most of the votes in Congress for free-trade accords in the past. Here is why: The deals cut taxes on trade. They expand individual freedom, consumer choice and opportunities for innovation. They reduce governmental barriers. They boost the private sector. They enhance the rule of law and foster civil society. An active trade agenda also signals America's interest in the rest of the world at a time others are worried about U.S. withdrawal. Free trade boosts development and economic reformers around the world, while supporting U.S. growth. For much of the world, America's commitment to stability seems more credible if built upon an economic foundation. Economic diplomacy can be the basis for hard, soft and smart power. Nevertheless, some Republicans are hesitant to grant negotiating authority to the president because they fear he will use it to impose stricter labor and environmental standards he couldn't otherwise get through Congress. But such fears can be addressed by circumscribing those provisions to the core labor and environmental standards that both parties agreed to in recent free trade agreements. Moreover, such concerns should not prevent Republicans from showing they can govern, lead internationally and extend America's economic power globally through a vibrant private sector. Republicans should also insist, as they did with President Clinton, that a reasonable number of Democrats in Congress back their president. We still have to see whether the Obama team can translate talk into action. It is not clear that this administration knows how to close deals—and take on its protectionist and isolationist constituencies in labor and manufacturing. Republicans should use TPA—and the process it creates—to set objectives that boost economic growth, pointing out that workers in U.S. export industries earn on average 18% more than other Americans because their labor is more productive. Republicans should also set the intellectual agenda for worker adjustment and jobs policies that help Americans adapt to change, whether triggered by trade or technology. The federal government spends about $18 billion a year on nearly 50 separate employment training programs, run by nine different agencies, with few ever evaluated for results. When the administration sends up trade agreements it should also propose options to transform this often inefficient spending. President Obama has tiptoed on trade, but he is moving in the right direction. He may hesitate when he recognizes that results require actions. Republicans should be pushing the president to deliver—and to make 2014 the year the U.S. reclaimed global leadership on trade.

#### It’s key to revitalize economic growth

Cowan and Okun-Kozlowicki, President and Visiting Fellow at Third Way, 11-26-’13 (Jon and Jeff, “Don't Waste This Free Trade Opportunity” US News, http://www.usnews.com/opinion/blogs/world-report/2013/11/26/why-congress-must-reauthorize-trade-promotion-authority)

Within the next 20 years, the Asia Pacific region will need 12,820 new airplanes, valued at $1.9 trillion. Who will build them?

With half of the world's air traffic growth revolving around the Asia-Pacific region, there are massive opportunities for American manufacturing and middle-class jobs in this one sector alone. But opportunity is not destiny. In the last decade, America's share of exports to key Asia-Pacific markets fell by 43 percent. Our performance was last among our major trade competitors in the region. We do not have to idle on the runway, however, as other foreign countries fly by. If we can regain our historical share of these export markets – which are set to approach $10 trillion by the end of this decade – it would add $600 billion to our economy and 3 million jobs by 2020 alone. The first step to seizing this growth opportunity rests with Congress and passage of a tool called Trade Promotion Authority. [See a collection of political cartoons on the economy.] Trade Promotion Authority is the mechanism that allows the president to negotiate international trade deals with congressional input. It gives stakeholders a voice and shows our trading partners that we are serious about expanded trade. And since American exports supported 9.8 million jobs in the United States last year, getting serious about expanded trade is critical. The authority, however, expired in 2007, putting our economic growth at risk. Congress needs to reauthorize the authority this year so we can expand this economic engine and make sure our economy is poised for flight in the 21st Century. Trade Promotion Authority can help ensure trade deals happen in three ways. First, it allows for both the White House and Congress to play a role in accessing foreign markets. While the executive branch negotiates agreements with foreign countries, Trade Promotion Authority allows for Congress to set clear negotiating goals and objectives. For example, in the Trade Act of 2002, Congress laid out nine overall trade negotiating objectives, from market access to environmental standards, as well as more than 50 principal negotiating objectives across 17 categories, ranging from electronic commerce to family farms. Guidance from Congress has yielded new or improved trade provisions on anti-corruption, labor and the environment, and other key emerging issues. Second, important trading partners won't sign a trade deal with the U.S. without Trade Promotion Authority. Of the last 17 U.S. trade agreements, only a deal with Jordan in 2000 was concluded without it. This is because our trading partners need to know the U.S. is negotiating in good faith and will not turn around and alter the agreement at the last minute. Finally, Trade Promotion Authority mandates that the president check in with the public before a deal is struck. Past legislation required the president to consult with Congress throughout negotiations. Although Trade Promotion Authority has not been in place during the Trans-Pacific Partnership negotiations, the U.S. Trade Representative has acted as though the 2002 provisions were still in effect and engaged in more than 1,000 briefings with Congress over the TPP. [See a collection of political cartoons on Congress.] It also ensures that industry and the public have a critical voice. Within past Trade Promotion Authority legislation, Congress built a system of advisory committees to ensure that trade negotiators were consulting with private sector representatives from the agricultural, labor and environmental communities, among others. Organizations represented on the committees ran the gamut from advocacy groups – including the AFL-CIO, the Environmental Defense Fund, Oceana, Consumers Union and the National Farmers Union – to large U.S. companies like Cargill, General Electric and Kraft Foods. So far, the U.S. Trade Representative has been operating in good faith despite the lack of Trade Promotion Authority. Last September, more than 250 organizations sent representatives to negotiations in Leesburg, Va. But good faith is not enough. Trade Promotion Authority is needed to ensure all voices are heard. The stakes could not be higher. As our country pulls out from the Great Recession and works to achieve lift off in the 21st Century economy, we need to seize opportunities within the new global marketplace. If the U.S. has any hope of tapping into massive export markets of the Asia Pacific – as well as other markets we are exploring such as within the EU – our policymakers need Trade Promotion Authority to get the job done.

#### Economic decline collapses Pakistan

Warrick 8, Washington Post, ‘8 (Joby, November 15, “Experts See Security Risks in Downturn, http://www.washingtonpost.com/wp-dyn/content/article/2008/11/14/AR2008111403864.html)

Intelligence officials are warning that the deepening global financial crisis could weaken fragile governments in the world's most dangerous areas and undermine the ability of the United States and its allies to respond to a new wave of security threats. U.S. government officials and private analysts say the economic turmoil has heightened the short-term risk of a terrorist attack, as radical groups probe for weakening border protections and new gaps in defenses. A protracted financial crisis could threaten the survival of friendly regimes from Pakistan to the Middle East while forcing Western nations to cut spending on defense, intelligence and foreign aid, the sources said. The crisis could also accelerate the shift to a more Asia-centric globe, as rising powers such as China gain more leverage over international financial institutions and greater influence in world capitals. Some of the more troubling and immediate scenarios analysts are weighing involve nuclear-armed Pakistan, which already was being battered by inflation and unemployment before the global financial tsunami hit. Since September, Pakistan has seen its national currency devalued and its hard-currency reserves nearly wiped out. Analysts also worry about the impact of plummeting crude prices on oil-dependent nations such as Yemen, which has a large population of unemployed youths and a history of support for militant Islamic groups. The underlying problems and trends -- especially regional instability and the waning influence of the West -- were already well established, but they are now "being accelerated by the current global financial crisis," the nation's top intelligence official, Director of National Intelligence Mike McConnell, said in a recent speech. McConnell is among several top U.S. intelligence officials warning that deep cuts in military and intelligence budgets could undermine the country's ability to anticipate and defend against new threats.

#### Economic crisis turns Indo-Pak war

Kemp 10 Geoffrey Kemp, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, **and** India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

#### 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.

### Uniqueness

#### Ununderlined from Mauldin – “If the president is going to go after something that's this politically difficult, he's got to use a 2-by-4," said Bill Brock, former U.S. trade representative in the Reagan administration.”

-History proves this is true in the trade context and now is the make or break time for a TPA push

Wall Street Journal 2/4/14–

William Galston: Obama's Moment of Truth on Trade

Bill Clinton bucked his own party to get Nafta. Will this president do the same to get agreements with Europe and Asia?

http://online.wsj.com/news/articles/SB10001424052702303942404579361110464290196?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702303942404579361110464290196.html–

That ended the debate—for a while. It started up again not long after he entered the Oval Office, among congressional Democrats and within the White House. In August 1993, President Clinton ended the internal debate by delivering a ringing defense of Nafta and appointing William Daley to spearhead the drive for its ratification. Although House Speaker Tom Foley supported the treaty, he said that in view of divisions within his caucus, the Democratic leadership would take no position. Within two weeks, House Democratic Whip David Bonior had become the floor leader of the Nafta opposition. A few weeks later, House Majority Leader Richard Gephardt announced that he too was opposed, a decision widely regarded as the death knell for the treaty. That was Mr. Clinton's moment of truth, and he did not flinch. After an all-out White House push in which the president participated extensively, the House approved Nafta, voting 234-200. Democrats were deeply divided: While 102 voted in favor, 156 opposed the treaty. With the support of a bare majority of Democrats, Nafta passed easily in the Senate. With Harry Reid's blunt rebuke last week, Barack Obama's moment of truth has arrived. His administration is now negotiating two major regional trade deals—the Trans-Pacific Partnership among 12 Asian nations that account for about 40% of global trade, and the Transatlantic Trade and Investment Partnership with the European Union. Without trade-promotion authority, often called fast-track, granted by Congress to the administration, concluding and ratifying these deals becomes much more difficult. Our negotiating partners will be much less willing to reach agreements without the assurance that the texts of these agreements are final and not subject to change. If the authority is not granted, Congress will be free to amend the draft agreements, upsetting the delicate balance among their provisions and scuttling ratification by other governments. In an interview with the Financial Times after Mr. Reid's announcement, U.S. Trade Representative Michael Froman argued that once the administration reaches deals of "high standards, ambition, and comprehensiveness," it can persuade Congress that the proposed agreements will promote growth, job creation and the well-being of the middle class, and congressional support will increase. It is hard to find anyone outside the administration who gives this strategy much chance of succeeding in the absence of trade-promotion authority. Many observers believe that without fast-track, progress toward the nearly completed Asian trade deal may stall short of the finish line, and the December 2014 target for completing the deal with the EU will be unattainable. According to Mr. Froman, "The president . . . is fully committed to a robust trade agenda and doing what's necessary to execute on that." In the coming months, we'll find out whether he is right. During Mr. Obama's first presidential campaign in 2008, he was hardly a full-throated free trader. He told the Texas Fair Trade Coalition that he "never supported Nafta." He told the Iowa Fair Trade Coalition that he wanted to reopen negotiations on the agreement, so alarming our neighbor to the north that Austan Goolsbee, his senior economic adviser, thought it necessary to offer Canadian diplomats back-channel reassurances. And Mr. Obama told the Wisconsin Fair Trade coalition that he would "replace fast-track with a process that includes criteria determining appropriate negotiating partners that includes an analysis of labor and environmental standards as well as the state of civil society in those countries." If Mr. Obama is serious about his trade agenda, he will—at a minimum—address the nation on the advantages of ratifying new regional trade agreements, make it clear that he intends to fight for trade-promotion authority, appoint a high-profile point-person to lead that fight in Congress, and personally lobby wavering lawmakers. In all probability, he will not be able to rally the support of a majority of Democrats in either the House or the Senate, which means that to get trade-promotion authority, he must be willing to accept truly bipartisan majorities tilted toward Republicans in both chambers.

#### 1nC Economist evidence answers mauldin – Reid has insiders that have conceded he’s going to allow a vote – prefer it because

TPA will pass-state of the union created bipartisianship that overcomes democratic and tea party unions

The Economist 2/1/14

HEADLINE: Deal or no deal?;

Barack Obama's state-of-the-union speech

American politics may be becoming a bit less dysfunctional IN HIS big annual speech to Congress, Barack Obama made several promises. He pledged to raise the minimum wage for those contracted to the federal government, to create a new tax-free savings bond to encourage Americans to save, to work for the closure of the Guantánamo Bay prison, to push immigration reforms and to veto any sanctions that Congress might pass designed to derail his deal with Iran over its nuclear programme. But for anybody listening from abroad, his most startling promise to America's legislature was to bypass it. "Wherever and whenever I can take steps without legislation to expand opportunity for more American families, that's what I'm going to do," he vowed. This year, he said, will be "a year of action". That in America this pledge was not regarded as the most remarkable element of the speech shows how inured the country has become to dysfunctional government. After years of gridlock, Americans have got used to the idea that the gerrymandering of the electoral system and the polarisation of their two political parties have set the branches of government against each other, and that the checks and balances originally intended to keep the country's polity healthy have condemned it to sclerosis. Government shutdowns, fiscal cliffs and presidents who promise to do their best to ignore the legislature are no longer much of a surprise. Yet Americans may have become too gloomy: Mr Obama's speech could be the latest in a series of small signs that things are getting better. Last year's shutdown was such a public-relations disaster for politicians in general and the Republicans in particular that it is unlikely to happen again. The Tea Party's kamikaze tactics have been discredited; that is why, without much fuss, Congress recently managed to pass a budget. Mr Obama knows that he can do nothing of interest without co-operation: when parsed, the promises of unilateral action in his speech amounted to not much more than a few low-level government workers getting paid a sliver more. No one expects 2014 to be a year of bipartisan chumminess, but several deals are possible. Take inequality, Mr Obama's new theme. Higher minimum wages are a less effective way to help poorer Americans than expanding the earned income tax credit (a negative income tax for workers on low pay). Several Republicans are open to this idea. Senator Marco Rubio, a rising star, recently said so; a fact Mr Obama alluded to in a speech that was uncharacteristically—and encouragingly—short of partisan sniping. On immigration, too, a deal is doable. House Republicans are about to release a list of principles for reforming a system everyone agrees is broken. Mr Obama said he wants to sign a bill this year; if he handles Congress delicately, he may get his wish. The same goes for his request for lawmakers to give him "fast track" authority to negotiate trade deals. This is an essential tool for promoting free trade: if Asians and Europeans think Congress will rewrite trade pacts after the haggling is over, they will not take Mr Obama seriously as a dealmaker. It is still sad that this is the best that can be said of the world's most powerful democracy. It is hard to imagine the citizens of emerging economies looking at these compromises and finding them inspiring. But they are a start—and the political winds may be changing. If Mr Obama is to be remembered for anything at home but the botched roll-out of his health reform, he needs to get some measures through Congress. The Republicans need to be seen as something other than obstructionist if they want to win the White House. For once, they both have something in common: they need government to work.

### Obama Push

#### The entire stassel article is in the context of Reid opposing the bill – cross apply all of my answers above

#### TPA is TOA

Zeese and Flowers 1/20 Kevin Zeese, JD and Margaret Flowers, MD are participants in PopularResistance.org; they co-direct It’s Our Economy and co-host Clearing the FOG. “Bipartisan New World Order: Fast Tracking the Trans-Pacific Partnership (TPP)” Global Research, January 20, 2014

http://www.globalresearch.ca/bipartisan-new-world-order-fast-tracking-the-trans-pacific-partnership-tpp/5365497

The White House is calling January “TPA (Trade Promotion Authority) Month” and has made it their task to pass Fast Track. President Obama needs Fast Track to pass the Trans-Pacific Partnership (TPP). When Congress returned this month, a bill was quickly introduced after delays of more than a year. Bipartisan

#### PC key to overcoming current opposition

Huffington Post, 2-2-’14 (Mack and Nelson, “A Critical Test of Leadership” http://www.huffingtonpost.com/thomas-f-mclarty/a-critical-test-of-leader\_b\_4705623.html)

The warning signs are clear, but so is the path forward. Now is the time for a full-court press from the White House. President Obama should be clear about the imperative of TPA and make the strong case for trade as a catalyst for job growth. Then he must press his cabinet to the task. Ambassador Froman is a skilled negotiator and advocate. His cabinet colleagues include many effective proponents of free trade and international engagement, including Secretary of State John Kerry, Treasury Secretary Jack Lew, and Commerce Secretary Penny Pritzker. Without a concerted effort, TPA may well fail, embarrassing us abroad, casting a shadow on the president's second term and hurting our economy in the long run. Why not instead show America and the world that the president and Congress, including leaders of his own party, can work together?

#### Obama will exert continued push to get dems on board

Parnes 1/21 Amie Parnes The Hill “Obama: Give me fast track trade” 01/21 http://thehill.com/homenews/administration/195858-white-house-works-to-convince-dems-to-give-obama-fast-track-on-trade

Senior congressional aides expect trade to be a part of Obama’s upcoming State of the Union address since the White House has made clear that the trade bill is a priority and that the TPP trade pact is a key part of the administration’s overall jobs agenda, in terms of increasing exports and opening markets.¶ “This is a priority of the president's,” White House press secretary Jay Carney told reporters last week. “It's part of a broad approach to expanding exports and, you know, creating more opportunities for our businesses to grow. And we're going to continue to push for it.”¶ In the same vein, House Republicans will continue to increase pressure on the administration to get Democrats on board.¶ “The White House carries the weight on this,” one senior House aide said.

### 1NR A2: Intrinsicness

#### The link proves the DA is intrinsic – proves doing both is illogical and there is an opportunity cost

#### Debate over political tradeoffs is good – key to a core neg generic, promotes civic engagement and policymaking education

### 1NR Losers Lose

#### The plan expends capital on a separate war powers issue–it’s immediate and forces a trade-off

O’Neil-prof law Fordham-7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of –Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### Obama fights the plan – strongly supports war powers

Rana 11 (Aziz – Assistant Professor of Law, Cornell Law School, “TEN QUESTIONS: RESPONSES TO THE TEN QUESTIONS”, 2011, 37 Wm. Mitchell L. Rev. 5099, lexis)

Thus, for many legal critics of executive power, the election of Barack Obama as President appeared to herald a new approach to security concerns and even the possibility of a fundamental break from Bush-era policies. These hopes were immediately stoked by Obama's decision before taking office to close the Guantanamo Bay prison. n4 Over two years later, however, not only does Guantanamo remain open, but through a recent executive order Obama has formalized a system of indefinite detention for those held there and also has stated that new military commission trials will begin for Guantanamo detainees. n5 More important, in ways small and large, the new administration remains committed to core elements of the previous constitutional vision of national security. Just as their predecessors, Obama officials continue to defend expansive executive detention and war powers and to promote the centrality of state secrecy to national security.

#### The plan drains political capital and derails agenda

**Shane, Ohio State law school chair 2011**

(Peter, “ARTICLE: The Obama Administration and the Prospects for a Democratic Presidency in a Post-9/11 World”, 56 N.Y.L. Sch. L. Rev. 27, lexis, ldg)

The second is politics. With the country still grappling with the effects of a devastating recession, as well as the need for pressing action on healthcare, climate change, and immigration, the President might well want to avoid the appearance of diluting his focus. Moreover, since the Johnson administration, Republicans have consistently--and with some success--cowed the Democrats by portraying them as soft on national security issues. The partisan pushback against any Obama administration effort to reinvigorate the rule of law in the national security context is likely to be vicious, threatening to erode whatever modicum of goodwill might otherwise be available to accomplish seemingly more concrete and immediate objectives. This, of course, is not hypothetical. We can see it in Republican efforts to derail the closing of Guantanamo and in proposals to prohibit the trial of foreign terrorists in civilian courts n108--a practice that Republicans seemed happier to live with under George W. Bush. n109

#### Plan’s a perceived as a loss-saps capital

**Loomis, Georgetown government professor, 2007**

(Andrew, “Leveraging legitimacy in the crafting of U.S. foreign policy”, 3-2, <http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php>, ldg)

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### Having to defend authority derails the agenda

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.

#### The President has institutional incentives to resist encroachments on authority even if he agrees with the policy

**Posner and Vermeule, 8 -** \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, “Constitutional Showdowns” 156 U. Pa. L. Rev. 991, lexis)

In many historical cases, Congress and the President agree about the policy outcome but disagree about lines of authority. For example, suppose that the executive branch has made a controversial decision, and a suspicious Congress wants the relevant executive officials to testify about their role in that decision. The President believes that Congress has no right to compel the officials to testify, whereas Congress believes that it has such a right. However, the President, in fact, does not mind if the officials testify because he believes that their testimony will reveal that the decision was made in good faith and for good reasons. [\*1016] The President's problem is that, if he allows the officials to testify, Congress and the public might interpret his acquiescence as recognition that Congress has the power to force executive officials to testify. If he refuses to allow the officials to testify, then he preserves his claim of executive privilege but loses the opportunity to show that the decision was made in good faith. In addition, he risks provoking a constitutional impasse in which Congress could eventually prevail - if, as we have discussed, public constitutional sentiment turns out to reject executive privilege in these circumstances. Congress faces similar dilemmas, for example, when it approves of officials nominated by the President for an agency or commission but wants to assert the power in general to impose restrictions on appointments. Political agents have long relied on a middle way to avoid the two extremes of acquiescence, on the one hand, and impasse, on the other. They acquiesce in the decision made by the other agent while claiming that their acquiescence does not establish a precedent. Or, equivalently, they argue that their acquiescence was a matter of comity rather than submission to authority. Are such claims credible? Can one avoid the precedential effect of an action by declaring that it does not establish a precedent - in effect, engaging in "ambiguous acquiescence"? The answer to this question is affirmative as long as the alternative explanation for the action is in fact credible. If, for example, observers agree that the President benefits from the testimony of executive officials, then his acquiescence to a congressional subpoena has two equally plausible explanations: that he independently benefits from the testimony, or that he believes that public constitutional sentiment rejects executive privilege. The response is thus ambiguous, and Congress may be no wiser about what will happen in the future when the President does not wish to permit officials to testify because their testimony would harm him or executive branch processes. If so, the ambiguous nature of the action does not establish a focal point that avoids an impasse in the future. On the other hand, if the President's claim that he benefits from the testimony is obviously false, then his authority will be accordingly diminished. This is why ambiguous acquiescence is not a credible strategy when the President and Congress disagree about the policy outcome. If the President thinks the war should continue, Congress thinks the war should end, and the President acquiesces to a statute that terminates the war, then he can hardly argue that he is acting out of comity. He could only be acting because he lacks power. But an agent can lack authority in more complicated settings where no serious [\*1017] policy conflict exists. If the President makes officials available for testimony every time Congress asks for such testimony, and if the testimony usually or always damages the President, then his claim to be acting out of comity rather than lack of authority eventually loses its credibility. Repeated ambiguous acquiescence to repeated claims over time will eventually be taken as unambiguous acquiescence and hence a loss of authority. For this reason, a President who cares about maintaining his constitutional powers will need to refuse to allow people to testify even when testimony would be in his short-term interest.

### MORE

#### TPA is top of the agenda and Obama is making a full court press-Now is the make or break time for spending political capital on trade-TPA failure collapses global trade, the economy and US leadership.

McLarty-former chief of staff to Clinton during the NAFTA ratification fight-2/2/14

Huffington Post 2/2/14

http://www.huffingtonpost.com/thomas-f-mclarty/a-critical-test-of-leader\_b\_4705623.html

A Critical Test of Leadership

In his State of the Union address last week, President Obama took a good first step in asking Congress to provide the tools he needs to close two of the most ambitious trade deals in U.S. history. But he faces an immediate challenge from within his party that could imperil negotiations, with huge stakes for the U.S. globally and for our economy at home. At issue is Trade Promotion Authority (TPA), which allows the president to send a trade agreement to Congress for an up-or-down vote, without amendments. Many Republicans reflexively oppose granting any request from the administration. But the biggest opposition is coming from Democrats skeptical of the value of free trade. The day after the president's address, Senate Majority Leader Harry Reid said he opposed "fast track" authority. His remarks revealed the depth of a gulf among Democrats over trade, and sparked new criticism from Republicans as a sign that the president's party couldn't be lined up behind a major administration initiative. For President Obama, this is a critical test of his leadership. Can he muster enough support for his trade agenda within his own party, and then assemble a bipartisan majority in both houses of Congress? Failure would be a great setback for U.S. prestige internationally, and a dismal signal for the president's remaining three years in office. We've seen this movie before -- and it didn't end well. The last Democratic president to seek fast track authority on trade was Bill Clinton in 1997. The effort collapsed when then House Speaker Newt Gingrich was unable to marshal his Republican majority. It was an opportunity lost, ending a period of bipartisan cooperation on trade and stalling momentum created a few years earlier by the North American Free Trade Agreement. Repeating this history would be a mistake, especially as our economy struggles to create good jobs at high wages. But the president faces an uphill battle. Now is the moment for Democrats to pause and take full measure of the stakes involved in opposing fast track. It's time for Republican supporters of trade to rally. And it is essential that the president and his cabinet exert persistent, focused leadership to persuade the skeptics. President Obama deserves much credit for advancing the most far-reaching trade agenda in a generation. The administration is nearing the finish line in negotiations of the Trans Pacific Partnership, an agreement with 11 Pacific Rim nations, including Japan and perhaps South Korea and others. Simultaneous talks are underway between the United States and the European Union over the Transatlantic Trade and Investment Partnership -- creating an economic NATO and the largest liberalized trade zone in the world. Together, the agreements would lower barriers in markets accounting for more than 60 percent of the global economy. Neither negotiation would survive a failure to renew Trade Promotion Authority, which expired in 2007. TPA reassures our negotiating partners that they will not agree to difficult concessions only to see Congress later force unilateral changes. Under TPA, Congress establishes negotiating goals and must be regularly consulted by the president. In exchange, Congress promises an up-or-down vote without amendment. No major trade legislation has passed Congress in decades without it. President Clinton knew that because trade was so hard, its support had to be bipartisan. To push for NAFTA, he assembled a high-profile war room in the White House, led by a prominent Democrat, Bill Daley, and former Republican Congressman Bill Frenzel. The president worked members tirelessly. The bill eventually passed with 102 Democratic and 132 Republican votes, and a similarly bipartisan total in the Senate. By contrast, the 1997 effort to renew fast-track authority lacked that high-profile White House push -- helping seal its doom. Over the last decades, global trade has proven essential to building employment and reducing inequality at home. One of every five jobs in the United States is tied to exports. More significantly for the long run, 95 percent of the world's customers live outside our borders. While many Americans have concerns about free trade, they say the benefits of U.S. involvement in the global economy outweigh the risks (by a 2-1 margin in a poll last month by the Pew Research Center). Even so, last fall 151 House Democrats signed a letter expressing their opposition to granting President Obama Trade Promotion Authority. Almost three dozen House Republicans followed suit. When the bill to renew TPA was introduced earlier this month, a number of Democratic Senators announced their opposition. They have now been joined by Sen. Reid. The warning signs are clear, but so is the path forward. Now is the time for a full-court press from the White House. President Obama should be clear about the imperative of TPA and make the strong case for trade as a catalyst for job growth. Then he must press his cabinet to the task. Ambassador Froman is a skilled negotiator and advocate. His cabinet colleagues include many effective proponents of free trade and international engagement, including Secretary of State John Kerry, Treasury Secretary Jack Lew, and Commerce Secretary Penny Pritzker. Without a concerted effort, TPA may well fail, embarrassing us abroad, casting a shadow on the president's second term and hurting our economy in the long run. Why not instead show America and the world that the president and Congress, including leaders of his own party, can work together?