### 1

#### Immigration reform will pass now – tons of momentum and the GOP is getting on board but capital is key to a compromise

Hawkings 1/15/14 (David, Roll Call, Hawkings Here, "This Year's Legislative Acid Test: Immigration Rewrite")

And if the 2014 legislative effort comes up empty, it will reaffirm not only the president’s significantly shrunken legislative sway, but also the GOP’s interest in cultivating its most conservative fringes at the expense of all else.¶ Framed in those stark terms, it should be tough to predict that impasse is the likely outcome. That’s why advocates of a big bill, not only in the Hispanic community but also in the business world, are stoking every inkling of momentum.¶ All the attention remains, of course, on the House Republican leadership. It’s been there now for seven months, [since 68 senators voted for a measure](http://blogs.rollcall.com/wgdb/immigration-overhaul-passes-senate/) combining a staggering border security beef-up with creation of a 13-year pathway to citizenship for the 11.5 million immigrants in the United States illegally.¶ The GOP leaders all want to put this issue behind them as quickly as practical — to get their party on the right side of demographic history before the nation’s fastest-growing ethnic group altogether abandons Republicans for a generation. (Mitt Romney took 27 percent of the Hispanic presidential vote last time, so there is still room for further decline.)¶ Word is that Speaker John A. Boehner, his three top leadership deputies and Judiciary Chairman Robert W. Goodlatte of Virginia will unveil a set of [vaguely worded policy goals](http://blogs.rollcall.com/218/boehner-says-gop-immigration-principles-to-be-released-soon/) for any bill during the next fortnight. The goal is two-fold: To signal, in advance of Obama’s State of the Union address, that their team is still interested in getting a bill, and to gauge how many in their own caucus are willing to at least keep an open mind on the matter.¶ The timing will then put the onus on the president to somehow respond in his speech. Obama and his aides are sending unmistakable signs that this year’s address will propose dead-on-arrival legislation designed to appeal to his party’s populist base during the campaign season while [he advances his agenda](http://www.rollcall.com/news/white_house_looks_past_congress_for_its_agenda-229990-1.html) almost entirely through regulations and public advocacy.¶ But “the pen, the phone and the podium,” to use the White House’s phrase, are not sufficient to change immigration policy. A jumpstart to that effort would come from Obama telling Congress on Jan. 28 how he is ready to compromise.¶ Ultimately, any deal would turn on the citizenship issue. Only if it gets resolved will there be any drive to solve disagreements about border security, the treatment of guest workers and increasing the number of visas for the highly skilled — or to decide if all immigration matters should be rolled into one bill or handled piecemeal.¶ Obama would need to back away from his desire to make a course toward citizenship as generous as the Senate’s, and then convince plenty of House Democrats to do the same in the name of partially solving a problem that would otherwise fester for years to come. House GOP leaders would need to persuade a few dozen of their own (a majority of the majority appearing out of the question) to abandon the position that any such pathway amounts to “amnesty” or “special treatment.”¶ And then at least 60 senators would need to acquiesce in whatever compromise was passed by the House.¶ The boundaries of this middle ground are getting clear to see. They are very close to what some House GOP leaders are talking about. And, according to a report this week from the National Foundation for American Policy, the result means about half the total number of current illegal residents would eventually get on a path to citizenship.¶ Goodlatte is now open to giving illegal immigrants provisional legal status, then permitting those with longstanding employment or with children or spouses who are citizens to seek a “green card” through existing channels. A green card means permanent legal residency and comes with its own timetable for becoming a citizen, usually within five years.¶ The nonpartisan research group’s study estimates 3.5 million to 5 million people could benefit from this approach, as would another 800,000 to 1.5 million if the law is changed to provide green cards to younger undocumented immigrants who arrived as children — the group now known as Dreamers.

#### Capital is key to a deal -

Albuquerque Journal 1/12/14 (Jim Kuhnhenn, The Associated Press, "Obama, Congress Face Crucial Immigration Push")

His agenda tattered by last year’s confrontations and missteps, President Barack Obama begins 2014 clinging to the hope of winning a lasting legislative achievement: an overhaul of immigration laws.¶ It will require a deft and careful use of his powers, combining a public campaign in the face of protests over his administration’s record number of deportations with quiet, behind-the-scenes outreach to Congress, something seen by lawmakers and immigration advocates as a major White House weakness.¶ In recent weeks, both Obama and House Speaker John Boehner, R-Ohio, have sent signals that raised expectations among overhaul supporters that 2014 could still yield the first comprehensive change in immigration laws in nearly three decades. If successful, it would fulfill an Obama promise many Latinos say is overdue.

#### Bipartisan opposition to reducing the security state

Antle, 13 -- Daily Caller News Foundation editor [James, "Congress Goes Bipartisan—Against Civil Liberties," American Conservative, 3-4-13, www.theamericanconservative.com/articles/the-drone-consensus313/, accessed 5-23-13, mss]

Congress Goes Bipartisan—Against Civil Liberties The parties collude to defeat accountability for the national-security state. Civil liberties are theoretically a bipartisan concern. Conservative Republicans who don’t like Obamacare’s “death panels” should be outraged by presidential kill lists. Liberal Democrats who defend due process ought to be offended by secret surveillance law. Protectors of the First and Second Amendments should have a high regard for the Fourth, Fifth, and Sixth. Yet restricting civil liberties is what actually commands bipartisan support in Washington. The same Congress that barely averted the fiscal cliff swiftly passed extensions of warrantless wiretapping and indefinite detention, assuring Americans that only the bad guys will be affected but evincing little interest in establishing whether this is really the case. The same Congress that failed to come up with an agreement to avoid sequestration appears to have bipartisan majorities in favor of profligate drone use at home and abroad. Lawmakers are generally less exercised about the confirmation of likely CIA chief John Brennan than Defense Secretary Chuck Hagel. At the very time it appears Washington is so dysfunctional that the two parties cannot get anything done, Democrats and Republicans cooperate regularly—when it it comes to jailing, spying on, and meting out extrajudicial punishments in ways that on their face contradict the Bill of Rights. Senate Majority Leader Harry Reid argued that preserving the Bush administration’s national surveillance program—now for the benefit of the Obama administration—was more important than Christmas. Republican Sen. Saxby Chambliss didn’t even want any amendments. The Senate overwhelmingly rejected an amendment that would apply the same protections against unlawful search and seizure to emails and text messages that already exist for letters, phone calls, and presumably the carrier pigeon. Despite deep divisions over taxes and domestic spending, members of both parties tend to sing from the same song sheet about the Patriot Act, the National Defense Authorization Act, and the Foreign Intelligence Surveillance Act amendments. So much for the Democrats’ bedrock belief in the right to privacy or Republicans’ convictions about limited government.

#### Immigration reform is key to economic growth – resolves outsourcing

Hill 12/30/13 (Selena, "Immigration REform 2013 News: Studies Show Immigrants Help Boost the US Economy, Create More American Jobs")

Research proves that immigration and economic progress go hand in hand. Contrary to fears that immigrants will take American jobs and make unemployment even worse, studies show that mending our broken U.S. immigration system would actually help end America's job crisis.¶ Like Us on Facebook ¶ One reason why open immigration policies would create more jobs for more Americans is because immigrants tend to be more entrepreneurial and innovative than native-born Americans, and are twice as likely to start businesses.¶ While immigrants make up 13 percent of the U.S. population, they account for nearly 20 percent of small businesses owners and are responsible for more than 25 percent of all new business creation and related job growth, the National Journal reports.¶ According to a 2012 study from the Fiscal Policy Institute, immigrant-owned small businesses employed nearly five million Americans in 2010 and generated an estimated $776 billion in revenue. Plus, the Partnership for a New American states that more than 40 percent of Fortune 500 companies were founded by immigrants or first generation Americans.¶ In addition, immigrants are also responsible for launching half of the nation's top startups which account for virtually all net new job creation, according to the Kauffman Foundation. ¶ In 2011, immigrants received more than 75 percent of almost 1,500 patents awarded at the nation's top 10 research universities, while most of the patents were in science, technology, engineering and mathematics.¶ Tim Rowe, founder of the Cambridge Innovation Center in Cambridge, Mass., told the Wall Street Journal that "our immigration policy is built around the notion that we have to protect American jobs. But we've got it backward. We're threatening the creation of new jobs by preventing these incredibly talented entrepreneurs from overseas from coming here and building their businesses here."¶ Rob Lilleness, president and chief executive of software developer Medio Systems in Seattle, Wash., added that immigration restrictions often force new companies to outsource jobs. "We have to look at India, or Argentina, or Vietnam, or China because there's not enough H-1B visas," he said.¶ One of the chief concerns of the Republican Party is to focus on boosting the economy and creating American jobs. Yet, by failing to pass comprehensive immigration reform for yet another year, House Republicans may not only be hurting immigrants, but they may also be hurting the country's economy.

#### Economic decline causes nuclear war.

ROYAL ‘10 – Director of Cooperative Threat Reduction at the U.S. Department of Defense (Jedediah, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215)

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Feaver, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write: The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. “Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995). and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force. In summary, recent economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflict at systemic, dyadic and national levels.5 This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention. This observation is not contradictory to other perspectives that link economic interdependence with a decrease in the likelihood of external conflict, such as those mentioned in the first paragraph of this chapter. Those studies tend to focus on dyadic interdependence instead of global interdependence and do not specifically consider the occurrence of and conditions created by economic crises. As such, the view presented here should be considered ancillary to those views.

### 2

#### US winning the war on terror- no WMD attacks

Oswald 5/30, Rachel Oswald, staff editor for the National Journal and the Global Security Newswire, “Despite WMD fears, terrorists are focused on conventional attacks,” May 30, 2013, <http://www.nationaljournal.com/nationalsecurity/despite-wmd-fears-terrorists-are-focused-on-conventional-attacks-20130417?page=1&utm_source=feedly>

WASHINGTON – The United States has spent billions of dollars to prevent terrorists from obtaining a weapon of mass destruction even as this week’s [bombings in Boston](http://www.nti.org/gsn/article/police-scrutinize-remnants-boston-blasts/) further show that a nuclear weapon or lethal bioagent is not necessary for causing significant harm.¶ Organized group plots against the U.S. homeland since Sept. 11, 2001 have all involved conventional means of attack. Beyond that have been a handful of instances in which individuals used the postal system to deliver disease materials -- notably [this week’s ricin letters](http://www.nti.org/gsn/article/lab-confirms-ricin-letter-sent-senator/) to President Obama and at least one senator and the 2001 anthrax mailings.¶ Terrorism experts offer a range of reasons for why al-Qaida or other violent militants have never met their goal of carrying out a biological, chemical, nuclear or radiological attack on the United States or another nation. These include:¶ -- substantive efforts by the United States and partner nations to secure the most lethal WMD materials;¶ -- improved border security and visa checks that deny entry to possible foreign-born terrorists;¶ -- a lack of imagination and drive on the part of would-be terrorists to pursue the kind of novel but technically difficult attacks that could lead to widespread dispersal of unconventional materials;¶ -- a general haplessness on the part of the native-born U.S. extremists who have pursued WMD attacks, specifically involving weaponized pathogens;¶ -- elimination of most of al-Qaida’s original leadership, notably those members with the most experience orchestrating large-scale attacks abroad; and¶ -- the Arab Spring uprisings have likely drawn down the pool of terrorists with the proper training and focus to organize WMD attacks abroad as they have opted instead to join movements to overthrow governments in places such as Syria and Yemen.¶ “We killed a lot of people. That was one thing,” said Randall Larsen, founding director of the Bipartisan WMD Terrorism Research Center, referring to the deaths in recent years of al-Qaida chief Osama bin Laden and any number of his direct or philosophical adherents.¶ Bin Laden is known to have exhorted his followers to seek weapons of mass destruction for use in attacks against the West. Leading al-Qaida propagandist Anwar al-Awlaki of the group’s Yemen affiliate, who was killed in a 2011 U.S. drone strike, used his Inspire magazine to [encourage sympathizers](http://www.nti.org/gsn/article/al-qaeda-magazine-urges-chemical-biological-strikes-us/) to develop and carry out their own chemical and biological attacks.¶ Al-Qaida also had separate efforts in [Afghanistan](http://www.nti.org/gsn/article/al-qaeda-operatives-discussed-wmd-attacks-while-training-prior-to-911-report-says/) and [Malaysia](http://www.nti.org/gsn/article/us-officials-worried-by-release-of-al-qaeda-bioweapons-operative/) that worked on developing anthrax for use in attacks before they were broken up or abandoned following the September 2001 attacks.¶ In the last decade, the technological means to carry out new kinds of improvised WMD attacks such as those involving [laboratory-engineered pathogens](http://www.nti.org/gsn/article/synthetic-pathogens-might-pose-bioterror-threat-scientists-warn/) has become much more available. However, it can take some time for bad actors to recognize how these new technologies can open the doorway to heretofore unseen massively disruptive terrorist attacks, according to Larsen.¶ Passenger airplanes were flying across the United States for decades before any terrorists realized that they would make a highly destructive improvised weapon when flown at high speeds into skyscrapers filled with thousands of people, Larsen noted.¶ A 2012 analysis by terrorism experts at the New America Foundation detailed a number of disrupted unconventional weapon plots against the country that counterintuitively were much more likely to involve home-grown antigovernment groups and lone-wolf actors than Muslim extremists. "In the past decade, there is no evidence that jihadist extremists in the United States have acquired or attempted to acquire material to construct CBRN weapons," according to authors Peter Bergen and Jennifer Rowland.¶ They documented a [number of failed domestic plots](http://homegrown.newamerica.net/), often involving cyanide or ricin. Only former Army microbiologist Bruce Ivins was successful in actually carrying out such an effort, killing five people with anthrax spores in 2001.¶ “Right-wing and left-wing extremist groups and individuals have been far more likely to acquire toxins and to assemble the makings of radiological weapons than al-Qaida sympathizers,” they said.

#### New restrictions crush counter-terror- crushes flexibility, announces our vulnerabilities, and snowballs

Corn, 13 Geoffrey, Professor of Law and Presidential Research Professor, Testimony at the Hearing of the Senate Armed Services Committee Subject: "The Law of Armed Conflict, the Use of Military Force, and the 2001 Authorization for Use of Military Force" May 16th, Federal News Service, Nexis

Because I do not believe there is inconsistency between the nature of U.S. operations to date and these inherent limitations, I do not believe it is necessary at this point in time to modify the AUMF. Instead, I believe that Congress should continue to engage in oversight to remain fully apprised of the strategic, operational, and at times tactical decisionmaking processes that result in the employment of U.S. combat power pursuant to the statute, enabling Congress to ensure that such use falls within the scope of an authorization targeted at al Qaeda, intended to protect the Nation from future terrorist attacks, and that these operations reflect unquestioned commitment to the principles of international law that regulate the use of military force during any armed conflict. I believe the AUMF effectively addresses the belligerent threat against the United States posed by terrorist groups. I emphasize the term ‘‘belligerent’’ for an important reason. It is obvious that the AUMF has granted authority to use the Nation’s military power against threats falling within its scope. Therefore, only those organizations that pose a risk of sufficient magnitude to justify invoking the authority associated with armed conflict should be included within that scope as a result of their affiliation with al Qaeda. Determining what groups properly fall within this scope is, therefore, both critical and challenging. The AUMF provides the President with the necessary flexibility to tailor U.S. operations to the evolving nature of this unconventional enemy, maximizing the efficacy of U.S. efforts to deny al Qaeda the freedom of action they possessed in Afghanistan prior to Operation Enduring Freedom. In reaction to this evolution, the United States has employed combat power against what the prior panel referred to as associated forces or co-belligerents of al Qaeda, belligerent groups assessed to adhere to the overall terrorist objectives of the organization and engage in hostilities alongside al Qaeda directed against the United States or its interests. The focused on shared ideology, tactics, and indicia of connection between high-level group leaders seems both logical and legitimate for including these offshoots of al Qaeda within the scope of the AUMF as co-belligerents, a determination that, based on publicly available information, has to date been limited to groups seeking the sanctuary of the Afghanistan-Pakistan border areas, Yemen, or Somalia. If Congress does, however, choose to revise the AUMF, I do not believe that the revision should incorporatean exclusive list of defined co-belligerent groups, a geographic scope limitation, or some external oversight of targeting decisions**,** all of which would undermine the efficacy of U.S. operations by signaling to the enemy limits on U.S. operational and tactical reach**.** It is an operational and tactical axiom that insurgent and non- state threats rarely seek the proverbial toe-to-toe confrontation with clearly superior military forces. Al Qaeda is no different. Indeed, their attempts to engage in such tactics in the initial phases of Operation Enduring Freedom proved disastrous. Incorporating such limitations into the AUMF would, therefore, be inconsistent with the operational objective of seizing and retaining the initiative against this unconventional enemy and the strategic objective of preventing future terrorist attacks against the United States. Finally, I believe to target decisionmaking during armed conflict is a quintessential command function and that the President, acting in his own capacity or through subordinate officers, should make these decisions. He and his subordinates bear an obligation to ensure compliance with the Law of Armed Conflict and other principles of international law when employing U.S. combat power. Every subordinate officer in the chain of command is sworn to uphold and defend the constitution which, by implication, also requires compliance with this law. I believe the level of commitment to ensuring such compliance in structure, process, education, training, and internal oversight is more significant today than at any time in our Nation’s history. As one familiar with all these aspects of the compliance process, I am discouraged by the common assertion that there is insufficient oversight for targeting decisions. Furthermore, I believe few people better understand the immense moral burden associated with a decision to order lethal attack than experienced military leaders who never take these decisions lightly. If our confidence in these leaders to make sound military decisions is sufficient to entrust to them the lives of our sons and daughters—and on this point, again I must admit my self-interest as my son is a second-year cadet in the U.S. Air Force Academy and my brother is a serving colonel in the United States Army—I believe it must be sufficient to judge when and how to employ lethal combat power against an enemy. These leaders spend their entire professional careers immersed in the operational, moral, ethical, and legal aspects of employing combat power. I just do not believe some external oversight mechanism or a Federal judge is more competent to make these extremely difficult and weighty judgments as the people that this Nation entrusts for that responsibility. Finally, I would like to make one comment on the very hotly discussed issue of associated forces and the scope of the AUMF. In my view, when the administration refers to an associated or affiliated force, it is referring to a process of mutation that this organization undergoes. Obviously, we are dealing with an enemy that is going to seek every asymmetrical tactic to avoid the capability of the United States to disrupt or disable its operations. Part of that tactic, I think is to recruit and grow affiliated organizations. I certainly understand the logic of wanting to include those organizations within the scope of a revised AUMF. My concern echoes that of Senator Inhofe, which is the risk is if you open that Pandora’s box, what other changes to this authority might be included in the statute which I believe could denigrate or limit the effectiveness of U.S. military operations. And so while I believe Congress absolutely has an important function to ensure that the use of force under the statute is consistent with the underlying principles that frame the enactment of the AUMF, which is to defeat al Qaeda as an entity in the corporate sense and protect the United States from future terrorist attacks, I do not believe at this point in time it is necessary to modify the statute.

#### Terrorism causes extinction- retaliation

Ayson 10 - Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington (Robert, July. “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects.” Studies in Conflict & Terrorism, Vol. 33, Issue 7. InformaWorld.)

But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that **some sort of terrorist attack**, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents’ … long-standing interest in all things nuclear.”42 American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, bothRussia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability.

### 3

#### US-Saudi relations are high now – counter terrorism cooperation is critical to the alliance

Riedel 8/21/13 (Bruce, Senior Fellow, Foreign Policy, Saban Center for Middle East Policy, Brookings Institution, "US and Saudis Share Needs If Not Values")

America's alliance with Saudi Arabia began with F.D.R. in 1945, and for almost 70 years the kingdom has been our most reliable ally in the Muslim world. It has fought the Soviets, Saddam, Khomeini and Bin Laden with us while providing critical backing to the Arab-Israeli peace process.¶ With its vast oil resources and command of Mecca, the House of Saud is a formidable ally. But the alliance has always been based on shared threat assessments, not shared values. The King is the world's last absolute monarchy. There is no pretense of democracy or pluralism in the Kingdom.¶ The Saudis have led the counter revolution to the Arab Awakening, occupying Bahrain, controlling change in Yemen and backing the army coup d'etat in Egypt with money and royal approval. The king personally has embraced General Sisi and the crackdown on the Brotherhood. Even in Syria, where Riyadh backs the rebels, they want a Sunni strong man to replace Assad not a democracy.¶ Washington and Riyadh still need each other. Many of our interests still over lap. Saudi assistance helps our allies like Jordan and Morocco.Saudi intelligence was key to foiling the last two al Qaeda plots to attack the American homeland and is critical to the battle in Yemen against the terrorists. Saudi Arabia is also central to keeping pressure on Iran through sanctions by replacing Iranian oil on the market.¶ America has much to lose and little to gain if the Arab revolutions spread to the kingdom itself. So we face the challenge of being the Saudis' ally while we disagree on core values.

#### The plan would crush US-Saudi relations – a hardline stance on remote weapons is critical to Saudi legitimacy

Eakin 12 (Hugh, IRP Gatekeeper Editor, May 21 2012 The New York Review, "Saudi Arabia and the New US War in Yemen"

What seems clear is that Saudi Arabia has become a key backer—and at times coordinator—of the accelerating US drone war and special operations offensive in Yemen, partly for its own security interests. Interior Ministry officials in Riyadh speak enthusiastically about the US **drone** program, and on May 12, drone strikes allegedly killed some eleven AQAP suspects, [two of them Saudi nationals](http://www.voanews.com/content/drones_in_yemen_kill_11_militants/566327.html). (It is worth noting, following the controversial killing of US citizen Anwar al-Awlaki, that Saudi Arabia does not appear to have many qualms about killing its own citizens in Yemen.)¶ Perhaps most important for the Saudi government, a successful counterterrorism policy carries enormous political value amid the upheavals of the Arab Spring. Even more than democratization or regime change in the region, the Saudi rulers seem to fear instability and unpredictability: though they have reluctantly supported the transition of power in Yemen, they are particularly nervous about the kind of extremism that has emerged in neighboring countries like Iraq, Yemen, and now Syria, when uprisings turn into violent conflict or authority breaks down entirely—places where Saudi jihadists have often found new causes. “Syria will be tempting to al-Qaeda,” Abdulrahman Alhadaq, a Saudi counter terrorism official, said in a briefing in Riyadh. “We need to avoid another Iraq.”¶ But Saudi counterterrorism efforts are also an important element in achieving consensus and legitimacy for the Saudi regime itself. Many young Saudis are growing increasingly impatient with their government’s oppressive status quo, and not a little of their ire is directed against the Interior Ministry, which has been blamed for arbitrary arrests of activists and human rights lawyers. Yet many I spoke to also seem to fear the chaos and violence that has engulfed so many of the country’s neighbors. In the early 2000s, when the Saudi government sponsored national dialogues to bring together activists, reformers, conservatives, and Islamists from across the ideological spectrum to suggest avenues of change, the country’s counterterrorism approach was one issue on which there was near universal agreement. (Participants in one of these dialogues explicitly endorsed a strategy of repentence and reconciliation for extremists.)¶ Turning Saudi Arabia into the US’s indispensable ally in Yemen—while making Yemen the central conflict in the US-led war against terrorism—has considerable strategic value for Crown Prince Nayef, who was named the heir apparent to King Abdullah last fall. As US-Saudi collaboration on security and counterterrorism has increased, the regime has largely avoided US pressure on human rights and domestic reforms. And while it keeps the terror threat at bay, at least within its own borders, the Interior Ministry can hold up Yemen as the example of what might happen at home if its broad powers were curbed. Whether that argument will continue to assuage the country’s youth remains an open question.

#### That causes Saudi nuclearization

Rozen ‘11 [Laura, the chief foreign policy reporter for Politico, quoting Patrick Clawson, a Persian Gulf expert at the Washington Institute for Near East Policy and Marc Lynch, a Middle East expert at George Washington University, Arab spring setbacks in the shadow of complicated U.S.-Saudi alliance, 4/18/11, <http://news.yahoo.com/s/yblog_theenvoy/20110418/ts_yblog_theenvoy/optimism-for-arab-spring-fades-in-face-of-complicated-u-s-saudi-alliance>]

**Riyadh, alarmed by** the **Obama** administration's failure to prop up its ally of three decades Egyptian President Hosni Mubarak, **is sending signs of its displeasure and interest in exploring alternative security arrangements**. Last month, former Saudi envoy to Washington now Saudi national security chief Prince **Bandar** **went to Pakistan, ostensibly to discuss the possibility of recruiting Pakistani troops** to help Sunni Gulf allies suppress Bahraini unrest. But some Washington **Middle East analysts interpreted the visit as a signal of possible Saudi interest in exploring being protected by a Pakistani nuclear security umbrella, or acquiring Pakistani nuclear weapons, if Washington doesn't sufficiently assure Riyadh that it will protect it from a nuclear Iran**. "The big problem we face is that at the very least the **Saudis** and [United Arab Emirates] **wonder to what extent we are committed to their most vital interests**," said Patrick Clawson, a Persian Gulf expert at the Washington Institute for Near East Policy. "Prince Bandar's visit to Pakistan is a shot across our bow of what the Saudis may feel is necessary if the U.S. is not providing an effective security guarantee.... The rumors in the region have long been that the Saudis paid a fair chunk of the bill" for Pakistan's nuclear program. "The momentum of the Arab revolutions has stalled, and the old Middle East is reasserting itself," said Marc Lynch, a Middle East expert at George Washington University who frequently consults with the Obama administration. In the current strategic malaise, Lynch said, "the Israelis and Palestinians are saying, 'what about us?' **The 'contain Iran' crowd is saying, 'don't forget about Iran.'" And the Saudis are playing up rising Sunni-Shiite tensions in the region, which "gives them an excuse," he added, to push their contain-Iran agenda, as well as to "equate Iranian subversion for use against their own Shia population**. Any time Saudi Shia make demands for political rights, they are accused of being Iranian agents."

#### Causes nuclear war and turns terrorism

Edelman ‘11 [Fellow at the Center for Strategic and Budgetary Assessments. Former Undersecretary for Defense—AND—Andrew Krepinevich—President of the Center for Strategic and Budgetary Assessments—AND—Evan Montgomery—Research Fellow at the Center for Strategic and Budgetary Assessments (Eric, The dangers of a nuclear Iran, FA 90;1, <http://www.csbaonline.org/wp-content/uploads/2010/12/2010.12.27-The-Dangers-of-a-Nuclear-Iran.pdf>]

There is, however, at least one state that could receive significant outside support: Saudi Arabia. And if it did, proliferation could accelerate throughout the region. Iran and Saudi Arabia have long been geopolitical and ideological rivals. Riyadh would face tremendous pressure to respond in some form to a nuclear-armed Iran, not only to deter Iranian coercion and subversion but also to preserve its sense that Saudi Arabia is the leading nation in the Muslim world. The Saudi government is already pursuing a nuclear power capability, which could be the first step along a slow road to nuclear weapons development. And concerns persist that it might be able to accelerate its progress by exploiting its close ties to Pakistan. During the 1980s, in response to the use of missiles during the Iran-Iraq War and their growing proliferation throughout the region, Saudi Arabia acquired several dozen CSS-2 intermediate-range ballistic missiles from China. The Pakistani government reportedly brokered the deal, and it may have also offered to sell Saudi Arabia nuclear warheads for the CSS-2S, which are not accurate enough to deliver conventional warheads effectively. There are still rumors that Riyadh and Islamabad have had discussions involving nuclear weapons, nuclear technology, or security guarantees. This "Islamabad option" could develop in one of several different ways. Pakistan could sell operational nuclear weapons and delivery systems to Saudi Arabia, or it could provide the Saudis with the infrastructure, material, and technical support they need to produce nuclear weapons themselves within a matter of years, as opposed to a decade or longer. Not only has Pakistan provided such support in the past, but it is currently building two more heavy-water reactors for plutonium production and a second chemical reprocessing facility to extract plutonium from spent nuclear fuel. In other words, it might accumulate more fissile material than it needs to maintain even a substantially expanded arsenal of its own. Alternatively, Pakistan might offer an extended deterrent guarantee to Saudi Arabia and deploy nuclear weapons, delivery systems, and troops on Saudi territory, a practice that the United States has employed for decades with its allies. This arrangement could be particularly appealing to both Saudi Arabia and Pakistan. It would allow the Saudis to argue that they are not violating the NPT since they would not be acquiring their own nuclear weapons. And an extended deterrent from Pakistan might be preferable to one from the United States because stationing foreign Muslim forces on Saudi territory would not trigger the kind of popular opposition that would accompany the deployment of U.S. troops. Pakistan, for its part, would gain financial benefits and international clout by deploying nuclear weapons in Saudi Arabia, as well as strategic depth against its chief rival, India. The Islamabad option raises a host of difficult issues, perhaps the most worrisome being how India would respond. Would it target Pakistan's weapons in Saudi Arabia with its own conventional or nuclear weapons? How would this expanded nuclear competition influence stability during a crisis in either the Middle East or South Asia? Regardless of India's reaction, any decision by the Saudi government to seek out nuclear weapons, by whatever means, would be highly destabilizing. It would increase the incentives of other nations in the Middle East to pursue nuclear weapons of their own. And it could increase their ability to do so by eroding the remaining barriers to nuclear proliferation: each additional state that acquires nuclear weapons weakens the nonproliferation regime, even if its particular method of acquisition only circumvents, rather than violates, the NPT. N-PLAYER COMPETITION Were Saudi Arabia to acquire nuclear weapons, the Middle East would count three nuclear-armed states, and perhaps more before long. It is unclear how such an n-player competition would unfold because most analyses of nuclear deterrence are based on the U.S.-Soviet rivalry during the Cold War. It seems likely, however, that the interaction among three or more nuclear-armed powers would be more prone to miscalculation and escalation than a bipolar competition. During the Cold War, the United States and the Soviet Union only needed to concern themselves with an attack from the other. Multi-polar systems are generally considered to be less stable than bipolar systems because coalitions can shift quickly, upsetting the balance of power and creating incentives for an attack. More important, emerging nuclear powers in the Middle East might not take the costly steps necessary to preserve regional stability and avoid a nuclear exchange. For nuclear-armed states, the bedrock of deterrence is the knowledge that each side has a secure second-strike capability, so that no state can launch an attack with the expectation that it can wipe out its opponents' forces and avoid a devastating retaliation. However, emerging nuclear powers might not invest in expensive but survivable capabilities such as hardened missile silos or submarine-based nuclear forces. Given this likely vulnerability, the close proximity of states in the Middle East, and the very short flight times of ballistic missiles in the region, any new nuclear powers might be compelled to "launch on warning" of an attack or even, during a crisis, to use their nuclear forces preemptively. Their governments might also delegate launch authority to lower-level commanders, heightening the possibility of miscalculation and escalation. Moreover, if early warning systems were not integrated into robust command-and-control systems, the risk of an unauthorized or accidental launch would increase further still. And without sophisticated early warning systems, a nuclear attack might be unattributable or attributed incorrectly. That is, assuming that the leadership of a targeted state survived a first strike, it might not be able to accurately determine which nation was responsible. And this uncertainty, when combined with the pressure to respond quickly, would create a significant risk that it would retaliate against the wrong party, potentially triggering a regional nuclear war. Most existing nuclear powers have taken steps to protect their nuclear weapons from unauthorized use: from closely screening key personnel to developing technical safety measures, such as permissive action links, which require special codes before the weapons can be armed. Yet there is no guarantee that emerging nuclear powers would be willing or able to implement these measures, creating a significant risk that their governments might lose control over the weapons or nuclear material and that nonstate actors could gain access to these items. Some states might seek to mitigate threats to their nuclear arsenals; for instance, they might hide their weapons. In that case, however, a single intelligence compromise could leave their weapons vulnerable to attack or theft.

## CASE

### Esc

#### Executive self-restraint now- Obama is not their egregious examples- war-fighting decisions are deliberative and vetted now

Pillar, 13 -- Brookings Foreign Policy Senior Fellow

[Paul, "The Danger of Groupthink," The National Interest, 2-26-13, webcache.googleusercontent.com/search?q=cache:6rnyjYlVKY0J:www.brookings.edu/research/opinions/2013/02/26-danger-groupthink-pillar+&cd=3&hl=en&ct=clnk&gl=us, accessed 9-23-13, mss]

David Ignatius has an interesting take on national security decision-making in the Obama administration in the wake of the reshuffle of senior positions taking place during these early weeks of the president's second term. Ignatius perceives certain patterns that he believes reinforce each other in what could be a worrying way. One is that the new team does not have as much “independent power” as such first-term figures as Clinton, Gates, Panetta and Petraeus. Another is that the administration has “centralized national security policy to an unusual extent” in the White House. With a corps of Obama loyalists, the substantive thinking may, Ignatius fears, run too uniformly in the same direction. He concludes his column by stating that “by assembling a team where all the top players are going in the same direction, he [Obama] is perilously close to groupthink.” We are dealing here with tendencies to which the executive branch of the U.S. government is more vulnerable than many other advanced democracies, where leading political figures with a standing independent of the head of government are more likely to wind up in a cabinet. This is especially true of, but not limited to, coalition governments. Single-party governments in Britain have varied in the degree to which the prime minister exercises control, but generally room is made in the cabinet for those the British call “big beasts”: leading figures in different wings or tendencies in the governing party who are not beholden to the prime minister for the power and standing they have attained. Ignatius overstates his case in a couple of respects. Although he acknowledges that Obama is “better than most” in handling open debate, he could have gone farther and noted that there have been egregious examples in the past of administrations enforcing a national security orthodoxy, and that the **Obama** administration **does not even come close** to these examples. There was Lyndon Johnson in the time of the Vietnam War, when policy was made around the president's Tuesday lunch table and even someone with the stature of the indefatigable Robert McNamara was ejected when he strayed from orthodoxy. Then there was, as the most extreme case, the George W. Bush administration, in which there was no policy process and no internal debate at all in deciding to launch a war in Iraq and in which those who strayed from orthodoxy, ranging from Lawrence Lindsey to Eric Shinseki, were treated mercilessly. **Obama's prolonged**—to the point of inviting charges of dithering—**internal debates on** the **Afghanistan** War **were the polar opposite** of this Ignatius also probably underestimates the contributions that will be made to internal debate by the two most important cabinet members in national security: the secretaries of state and defense. He says John Kerry “has the heft of a former presidential candidate, but he has been a loyal and discreet emissary for Obama and is likely to remain so.” The heft matters, and Kerry certainly qualifies as a big beast. Moreover, the discreet way in which a member of Congress would carry any of the administration's water, as Kerry sometimes did when still a senator, is not necessarily a good indication of the role he will assume in internal debates as secretary of state. As for Chuck Hagel, Ignatius states “he has been damaged by the confirmation process and will need White House cover.” But now that Hagel's nomination finally has been confirmed, what other “cover” will he need? It's not as if he ever will face another confirmation vote in the Senate. It was Hagel's very inclination to flout orthodoxy, to arrive at independent opinions and to voice those opinions freely that led to the fevered opposition to his nomination.

#### Status quo is goldilocks- Obama won’t start wars but is preserving flexible self-defense- Syria proves

Corn, 13 -- Mother Jones' Washington bureau chief

[David, "Obama, Syria, and Congress: Why Did He Go There?" Mother Jones, www.motherjones.com/politics/2013/09/why-obama-sought-congressional-authorization-syria, accessed 9-23-13, mss]

Given all these swirling and complicated political dynamics, why did Obama grant Congress the right to hold him hostage? Some cynics have suggested that he might be seeking a way out of the corner he red-lined himself into. The polls show a strike would likely be highly unpopular among American voters, and experts of various ideological bents have raised serious questions about the efficacy and impact of a limited US military assault designed to deter Assad from the further use of chemical weapons. If Congress doesn't green light the endeavor, Obama can say he gave it a shot and retreat. Others have slammed Obama for not having the spine to go it alone, speculating he felt the need for political cover. But there's an alternative explanation: He's doing the right thing—or what he believes is the right thing. A former senior Obama adviser who still works with the White House says, "Look at this. Is there any other explanation, other than he thinks this is what he ought to do?" Meaning that Obama, the former law professor, is paying heed to the constitutional notion that the president shares war-making responsibility with Congress. Though this question has long been a source of unresolved conflict between presidents and legislators—and Obama did not seek congressional approval for the military action in Libya and has ordered drone strikes without official Capitol Hill backing—he does appear to be sympathetic to the idea that a president does not possess unhindered and unchecked war-making authority. During the 2008 campaign, he declared, "The president does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation." In Libya, Obama did not act in sync with his campaign statement. But in that instance, past and present Obama aides have contended, the president had only two days or so to mount a strike (with European and Arab allies) to prevent a possible slaughter of Libyan civilians. So Obama sidestepped his previously held view, put that particular principle on hold—and took the hit. This time around, as Obama has pointed out, he does not have to move quickly to thwart an imminent threat. Consequently, he has had the chance to proceed according to constitutional rules (as he sees them). "I think it was pretty clear to him," says a former senior White House official, "that if he blew past Congress this time, that would be it." That is, the idea of joint executive-legislative responsibility for war would be trampled so far into the ground it could remain buried for years to come. Though **Obama** has **aimed to preserve a flexible degree of executive privilege**—and he still might order a strike on Syria without Congress' okay—**he didn't want to do long-term damage to this central constitutional principle.** Sure, **he'll bend it, but he won't break it**. Guiding him, this former aide suggested, was that trademarked Obama nuance-ism that blends pragmatism and principle in a manner that hardly lends itself to crystal-clear messaging.

#### The plan decimates that flexibility- makes global war inevitable

WAXMAN 2013 - law professor at Columbia Law School, co-chairs the Roger Hertog Program on Law and National Security (Matthew Waxman, “The Constitutional Power to Threaten War,” August 27, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2316777)

As a prescriptive matter, Part II also shows that examination of threatened force and the credibility requirements for its effectiveness calls into question many orthodoxies of the policy advantages and risks attendant to various allocations of legal war powers, including the existing one and proposed reforms.23 Most functional arguments about war powers focus on fighting wars or hostile engagements, but that is not all – or even predominantly – what the United States does with its military power. Much of the time it seeks to avert such clashes while achieving its foreign policy objectives: to bargain, coerce, deter.24 The President’s flexibility to use force in turn affects decision-making about threatening it, with major implications for securing peace or dragging the United States into conflicts. Moreover, constitutional war power allocations affect potential conflicts not only because they **may constrain U.S. actions** but because **they may send signals and shape** other states’ (including adversaries’) expectations of U.S. actions.25 That is, most analysis of war-powers law is inward-looking, focused on audiences internal to the U.S. government and polity, but thinking about threatened force prompts us to look outward, at how war-powers law affects external perceptions among adversaries and allies. Here, extant political science and strategic studies offer few clear conclusions, but they point the way toward more sophisticated and realistic policy assessment of legal doctrine and proposed reform. More generally, as explained in Part III, analysis of threatened force and war powers exposes an under-appreciated relationship between constitutional doctrine and grand strategy. Instead of proposing a functionally optimal allocation of legal powers, as legal scholars are often tempted to do, this Article in the end denies the tenability of any such claim. Having identified new spaces of war and peace powers that legal scholars need to take account of in understanding how those powers are really exercised, this Article also highlights the extent to which any normative account of the proper distribution of authority over this area depends on many matters that cannot be predicted in advance or expected to remain constant.26 Instead of proposing a policy-optimal solution, this Article concludes that the allocation of constitutional war powers is – and should be –geopolitically and strategically contingent; the actual and effective balance between presidential and congressional powers over war and peace in practice necessarily depends on fundamental assumptions and shifting policy choices about how best to secure U.S. interests against potential threats.27 I. Constitutional War Powers and Threats of Force Decisions to go to war or to send military forces into hostilities are immensely consequential, so it is no surprise that debates about constitutional war powers occupy so much space. But one of the most common and important ways that the United States uses its military power is by threatening war or force – and the constitutional dimensions of that activity receive almost no scrutiny or even theoretical investigation. A. War Powers Doctrine and Debates The Constitution grants Congress the powers to create military forces and to “declare war,”28 which the Supreme Court early on made clear includes the power to authorize limited uses of force short of full-blown war.29 The Constitution then vests the President with executive power and designates him commander in chief of the armed forces,30 and it has been well-accepted since the Founding that these powers include unilateral authority to repel invasions if the United States is attacked.31 Although there is nearly universal acceptance of these basic starting points, there is little legal agreement about how the Constitution allocates responsibility for the vast bulk of cases in which the United States has actually resorted to force. The United States has declared war or been invaded only a handful of times in its history, but it has used force – sometimes large-scale force – hundreds of other times.32 Views split over questions like when, if ever, the President may use force to deal with aggression against third parties and how much unilateral discretion the President has to use limited force short of full-blown war. For many lawyers and legal scholars, at least one important methodological tool for resolving such questions is to look at historical practice, and especially the extent to which the political branches acquiesced in common practices.33 Interpretation of that historical practice for constitutional purposes again divides legal scholars, but most would agree at least descriptively on some basic parts of that history. In particular, most scholars assess that from the Founding era through World War II, Presidents and Congresses alike recognized through their behavior and statements that except in certain narrow types of contingencies, congressional authorization was required for large-scale military operations against other states and international actors, even as many Presidents pushed and sometimes crossed those boundaries.34 Whatever constitutional constraints on presidential use of force existed prior to World War II, however, most scholars also note that the President asserted much more extensive unilateral powers to use force during and after the Cold War, and many trace the turning point to the 1950 Korean War.35 Congress did not declare war in that instance, nor did it expressly authorize U.S. participation.36 From that point forward, presidents have asserted broad unilateral authority to use force to address threats to U.S. interests, including threats to U.S. allies, and that neither Congress nor courts pushed back much against this expanding power.37 Concerns about expansive presidential war-making authority spiked during the Vietnam War. In the wind-down of that conflict, Congress passed – over President Nixon’s veto – the War Powers Resolution,38 which stated its purpose as to ensure the constitutional Founders’ original vision that the “collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”39 Since then, presidentialists have argued that the President still retains expansive authority to use force abroad to protect American interests,40 and congressionalists argue that this authority is tightly circumscribed.41 These constitutional debates have continued through the first decade of the 21st century. Constitutional scholars split, for example, over President Obama’s power to participate in coalition operations against Libya without congressional authorization in 2011, especially after the War Powers Resolution’s 60-day clock expired.42 Some argue that President Obama’s use of military force without specific congressional authorization in that case **reflects the broad constitutional discretion presidents** now **have** to protect American interests, at least short of full-blown “war”, while others argue that it is the latest in a long record of presidential violations of the Constitution and the War Powers Resolution.43 B. Threats of Force and Constitutional Powers These days it is usually taken for granted that – whether or not he can make war unilaterally – the President is constitutionally empowered to threaten the use of force, implicitly or explicitly, through diplomatic means or shows of force. It is never seriously contested whether the President may declare that United States is contemplating military options in response to a crisis, or whether the President may move substantial U.S. military forces to a crisis region or engage in military exercises there. To take the Libya example just mentioned, is there any constitutional limitation on the President’s authority to move U.S. military forces to the Mediterranean region and prepare them very visibly to strike?44 Or his authority to issue an ultimatum to Libyan leaders that they cease their brutal conduct or else face military action? Would it matter whether such threats were explicit versus implicit, whether they were open and public versus secret, or whether they were just a bluff? If not a constitutional obstacle, could it be argued that the War Powers Resolution’s reporting requirements and limits on operations were triggered by a President’s mere ultimatum or threatening military demonstration, insofar as those moves might constitute a “situation where imminent involvement in hostilities is clearly indicated by the circumstances”? These questions simply are not asked (at least not anymore).45 If anything, most lawyers would probably conclude that the President’s constitutional powers to threaten war **are not just expansive but largely beyond Congress’s authority** to regulate directly. From a constitutional standpoint, to the extent it is considered at all, the President’s power to threaten force is probably regarded to be at least as broad as his power to use it. One way to look at it is that the power to threaten force is a lesser included element of presidential war powers; the power to threaten to use force is simply a secondary question, the answer to which is bounded by the primary issue of the scope of presidential power to actually use it. If one interprets the President’s defensive war powers very broadly, to include dealing with aggression not only directed against U.S. territories but also against third parties,46 then it might seem easy to conclude that the President can also therefore take steps that stop short of actual armed intervention to deter or prevent such aggression. If, however, one interprets the President’s powers narrowly, for example, to include only limited unilateral authority to repel attacks against U.S. territory,47 then one might expect objections to arguably excessive presidential power to include his unilateral threats of armed intervention. Another way of looking at it is that in many cases, threats of war or force might fall within even quite narrow interpretations of the President’s inherent foreign relations powers to conduct diplomacy or his express commander in chief power to control U.S. military forces – or some combination of the two – depending on how a particular threat is communicated. A President’s verbal warning, ultimatum, or declared intention to use military force, for instance, could be seen as merely exercising his role as the “sole organ” of U.S. foreign diplomacy, conveying externally information about U.S. capabilities and intentions.48 A president’s movement of U.S. troops or warships to a crisis region or elevation of their alert level could be seen as merely exercising his dayto- day tactical control over forces under his command.49 Generally it is not seriously contested whether the exercise of these powers alone could so affect the likelihood of hostilities or war as to intrude on Congress’s powers over war and peace.50 We know from historical examples that such unilateral military moves, even those that are ostensibly pure defensive ones, can provoke wars – take, for example, President Polk’s movement of U.S. forces to the contested border with Mexico in 1846, and the resulting skirmishes that led Congress to declare war.51 Coming at the issue from Congress’s Article I powers rather than the President’s Article II powers, the very phrasing of the power “To declare War” puts most naturally all the emphasis on the present tense of U.S. military action, rather than its potentiality. Even as congressionalists advance interpretations of the clause to include not merely declarative authority but primary decision-making authority as to whether or not to wage war or use force abroad, their modern-day interpretations do not include a power to threaten war (except perhaps through the specific act of declaring it). None seriously argues – at least not any more – that the Declare War Clause precludes presidential threats of war. This was not always the case. During the early period of the Republic, there was a powerful view that beyond outright initiation of armed hostilities or declaration of war, more broadly the President also could not unilaterally take actions (putting aside actual military attacks) that would likely or directly risk war,52 provoke a war with another state,53 or change the condition of affairs or relations with another state along the continuum from peace to war.54 To do so, it was often argued, would usurp Congress’s prerogative to control the nation’s state of peace or war.55 During the Quasi-War with France at the end of the 18th century, for example, some members of Congress questioned whether the President, absent congressional authorization, could take actions that visibly signaled an intention to retaliate against French maritime harassment,56 and even some members of President Adams’ cabinet shared doubts.57 Some questions over the President’s power to threaten force arose (eventually) in relation to the Monroe Doctrine, announced in an 1823 presidential address to Congress and which in effect declared to European powers that the United States would oppose any efforts to colonize or reassert control in the Western Hemisphere.58 “Virtually no one questioned [Monroe’s proclamation] at the time. Yet it posed a constitutional difficulty of the first importance.”59 Of course, Monroe did not actually initiate any military hostilities, but his implied threat – without congressional action – risked provoking rather than deterring European aggression and by putting U.S. prestige and credibility on the line it limited Congress’s practical freedom of action if European powers chose to intervene.60 The United States would have had at the time to rely on British naval power to make good on that tacit threat, though a more assertive role for the President in wielding the potential for war or intervention during this period went hand in hand with a more sustained projection of U.S. power beyond its borders, especially in dealing with dangers emanating from Spanish-held Florida territory.61 Monroe’s successor, John Quincy Adams, faced complaints from opposition members of Congress that Monroe’s proclamation had exceeded his constitutional authority and had usurped Congress’s by committing the United States – even in a non-binding way – to resisting European meddling in the hemisphere.62 The question whether the President could unilaterally send militarily-threatening signals was in some respects a mirror image of the issues raised soon after the Constitution was ratified during the 1793 Neutrality Controversy: could President Washington unilaterally declare the United States to be neutral as to the war among European powers. Washington’s politically controversial proclamation declaring the nation “friendly and impartial” in the conflict between France and Great Britain (along with other European states) famously prompted a back-and-forth contest of public letters by Alexander Hamilton and James Madison, writing pseudonymously as “Pacificus” and “Helvidius”, about whether the President had such unilateral power or whether it belonged to Congress.63 Legal historian David Currie points out the irony that the neutrality proclamation was met with stronger and more immediate constitutional scrutiny and criticism than was Monroe’s threat. After all, Washington’s action accorded with the principle that only Congress, representing popular will, should be able to take the country from the baseline state of peace to war, whereas Monroe’s action seemed (at least superficially) to commit it to a war that Congress had not approved.64 Curiously (though for reasons offered below, perhaps not surprisingly) this issue – whether there are constitutional limits on the President’s power to threaten war – has almost vanished completely from legal discussion, and that evaporation occurred even before the dramatic post-war expansion in asserted presidential power to make war. Just prior to World War II, political scientist and presidential powers theorist Edward Corwin remarked that “[o]f course, it may be argued, and has in fact been argued many times, that the President is under constitutional obligation not to incur the risk of war in the prosecution of a diplomatic policy without first consulting Congress and getting its consent.”65 “Nevertheless,” he continued,66 “the supposed principle is clearly a maxim of policy rather than a generalization from consistent practice.” In his 1945 study World Policing and the Constitution, James Grafton Rogers noted: [E]xamples of demonstrations on land and sea made for a variety of purposes and under Presidents of varied temper and in different political climates will suffice to make the point. The Commander-in-Chief under the Constitution can display our military resources and threaten their use whenever he thinks best. The weakness in the diplomatic weapon is the possibility of dissidence at home which may cast doubt on our serious intent. The danger of the weapon is war.67 At least since then, however, the importance to U.S. foreign policy of threatened force has increased dramatically, while legal questions about it have receded further from discussion. In recent decades a few prominent legal scholars have addressed the President’s power to threaten force, though in only brief terms.

Taylor Reveley noted in his volume on war powers the importance of allocating constitutional responsibility not only for the actual use of force but also “[v]erbal or written threats or assurances about the circumstances in which the United States will take military action …, whether delivered by declarations of American policy, through formal agreements with foreign entities, by the demeanor or words of American officials, or by some other sign of national intent.”68 Beyond recognizing the critical importance of threats and other non-military actions in affecting war and peace, however, Reveley made little effort to address the issue in any detail. Among the few legal scholars attempting to define the limiting doctrinal contours of presidentially threatened force, Louis Henkin wrote in his monumental Foreign Affairs and the Constitution that: Unfortunately, the line between war and lesser uses of force is often elusive, sometimes illusory, and the use of force for foreign policy purposes can almost imperceptibly become a national commitment to war. Even when he does not use military force, the President can incite other nations or otherwise plunge or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. As a matter of constitutional doctrine, however, one can declare with confidence that a President begins to exceed his authority if he willfully or recklessly moves the nation towards war…69 The implication seems to be that the President may not unilaterally threaten force in ways that are dramatically escalatory and could likely lead to war, or perhaps that the President may not unilaterally threaten the use of force that he does not have the authority to initiate unilaterally.70 Jefferson Powell, who generally takes a more expansive view than Henkin of the President’s war powers, argues by contrast that “[t]he ability to warn of, or threaten, the use of military force is an ordinary and essential element in the toolbox of that branch of government empowered to formulate and implement foreign policy.”71 For Powell, the President is constantly taking actions as part of everyday international relations that carry a risk of military escalation, and these are well-accepted as part of the President’s broader authority to manage, if not set, foreign policy. Such brief mentions are in recent times among the rare exceptions to otherwise barren constitutional discussion of presidential powers to threaten force. That the President’s authority to threaten force is so well-accepted these days as to seem self-evident is not just an academic phenomenon. It is also reflected in the legal debates among and inside all three branches of government. In 1989, Michael Reisman observed: Military maneuvers designed to convey commitment to allies or contingent threats to adversaries … **are matters of presidential competence**. Congress does not appear to view as within its bailiwick many low-profile contemporaneous expressions of gunboat diplomacy, i.e., the physical interposition of some U.S. war-making capacity as communication to an adversary of United States’ intentions and capacities to oppose it.72 This was and remains a correct description but understates the pattern of practice, insofar as even major and high-profile expressions of coercive diplomacy are regarded among all three branches of government as within presidential competence. In Dellums v. Bush – perhaps the most assertive judicial scrutiny of presidential power to use large-scale force abroad since the end of the Cold War – the district court dismissed on ripeness grounds congressmembers’ suit challenging President George H. W. Bush’s intended military operations against Iraq in 1991 and seeking to prevent him from initiating an offensive attack against Iraq without first securing explicit congressional authorization for such action.73 That at the time of the suit the President had openly threatened war – through ultimatums and deployment of several hundred thousand U.S. troops – but had not yet “committed to a definitive course of action” to carry out the threat meant there was no justiciable legal issue, held the court.74 The President’s threat of war did not seem to give the district court legal pause at all; quite the contrary, the mere threat of war was treated by the court as a non-issue entirely.75 There are several reasons why constitutional questions about threatened force have dropped out of legal discussions. First, the more politically salient debate about the President’s unilateral power to use force has probably swallowed up this seemingly secondary issue. As explained below, it is a mistake to view threats as secondary in importance to uses of force, but they do not command the same political attention and their impacts are harder to measure.76 Second, the expansion of American power after World War II, combined with the growth of peacetime military forces and a set of defense alliance commitments (developments that are elaborated below) make at least some threat of force much more common – in the case of defensive alliances and some deterrent policies, virtually constant – and difficult to distinguish from other forms of everyday diplomacy and security policy.77 Besides, for political and diplomatic reasons, presidents rarely threaten war or intervention without at least a little deliberate ambiguity. As historian Marc Trachtenberg puts it: “It often makes sense … to muddy the waters a bit and avoid direct threats.”78 Any legal lines one might try to draw (recall early attempts to restrict the President’s unilateral authority to alter the state of affairs along the peacetime-wartime continuum) have become blurrier and blurrier. In sum, if the constitutional power to threaten war ever posed a serious legal controversy, it does so no more. As the following section explains, however, threats of war and armed force have during most of our history become a greater and greater part of American grand strategy, defined here as long-term policies for using the country’s military and non-military power to achieve national goals. The prominent role of threatened force in U.S. strategy has become the focus of political scientists and other students of security strategy, crises, and responses – but constitutional study has not adjusted accordingly.79 C. Threats of Force and U.S. Grand Strategy While the Korean and Vietnam Wars were generating intense study among lawyers and legal scholars about constitutional authority to wage military actions abroad, during that same period many political scientists and strategists – economists, historians, statesmen, and others who studied international conflict – turned their focus to the role of threatened force as an instrument of foreign policy. The United States was building and sustaining a massive war-fighting apparatus, but its security policy was not oriented primarily around waging or winning wars but around deterring them and using the threat of war – including demonstrative military actions – to advance U.S. security interests. It was the potential of U.S. military might, not its direct application or engagement with the enemy, that would do much of the heavy lifting. U.S. military power would be used to deter the Soviet Union and other hostile states from taking aggressive action. It would be unsheathed to prompt them to back down over disputes. It would reassure allies that they could depend on U.S. help in defending themselves. All this required that U.S. willingness to go to war be credible in the eyes of adversaries and allies alike. Much of the early Cold War study of threatened force concerned nuclear strategy, and especially deterrence or escalation of nuclear war. Works by Albert Wohlstetter, Herman Kahn, and others not only studied but shaped the strategy of nuclear threats, as well as how to use limited applications of force or threats of force to pursue strategic interests in remote parts of the globe without sparking massive conflagrations.80 As the strategic analyst Bernard Brodie wrote in 1946, “Thus far the chief purpose of our military establishment has been to win wars. From now on its chief purpose must be to avert them.”81 Toward that end, U.S. government security and defense planners during this time focused heavily on preserving and improving the credibility of U.S. military threats – while the Soviet Union was doing likewise.82 The Truman administration developed a militarized version of containment strategy against the Soviet empire, emphasizing that stronger military capabilities were necessary to prevent the Soviets from seizing the initiative and to resist its aggressive probes: “it is clear,” according to NSC-68, the government document which encapsulated that strategy, “that a substantial and rapid building up of strength in the free world is necessary to support a firm policy intended to check and to roll back the Kremlin's drive for world domination.”83 The Eisenhower administration’s “New Look” policy and doctrine of “massive retaliation” emphasized making Western collective security both more effective and less costly by placing greater reliance on deterrent threats – including threatened escalation to general or nuclear war. As his Secretary of State John Foster Dulles explained, “[t]here is no local defense which alone will contain the mighty landpower of the Communist world. Local defenses must be reinforced by the further deterrent of massive retaliatory power.”84 As described in Evan Thomas’s recent book, Ike’s Bluff, Eisenhower managed to convince Soviet leaders that he was ready to use nuclear weapons to check their advance in Europe and elsewhere. In part due to concerns that threats of massive retaliation might be insufficiently credible in Soviet eyes (especially with respect to U.S. interests perceived as peripheral), the Kennedy administration in 1961 shifted toward a strategy of “flexible response,” which relied on the development of a wider spectrum of military options that could quickly and efficiently deliver varying degrees of force in response to foreign aggression.85 Throughout these periods, the President often resorted to discrete, limited uses of force to demonstrate U.S. willingness to escalate. For example, in 1961 the Kennedy administration (mostly successfully in the short-run) deployed intervention-ready military force immediately off the coast of the Dominican Republic to compel its government's ouster,86 and that same year it used military exercises and shows of force in ending the Berlin crisis;87 in 1964, the Johnson administration unsuccessfully used air strikes on North Vietnamese targets following the Tonkin Gulf incidents, failing to deter what it viewed as further North Vietnamese aggression.88 The point here is not the shifting details of U.S. strategy after World War II – during this era of dramatic expansion in asserted presidential war powers – but the central role of credible threats of war in it, as well as the interrelationship of plans for using force and credible threats to do so. Also during this period, the United States abandoned its long-standing aversion to “entangling alliances,”89 and committed to a network of mutual defense treaties with dependent allies. Besides the global collective security arrangement enshrined in the UN Charter, the United States committed soon after World War II to mutual defense pacts with, for example, groups of states in Western Europe (the North Atlantic Treaty Organization)90 and Asia (the Southeast Asia Treaty Organization,91 as well as a bilateral defense agreement with the Republic of Korea,92 Japan,93 and the Republic of China,94 among others). These alliance commitments were part of a U.S. effort to “extend” deterrence of Communist bloc aggression far beyond its own borders.95 “Extended deterrence” was also critical to reassuring these U.S. allies that their security needs would be met, in some instances to head off their own dangerous rearmament.96 Among the leading academic works on strategy of the 1960s and 70s were those of Thomas Schelling, who developed the theoretical structure of coercion theory, arguing that rational states routinely use the threat of military force – the manipulation of an adversary’s perceptions of future risks and costs with military threats – as a significant component of their diplomacy.97 Schelling distinguished between deterrence (the use of threats to dissuade an adversary from taking undesired action) and compellence (the use of threats to persuade an adversary to behave a certain way), and he distinguished both forms of coercion from brute force: “[B]rute force succeeds when it is used, whereas the power to hurt is most successful when held in reserve. It is the threat of damage to come that can make someone yield of comply. It is latent violence that can influence someone’s choice.”98 Alexander George, David Hall, and William Simons then led the way in taking a more empirical approach, reviewing case studies to draw insights about the success and failure of U.S. coercive threats, analyzing contextual variables and their effects on parties’ reactions to threats during crises. Among their goals was to generate lessons informed by history for successful strategies that combine diplomatic efforts with threats or demonstrations of force, recognizing that the United States was relying heavily on threatened force in addressing security crises. Coercive diplomacy – if successful – offered ways to do so with minimal actual application of military force.99 One of the most influential studies that followed was Force Without War: U.S. Armed Forces as a Political Instrument, a Brookings Institution study led by Barry Blechman and Stephen Kaplan and published in 1977.100 They studied “political uses of force”, defined as actions by U.S. military forces “as part of a deliberate attempt by the national authorities to influence, or to be prepared to influence, specific behavior of individuals in another nation without engaging in a continued contest of violence.”101 Blechman and Kaplan’s work, including their large data set and collected case studies, was important for showing the many ways that threatened force could support U.S. security policy. Besides deterrence and compellence, threats of force were used to assure allies (thereby, for example, avoiding their own drive toward militarization of policies or crises) and to induce third parties to behave certain ways (such as contributing to diplomatic resolution of crises). The record of success in relying on threatened force has been quite mixed, they showed. Blechman and Kaplan’s work, and that of others who built upon it through the end of the Cold War and the period that has followed,102 helped understand the factors that correlated with successful threats or demonstrations of force without resort or escalation to war, especially the importance of credible signals.103 After the Cold War, the United States continued to rely on coercive force – threatened force to deter or compel behavior by other actors – as a central pillar of its grand strategy. During the 1990s, the United States wielded coercive power with varied results against rogue actors in many cases that, without the overlay of superpower enmities, were considered secondary or peripheral, not vital, interests: Iraq, Somalia, Haiti, Bosnia, and elsewhere. For analysts of U.S. national security policy, a major puzzle was reconciling the fact that the United States possessed overwhelming military superiority in raw terms over any rivals with its difficult time during this era in compelling changes in their behavior.104 As Daniel Byman and I wrote about that decade in our study of threats of force and American foreign policy: U.S. conventional and nuclear forces dwarf those of any adversaries, and the U.S. economy remains the largest and most robust in the world. Because of these overwhelming advantages, the United States can threaten any conceivable adversary with little danger of a major defeat or even significant retaliation. Yet coercion remains difficult. Despite the United States’ lopsided edge in raw strength, regional foes persist in defying the threats and ultimatums brought by the United States and its allies. In confrontations with Somali militants, Serb nationalists, and an Iraqi dictator, the U.S. and allied record or coercion has been mixed over recent years…. Despite its mixed record of success, however, coercion will remain a critical element of U.S. foreign policy.105 One important factor that seemed to undermine the effectiveness of U.S. coercive threats during this period was that many adversaries perceived the United States as still afflicted with “Vietnam Syndrome,” unwilling to make good on its military threats and see military operations through.106 Since the turn of the 21st Century, major U.S. security challenges have included non-state terrorist threats, the proliferation of nuclear and other weapons of mass destruction (WMD), and rapidly changing power balances in East Asia, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors – including terrorist organizations and some states seeking WMD arsenals – are undeterrable, so the United States might have to strike them first rather than waiting to be struck.107 On one hand, this was a move away from reliance on threatened force: “[t]he inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.108 Yet the very enunciation of such a policy – that “[t]o forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively”109 – was intended to persuade those adversaries to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring threats (such as aggressive Iranian moves), intervening in humanitarian crises (as in Libya), and reassuring allies.110 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for deterring Chinese and North Korean aggression as well as reassuring other Asian powers of U.S. protection, to avert a destabilizing arms race.111 D. The Disconnect Between Constitutional Discourse and Strategy There is a major disconnect between the decades of work by strategists and many political scientists on American security policy and practice since the Second World War and legal analysis and scholarship of constitutional war powers during that period. Lawyers and strategists have been relying on not only distinct languages but distinct logics of military force – in short, when it comes to using U.S. military power, lawyers think in terms of “going to war” while strategists focus on potential war and processes leading to it. These framings manifest in differing theoretical starting points for considering how exercises of U.S. military might affect war and peace, and they skew the empirical insights and normative prescriptions about Presidential power often drawn from their analyses. 1. Lawyers’ Misframing Lawyers’ focus on actual uses of force – especially engagements with enemy military forces – as constitutionally salient, rather than including threats of force in their understanding of modern presidential powers tilts analysis toward a one-dimensional strategic logic, rather than a more complex and multi-dimensional and dynamic logic in which the credible will to use force is as important as the capacity to do so. As discussed above, early American constitutional thinkers and practitioners generally wanted to slow down with institutional checks decisions to go to war, because they thought that would make war less likely. “To invoke a more contemporary image,” wrote John Hart Ely of their vision, “it takes more than one key to launch a missile: It should take quite a number to start a war.”112 They also viewed the exercise of military power as generally a ratchet of hostilities, whereby as the intensity of authorized or deployed force increased, so generally did the state of hostilities between the United States and other parties move along a continuum from peace to war.113 Echoes of this logic still reverberate in modern congressionalist legal scholarship: the more flexibly the President can use military force, the more likely it is that the United States will find itself in wars; better, therefore, to clog decisions to make war with legislative checks.114 Modern presidentialist legal scholars usually respond that rapid action is a virtue, not a vice, in exercising military force.115 Especially as a superpower with global interests and facing global threats, presidential discretion to take rapid military **action** – endowed with what Alexander Hamilton called “[**d]ecision, activity, secrecy, and dispatch**”116 – **best protects American interests**. In either case the emphasis tends overwhelmingly to be placed on actual military engagements with adversaries. Strategists and many political scientists, by contrast, view some of the most significant use of military power as starting well before armed forces clash – and including important cases in which they never actually do. Coercive diplomacy and strategies of threatened force, they recognize, often involve a set of moves and countermoves by opposing sides and third parties before or even without the violent engagement of opposing forces. It is often the parties’ perceptions of anticipated actions and costs, not the actual carrying through of violence, that have the greatest impact on the course of events and resolution or escalation of crises. Instead of a ratchet of escalating hostilities, the flexing of military muscle can increase as well as decrease actual hostilities, inflame as well as stabilize relations with rivals or enemies. Moreover, those effects are determined not just by U.S. moves but by the responses of other parties to them – or even to anticipated U.S. moves and countermoves.117 Indeed, as Schelling observed, strategies of brinkmanship sometimes operate by “the deliberate creation of a recognizable risk of war, a risk that one does not completely control.”118 This insight – that effective strategies of threatened force involve not only great uncertainty about the adversary’s responses but also sometimes involve intentionally creating risk of inadvertent escalation119 – poses a difficult challenge for any effort to cabin legally the President’s power to threaten force in terms of likelihood of war or some due standard of care.120 2. Lawyers’ Selection Problems Methodologically, a lawyerly focus on actual uses of force – a list of which would then commonly be used to consider which ones were or were not authorized by Congress – vastly undercounts the instances in which presidents wield U.S. military might. It is already recognized by some legal scholars that studying actual uses of force risks ignoring instances in which President contemplated force but refrained from using it, whether because of political, congressional, or other constraints.121 The point here is a different one: that some of the most significant (and, in many instances, successful) presidential decisions to threaten force do not show up in legal studies of presidential war powers that consider actual deployment or engagement of U.S. military forces as the relevant data set. Moreover, some actual uses of force, whether authorized by Congress or not, were preceded by threats of force; in some cases these threats may have failed on their own to resolve the crisis, and in other cases they may have precipitated escalation. To the extent that lawyers are interested in understanding from historical practice what war powers the political branches thought they had and how well that understanding worked, they are excluding important cases. Consider, as an illustration of this difference in methodological starting point, that for the period of 1946-1975 (during which the exercise of unilateral Presidential war powers had its most rapid expansion), the Congressional Research Service compilation of instances in which the United States has utilized military forces abroad in situations of military conflict or potential conflict to protect U.S. citizens or promote U.S. interests – which is often relied upon by legal scholars studying war powers – lists only about two dozen incidents.122 For the same time period, the Blechman and Kaplan study of political uses of force (usually threats) – which is often relied upon by political scientists studying U.S. security strategy – includes dozens more data-point incidents, because they divide up many military crises into several discrete policy decisions, because many crises were resolved with threat-backed diplomacy, and because many uses of force were preceded by overt or implicit threats of force.123 Among the most significant incidents studied by Blechman and Kaplan but not included in the Congressional Research Service compilation at all are the 1958-59 and 1961 crises over Berlin and the 1973 Middle East War, during which U.S. Presidents signaled threats of superpower war, and in the latter case signaled particularly a willingness to resort to nuclear weapons.124 Because the presidents did not in the end carry out these threats, these cases lack the sort of authoritative legal justifications or reactions that accompany actual uses of force. It is therefore difficult to assess how the executive branch and congress understood the scope of the President’s war powers in these cases, but historical inquiry would probably show the executive branch’s interpretation to be very broad, even to include full-scale war and even where the main U.S. interest at stake was the very credibility of U.S. defense commitments undergirding its grand strategy, not simply the interests specific to divided Germany and the Middle East region.

Of course, one might argue that because the threatened military actions were never carried out in these cases, it is impossible to know if the President would have sought congressional authorization or how Congress would have reacted to the use of force; nonetheless, it is easy to see that in crises like these a threat by the President to use force, having put U.S. credibility on the line in addition to whatever other foreign policy stakes were at issues, would have put Congress in a bind. 3. Lawyers’ Mis-Assessment Empirically, analysis of and insights gleaned from any particular incident – which might then be used to evaluate the functional merits of presidential powers – looks very different if one focuses predominantly on the actual use of force instead of considering also the role of threatened force. Take for example, the Cuban Missile Crisis – perhaps the Cold War’s most dangerous event. To the rare extent that they consider domestic legal issues of this crisis at all, lawyers interested in the constitutionality of President Kennedy’s actions generally ask only whether he was empowered to initiate the naval quarantine of Cuba, because that is the concrete military action Kennedy took that was readily observable and that resulted in actual engagement with Soviet forces or vessels – as it happens, very minimal engagement.125 To strategists who study the crisis, however, the naval quarantine is not in itself the key presidential action; after all, as Kennedy and his advisers realized, a quarantine alone could not remove the missiles that were already in Cuba. The most consequential presidential actions were threats of military or even nuclear escalation, signaled through various means including putting U.S. strategic bombers on highest alert.126 The quarantine itself was significant not for its direct military effects but because of its communicative impact in showing U.S. resolve. If one is focused, as lawyers often are, on presidential military action that actually engaged the enemy in combat or nearly did, it is easy to dismiss this case as not very constitutionally significant. If one focuses on it, as strategists and political scientists often do, on nuclear brinkmanship, it is arguably the most significant historical exercise of unilateral presidential powers to affect war and peace.127 Considering again the 1991 Gulf War, most legal scholars would dismiss this instance as constitutionally a pretty uninteresting military conflict: the President claimed unilateral authority to use force, but he eventually sought and obtained congressional authorization for what was ultimately – at least in the short-run – a quite successful war. For the most part this case is therefore neither celebrated nor decried much by either side of legal war powers debates,128 though some congressionalist scholars highlight the correlation of congressional authorization for this war and a successful outcome.129 Political scientists look at the case differently, though. They often study this event not as a successful war but as failed coercive diplomacy, in that the United States first threatened war through a set of dramatically escalating steps that ultimately failed to persuade Saddam Hussein to withdraw from Kuwait.130 Some political scientists even see U.S. legal debate about military actions as an important part of this story, assessing that adversaries pay attention to congressional arguments and moves in evaluating U.S. resolve (an issue taken up in greater detail below) and that congressional opposition to Bush’s initial unilateralism in this case undermined the credibility of U.S. threats.131 Whether one sees the Gulf War as a case of (successful) war, as lawyers usually do, or (unsuccessful) threatened war, as political scientists usually do, colors how one evaluates the outcome and the credit one might attach to some factors such as vocal congressional opposition to initially-unilateral presidential moves. Notice also that legal analysis of Presidential authority to use force is sometimes thought to turn partly on the U.S. security interests at stake, as though those interests are purely contextual and exogenous to U.S. decision-making and grand strategy. In justifying President Obama’s 2011 use of force against the Libyan government, for example, the Justice Department’s Office of Legal Counsel concluded that the President had such legal authority “because he could reasonably determine that such use of force was in the national interest,” and it then went on to detail the U.S. security and foreign policy interests.132 The interests at stake in crises like these, however, are altered dramatically if the President threatens force: doing so puts the credibility of U.S. threats at stake, which is important not only with respect to resolving the crisis at hand but with respect to other potential adversaries watching U.S. actions.133 The President’s power to threaten force means that he may unilaterally alter the costs and benefits of actually using force through his prior actions.134 The U.S. security interests in carrying through on threats are partly endogenous to the strategy embarked upon to address crises (consider, for example, that once President George H.W. Bush placed hundred of thousands of U.S. troops in the Persian Gulf region and issued an ultimatum to Saddam Hussein in 1990, the credibility of U.S. threats and assurances to regional allies were put on the line).135 Moreover, interests at stake in any one crisis cannot simply be disaggregated from broader U.S. grand strategy: if the United States generally relies heavily on threats of force to shape the behavior of other actors, then its demonstrated willingness or unwillingness to carry out a threat and the outcomes of that action affect its credibility in the eyes of other adversaries and allies, too.136 It is remarkable, though in the end not surprising, that the executive branch does not generally cite these credibility interests in justifying its unilateral uses of force. It does cite when relevant the U.S. interest in sustaining the credibility of its formal alliance commitments or U.N. Security Council resolutions, as reasons supporting the President’s constitutional authority to use force.137 The executive branch generally refrains from citing the similar interests in sustaining the credibility of the President’s own threats of force, however, probably in part because doing so would so nakedly expose the degree to which the President’s prior unilateral strategic decisions would tie Congress’s hands on the matter. \* \* \* In sum, lawyers’ focus on actual uses of force – usually in terms of armed clashes with an enemy or the placement of troops into hostile environments – does not account for much vaster ways that President’s wield U.S. military power and it skews the claims legal scholars make about the allocation of war powers between the political branches. A more complete account of constitutional war powers should recognize the significant role of threatened force in American foreign policy. II. Democratic Checks on Threatened Force The previous Parts of this Article showed that, especially since the end of World War II, the United States has relied heavily on strategies of threatened force in wielding its military might – for which credible signals are a necessary element – and that the President is not very constrained legally in any formal sense in threatening war. Drawing on recent political science scholarship, this Part takes some of the major questions often asked by students of constitutional war powers with respect to the actual use of force and reframes them in terms of threatened force. First, as a descriptive matter, in the absence of formal legal checks on the President’s power to threaten war, is the President nevertheless informally but significantly constrained by democratic institutions and processes, and what role does Congress play in that constraint? Second, as a normative matter, what are the strategic merits and drawbacks of this arrangement of democratic institutions and constraints with regard to strategies of threatened force? Third, as a prescriptive matter, although it is not really plausible that Congress or courts would ever erect direct legal barriers to the President’s power to threaten war, how might legal reform proposals to more strongly and formally constrain the President’s power to use force indirectly impact his power to threaten it effectively? For reasons discussed below, I do not consider whether Congress could legislatively restrict directly the President’s power to threaten force or war; in short, I set that issue aside because assuming that were constitutionally permissible, even ardent congressionalists have exhibited no interest in doing so, and instead have focused on legally controlling the actual use of force. Political science insights that bear on these questions emerge from several directions. One is from studies of Congress’ influence on use of force decisions, which usually assume that Congress’s formal legislative powers play only a limited role in this area, and the effects of this influence on presidential decision-making about threatened force. Another is international relations literature on international bargaining138 as well as literature on the theory of democratic peace, the notion that democracies rarely, if ever, go to war with one another.139 In attempting to explain the near-absence of military conflicts between democracies, political scientists have examined how particular features of democratic governments – electoral accountability, the institutionalized mobilization of political opponents, and the diffusion of decision-making authority regarding the use of force among executive and legislative branches – affect decision-making about war.140 These and other studies, in turn, have led some political scientists (especially those with a rational choice theory orientation) to focus on how those features affect the credibility of signals about force that governments send to adversaries in crises.141 My purpose in addressing these questions is to begin painting a more complete and detailed picture of the way war powers operate, or could operate, than one sees when looking only at actual wars and use of force. This is not intended to be a comprehensive account but an effort to synthesize some strands of scholarship from other fields regarding threatened force to inform legal discourse about how war powers function in practice and the strategic implications of reform. The answers to these questions also bear on raging debates among legal scholars on the nature of American executive power and its constraint by law. Initially they seem to support the views of those legal scholars who have long believed that in practice law no longer seriously binds the President with respect to war-making.142 That view has been taken even further recently by Eric Posner and Adrian Vermeule, who argue that “[l]aw does little constraint the modern executive” at all, but also observe that “politics and public opinion” operate effectively to cabin executive powers.143 The arguments offered here, however, do more to support the position of those legal scholars who describe a more complex relationship between law and politics, including that law is constitutive of the processes of political struggle.144 That law helps constitute the processes of political struggles is true of any area of public policy, though, and what is special here is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too. Democratic Constraints on the Power to the Threaten Force Whereas most lawyers usually begin their analysis of the President’s and Congress’s war powers by focusing on their formal legal authorities, political scientists usually take for granted these days that the President is – in practice – the dominant branch with respect to military crises and that Congress wields its formal legislative powers in this area rarely or in only very limited ways. A major school of thought, however, is that congressional members nevertheless wield significant influence over decisions about force, and that this influence extends to threatened force, so that Presidents generally refrain from threats that would provoke strong congressional opposition. Even without any serious prospect for legislatively blocking the President’s threatened actions, Congress under certain conditions can loom large enough to force Presidents to adjust their policies; even when it cannot, congressional members can oblige the President expend lots of political capital. As Jon Pevehouse and William Howell explain: When members of Congress vocally **oppose a use of force, they undermine the president’s ability to convince** foreign states that he will see a fight through to the end. Sensing hesitation on the part of the United States, **allies may be reluctant to contribute** to a military campaign, **and adversaries are likely to fight harder and longer** when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy emboldened by domestic critics, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests. 145 This statement also highlights the important point, alluded to earlier, that force and threatened force are not neatly separable categories. Often limited uses of force are intended as signals of resolve to escalate, and most conflicts involve bargaining in which the threat of future violence – rather than what Schelling calls “brute force”146 – is used to try to extract concessions. The formal participation of political opponents in legislative bodies provides them with a forum for registering dissent to presidential policies of force through such mechanisms floor statements, committee oversight hearings, resolution votes, and funding decisions.147 These official actions prevent the President “from monopolizing the nation’s political discourse” on decisions regarding military actions can thereby make it difficult for the President to depart too far from congressional preferences.148 Members of the political opposition in Congress also have access to resources for gathering policy relevant information from the government that informs their policy preferences. Their active participation in specialized legislative committees similarly gives opponent party members access to fact-finding resources and forums for registering informed dissent from decisions within the committee’s purview.149 As a result, legislative institutions within democracies can enable political opponents to have a more **immediate** and informed **impact** on executive’s decisions regarding force than can opponents among the general public. Moreover, studies suggest that Congress can actively shape media coverage and public support for a president’s foreign policy engagements.150 In short, these findings among political scientists suggest that, even without having to pass legislation or formally approve of actions, Congress often operates as an important check on threatened force by providing the president’s political opponents with a forum for registering dissent from the executive’s decisions regarding force in ways that attach domestic political costs to contemplated military actions or even the threats to use force. Under this logic, Presidents, anticipating dissent, will be more selective in issuing¶ threats in the first place, making only those commitments that would not incite¶ widespread political opposition should the threat be carried through.151 Political¶ opponents within a legislature also have few electoral incentives to collude in an¶ executive’s bluff, and they are capable of expressing opposition to a threatened use of¶ force in ways that could expose the bluff to a threatened adversary.152 This again narrows¶ the President’s range of viable policy options for brandishing military force. Counter-intuitively, given the President’s seemingly unlimited and unchallenged¶ constitutional power to threaten war, it may in some cases be easier for members of¶ Congress to influence presidential decisions to threaten military action than presidential¶ war decisions once U.S. forces are already engaged in hostilities. It is widely believed¶ that once U.S. armed forces are fighting, congress members’ hands are often tied: policy¶ opposition at that stage risks being portrayed as undermining our troops in the field.153¶ Perhaps, it could be argued, the President takes this phenomenon into account and¶ therefore discounts political opposition to threatened force; he can assume that such¶ opposition will dissipate if he carries it through. Even if that is true, before that point¶ occurs, however, members of Congress may have communicated messages domestically¶ and communicated signals abroad that the President will find difficult to counter.154 The bottom line is that a body of recent political science, while confirming the¶ President’s dominant position in setting policy in this area, also reveals that policymaking¶ with respect to threats of force is significantly shaped by domestic politics and¶ that Congress is institutionally positioned to play a powerful role in influencing those¶ politics, even without exercising its formal legislative powers. Given the centrality of¶ threatened force to U.S. foreign policy strategy and security crises, this suggests that the¶ practical war powers situation is not so imbalanced toward the President as many assume. B. Democratic Institutions and the Credibility of Threats A central question among constitutional war powers scholars is whether robust¶ checks – especially congressional ones – on presidential use of force lead to “sound”¶ policy decision-making. Congressionalists typically argue that legislative control over¶ war decisions promotes more thorough deliberation, including more accurate weighing of¶ consequences and gauging of political support of military action.155 Presidentialists¶ usually counter that the executive branch has better information and therefore better¶ ability to discern the dangers of action or inaction, and that quick and decisive military¶ moves are often required to deal with security crises.156 If we are interested in these sorts of functional arguments, then reframing the¶ inquiry to include threatened force prompts critical questions whether such checks also¶ contribute to or detract from effective deterrence and coercive diplomacy and therefore¶ positively or negatively affect the likelihood of achieving aims without resort to war.¶ Here, recent political science provides some reason for optimism, though the scholarship¶ in this area is neither yet well developed nor conclusive. To be sure, “soundness” of policy with respect to force is heavily laden with¶ normative assumptions about war and the appropriate role for the United States in the¶ broader international security system, so it is difficult to assess the merits and¶ disadvantages of constitutional allocations in the abstract. That said, whatever their¶ specific assumptions about appropriate uses of force in mind, constitutional war powers¶ scholars usually evaluate the policy advantages and dangers of decision-making¶ allocations narrowly in terms of the costs and outcomes of actual military engagements¶ with adversaries. The importance of credibility to strategies of threatened force adds important new¶ dimensions to this debate. On the one hand, one might intuitively expect that robust democratic checks would generally be ill-suited for coercive threats and negotiations –¶ that institutional centralization and secrecy of decision-making might better equip nondemocracies¶ to wield threats of force. As Quincy Wright speculated in 1944, autocracies¶ “can use war efficiently and threats of war even more efficiently” than democracies,157¶ especially the American democracy in which vocal public and congressional opposition¶ may undermine threats.158 Moreover, proponents of democratic checks on war powers¶ usually assume that careful deliberation is a virtue in preventing unnecessary wars, but¶ strategists of deterrence and coercion observe that perceived irrationality is sometimes¶ important in conveying threats: “don’t test me, because I might just be crazy enough to¶ do it!”159 On the other hand, some political scientists have recently called into question this¶ view and concluded that the institutionalization of political contestation and some¶ diffusion of decision-making power in democracies of the kind described in the previous¶ section make threats to use force rare but especially credible and effective in resolving¶ international crises without actual resort to armed conflict. In other words, recent¶ arguments in effect turn some old claims about the strategic disabilities of democracies¶ on their heads: whereas it used to be generally thought that democracies were ineffective¶ in wielding threats because they are poor at keeping secrets and their decision-making is¶ constrained by internal political pressures, a current wave of political science accepts this¶ basic description but argues that these democratic features are really strategic virtues.160 Rationalist models of crisis bargaining between states assume that because war is¶ risky and costly, states will be better off if they can resolve their disputes through¶ bargaining rather than by enduring the costs and uncertainties of armed conflict.161¶ Effective bargaining during such disputes – that which resolves the crisis without a resort¶ to force – depends largely on states’ perceptions of their adversary’s capacity to wage an¶ effective military campaign and its willingness to resort to force to obtain a favorable¶ outcome. A state targeted with a threat of force, for example, will be less willing to resist¶ the adversary’s demands if it believes that the adversary intends to wage and is capable of¶ waging an effective military campaign to achieve its ends. In other words, if a state¶ perceives that the threat from the adversary is credible, that state has less incentive to¶ resist such demands if doing so will escalate into armed conflict. The accuracy of such perceptions, however, is often compromised by¶ informational asymmetries that arise from private information about an adversary’s¶ relative military capabilities and resolve that prevents other states from correctly¶ assessing another states’ intentions, as well as by the incentives states have to¶ misrepresent their willingness to fight – that is, to bluff.162 Informational asymmetries¶ increase the potential for misperception and thereby make war more likely; war,¶ consequentially, can be thought of in these cases as a “bargaining failure.”163 Some political scientists have argued in recent decades – contrary to previously common wisdom – that features and constraints of democracies make them better suited than non-democracies to credibly signal their resolve when they threaten force. To bolster their bargaining position, states will seek to generate credible signals of their resolve by taking actions that can enhance the credibility of such threats, such as mobilizing military forces or making “hand-tying” commitments from which leaders cannot back down without suffering considerable political costs domestically.164 These domestic audience costs, according to some political scientists, are especially high for leaders in democratic states, where they may bear these costs at the polls.165 Given the potentially high domestic political and electoral repercussions democratic leaders face from backing down from a public threat, they have considerable incentives to refrain from bluffing. An adversary that understands these political vulnerabilities is thereby more likely to perceive the threats a democratic leader does issue as highly credible, in turn making it more likely that the adversary will yield.166 Other scholars have recently pointed to the special role of legislative bodies in signaling with regard to threatened force. This is especially interesting from the perspective of constitutional powers debates, because it posits a distinct role for Congress – and, again, one that does not necessarily rely on Congress’s ability to pass binding legislation that formally confines the President. Kenneth Schultz, for instance, argues that the open nature of competition within democratic societies ensures that the interplay of opposing parties in legislative bodies over the use of force is observable not just to their domestic publics but to foreign actors; this inherent transparency within democracies – magnified by legislative processes – **provides more information to adversaries** regarding the unity of domestic opponents around a government’s military and foreign policy decisions.167 Political opposition parties can undermine the credibility of some threats by the President to use force if they publicly voice their opposition in committee hearings, public statements, or through other institutional mechanisms. Furthermore, legislative processes – such as debates and hearings – make it difficult to conceal or misrepresent preferences about war and peace. Faced with such institutional constraints, Presidents will incline to be more selective about making such threats and avoid being undermined in that way.168 This restraining effect on the ability of governments to issue threats simultaneously makes those threats that the government issues more credible, if an observer assumes that the President would not be issuing it if he anticipated strong political opposition. Especially when members of the opposition party publicly support an executive’s threat to use force during a crisis, their visible support lends additional credibility to the government’s threat by demonstrating that political conditions domestically favor the use of force should it be necessary.169 In some cases, Congress may communicate greater willingness than the president to use force, for instance through non-binding resolutions.170 Such powerful signals of resolve should in theory make adversaries more likely to back down. The credibility-enhancing effects of legislative constraints on threats are subject to dispute. Some studies question the assumptions underpinning theories of audience costs – specifically the idea that democratic leaders suffer domestic political costs to failing to make good on their threats, and therefore that their threats are especially credible171 – and others question whether the empirical data supports claims that democracies have credibility advantages in making threats.172 Other scholars dispute the likelihood that leaders will really be punished politically for backing down, especially if the threat was not explicit and unambiguous or if they have good policy reasons for doing so.173 Additionally, even if transparency in democratic institutions allows domestic dissent from threats of force to be visible to foreign audiences, it is not clear that adversaries would interpret these mechanisms as political scientists expect in their models of strategic interaction, in light of various common problems of misperception in international relations.174 These disputes are not just between competing theoretical models but also over the links between any of the models and real-world political behavior by states. At this point there remains a dearth of good historical evidence as to how foreign leaders interpret political maneuvers within Congress regarding threatened force. Nevertheless, at the very least, strands of recent political science scholarship cast significant doubt on the intuition that democratic checks are inherently disadvantageous to strategies of threatened force. Quite the contrary, they suggest that legislative checks – or, indeed, even the signaling functions that Congress is institutionally situated to play with respect to foreign audiences interpreting U.S. government moves – can be harnessed in some circumstances to support such strategies. C. Legal Reform and Strategies of Threatened Force Among legal scholars of war powers, the ultimate prescriptive question is whether the President should be constrained more formally and strongly than he currently is by legislative checks, especially a more robust and effective mandatory requirement of congressional authorization to use force. Calls for reform usually take the form of narrowing and better enforcement (by all three branches of government) of purported constitutional requirements for congressional authorization of presidential uses of force or revising and enforcing the War Powers Resolutions or other framework legislation requiring express congressional authorization for such actions.175

As applied to strategies of threatened force, generally **under these proposals the President would lack authority to make good on them** unilaterally (except in whatever narrow circumstances for which he retains his own unilateral authority, such as deterring imminent attacks on the United States). Whereas legal scholars are consumed with the internal effects of war powers law, such as whether and when it constrains U.S. government decision-making, the analysis contained in the previous section shifts attention externally to whether and when U.S. law might influence decision-making by adversaries, allies, and other international actors. In prescriptive terms, if the President’s power to use force is linked to his ability to threaten it effectively, then any consideration of war powers reform on policy outcomes and longterm interests should include the important secondary effects on deterrent and coercive strategies – and how U.S. legal doctrine is perceived and understood abroad.176 Would stronger requirements for congressional authorization to use force reduce a president’s opportunities for bluffing, and if so would this improve U.S. coercive diplomacy by making ensuing threats more credible? Or would it undermine diplomacy by taking some threats off the table as viable policy options? Would stronger formal legislative powers with respect to force have significant marginal effects on the signaling effects of dissent within Congress, beyond those effects already resulting from open political discourse? These are difficult questions, but the analysis and evidence above helps generate some initial hypotheses and avenues for further research and analysis. One might ask at this point why, though, having exposed as a hole in war powers legal discourse the tendency to overlook threatened force, this Article does not take up whether Congress should assert some direct legislative control of threats – perhaps statutorily limiting the President’s authority to make them or establishing procedural conditions like presidential reporting requirements to Congress. This Article puts such a notion aside for several reasons. First, for reasons alluded to briefly above, such limits would be very constitutionally suspect and difficult to enforce.177 Second, even the most ardent war-power congressionalists do not contemplate such direct limits on the President’s power to threaten; they are not a realistic option for reform. Instead, this Article focuses on the more plausible – and much more discussed – possibility of strengthening Congress’s power over the ultimate decision whether to use force, but augments the usual debate over that question with appreciation for the importance of credible threats. A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued: In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps **the *most* important** of all the powers in our constitutional armory to prevent confrontations that could **carry nuclear implications**. … [I]t is the **diplomatic power the President needs** most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179 In his veto statement on the War Powers Resolution, President Nixon echoed these concerns, arguing that **the law would undermine the credibility of U.S. deterrent** and coercive threats in the eyes of both adversaries and allies – they would know that presidential authority to use force would expire after 60 days, so absent strong congressional support they could assume U.S. withdrawal at that point.180 In short, those who oppose tying the president’s hands with mandatory congressional authorization requirements to use force sometimes argue that doing so incidentally and dangerously ties his hands in threatening it. A critical assumption here is that presidential flexibility, preserved in legal doctrine, enhances the credibility of presidential threats to escalate.

### Mod

#### No US-China war

**Rosecrance et al ‘10** (Richard, Political Science Professor @ Cal and Senior Fellow @ Harvard’s Belfer Center and Former Director @ Burkle Center of IR @ UCLA, and Jia Qingguo, PhD Cornell, Professor and Associate Dean of School of International Studies @ Peking University, “Delicately Poised: Are China and the US Heading for Conflict?” Global Asia 4.4, <http://www.globalasia.org/l.php?c=e251>)

**Will China and the US Go to War?** If one accepts the previous analysis, the answer is “no,” or at least not likely. Why? First, despite its revolutionary past, **China has** gradually **accepted the US-**led **world** order **and become a status quo power.** It has joined most of the important inter-governmental international organizations. It has subscribed to most of the important international laws and regimes. It has not only accepted the current world order, it has become a strong supporter and defender of it. China has repeatedly argued that the authority of the United Nations and international law should be respected in the handling of international security crises. China has become an ardent advocate of multilateralism in managing international problems. And China has repeatedly defended the principle of free trade in the global effort to fight the current economic crisis, despite efforts by some countries, including the US, to resort to protectionism. To be sure, there are some aspects of the US world order that China does not like and wants to reform. However, it wishes to improve that world order rather than to destroy it. Second, **China** has **clearly rejected** the option of **territorial expansion.** It argues that territorial expansion is both immoral and counterproductive: immoral because it is imperialistic and counterproductive because it does not advance one’s interests. China’s behavior shows that instead of trying to expand its territories, **it has been trying to settle** its border **disputes through negotiation**. Through persistent efforts, China has concluded quite a number of border agreements in recent years. As a result, most of its land borders are now clearly drawn and marked under agreements with its neighbors. In addition, China is engaging in negotiations to resolve its remaining border disputes and making arrangements for peaceful settlement of disputed islands and territorial waters. Finally, **even on** the question of **Taiwan**, which China believes is an indisputable part of its territory, **it has adopted** a policy of **peaceful reunification**. A country that handles territorial issues in such a manner is by no means expansionist. Third, **China has relied on trade** and investment **for** national welfare and **prestige, instead of** military **conquest.** And like the US, Japan and Germany, China has been very successful in this regard. In fact, so successful that **it** really **sees no other option than** to continue on **this path to prosperity**. Finally, after years of reforms, China increasingly finds itself sharing certain basic values with the US, such as a commitment to the free market, rule of law, human rights and democracy. Of course, there are still significant differences in terms of how China understands and practices these values. However, at a conceptual level, Beijing agrees that these are good values that it should strive to realize in practice. A Different World It is also important to note that certain changes in international relations since the end of World War II have made the peaceful rise of a great power more likely. To begin with, the emergence of nuclear weapons has drastically reduced the usefulness of war as a way to settle great power rivalry. By now, all great powers either have nuclear weapons or are under a nuclear umbrella. If the objective of great power rivalry is to enhance one’s interests or prestige, the sheer destructiveness of nuclear weapons means that these goals can no longer be achieved through military confrontation. Under these circumstances, countries have to find other ways to accommodate each other — something that China and the US have been doing and are likely to continue to do. Also, globalization has made it easier for great powers to increase their national welfare and prestige through international trade and investment rather than territorial expansion. In conducting its foreign relations, the US relied more on trade and investment than territorial expansion during its rise, while Japan and Germany relied almost exclusively on international trade and investment. China, too, has found that its interests are best served by adopting the same approach. Finally, the development of relative pacifism in the industrialized world, and indeed throughout the world since World War II, has discouraged any country from engaging in territorial expansion. **There is less and less popular support for using force to address even legitimate concerns** on the part of nation states. Against this background, efforts to engage in territorial expansion are likely to rally international resistance and condemnation. Given all this, is the rise of China likely to lead to territorial expansion and war with the US? The answer is no.

#### Economics and relations prevent China-Taiwan war

**Rosenberg 9** (David, Professor of Political Science – Middlebury College and Research Fellow at the Research School of Pacific and Asian Studies – Australian National University, “Dire Straits: Competing Security Priorities in the South China Sea”, The Asia-Pacific Journal, 3-20, http://japanfocus.org/-David-Rosenberg/1773)

**There is a** curious **pattern of accommodation** **in PRC-Taiwan relations**. On the one hand, the PRC views Taiwan as a renegade province while Taiwan views the mainland with cultural empathy but political disdain. **On many South China Sea** **issues**, however, **they are** often **in agreement. They have not had any direct confrontations** in the South China Sea. They make the same claims, use the same definitions, baselines, and maps in stating their interests in the region. There is even some direct cooperation between China and Taiwan on technical issues. Beyond these governmental links, **there are very substantial corporate and personal links between China and Taiwan**. Taiwanese firms have invested over US $100 billion on the mainland, more than any other country. Much of this involves the relocation of Taiwanese industries to the Shanghai-Suzhou and Fujian areas. To a large extent, **Taiwan's continued economic prosperity is tied to reintegration with the mainland**. **These** economic **links** of investment and trade **are reinforced by** **millions of personal visits** as well as mail and email correspondence. Bonds of marriage also strengthen these ties. Nearly 10% of Taiwanese men marry mainland brides, further tying migrant generations to ancestral origins. These deeply-rooted, long-term economic and demographic trends provide a counterbalance to the often strident political clashes. The longer and broader the cross-Strait engagement, the better the prospects for peaceful coexistence. Unfortunately, the cross-Strait issue has become immersed in domestic politics in Taiwan and China. The recent spate of threats and counter-threats over Taiwan's status is linked to maneuvering among domestic political forces seeking popular support. For example, in March 2005, after China passed its anti-secession law, there were widespread protest demonstrations in Taiwan led by Prime Minister Chen Shui-bian's Democratic Progressive Party (DPP). Soon after, a large delegation of Taiwan's main opposition party, the Kuomintang (KMT, Nationalist Party), visited the mainland to encourage trade and political dialogue with China and to pay respects to the memorial shrine of Sun Yat-sen, KMT's founder. This, in turn, was followed in early April by the visit of right-wing Taiwan Solidarity Union party leaders to the Yasukuni shrine, the Japanese war memorial in Tokyo. Clearly issues of national identity and national sovereignty can generate volatile reactions. The big danger across the Taiwan Strait is that misunderstanding and miscalculation, fueled by distrust, xenophobia, and opportunism, may lead to escalating conflict. Senior leaders on both sides of the Strait are beginning to realize the potential consequences if instability erupts into violence. Hu Jintao has recently been signaling that he advocates a long-term policy of stability for eventual reunification. Chen Shui-bian has recently dropped his independence demands. Several Southeast Asian leaders have opposed Taiwan's independence; most explicitly, Singapore's Prime Minister, Lee Hsien Loong. Lee bluntly stated, "If Taiwan goes for independence, Singapore will not recognize it. In fact no Asian country will recognize it. China will fight. Win or lose, Taiwan will be devastated." The prospect of a **military confrontation** between the mainland and Taiwan **is unlikely**, in part **because the consequences** of such a conflict **would be extremely destructive for both sides.** Diplomatic efforts are needed to avoid even this remote risk. In the March/April 2005 issue of Foreign Affairs, Kenneth Lieberthal offered a useful proposal to change the focus of negotiations over "independence" and "reunification" to a pragmatic question: what is needed to achieve long-term stability and peaceful coexistence between China and Taiwan? What confidence building measures are needed to reassure security strategists that defensive military developments are not offensive? What legal and administrative means are necessary to resolve routine conflicts that will inevitably occur as commercial and civil relations thicken? The current U.S. attempts to help Taiwan "contain" China and to mobilize support in its global war on terrorism threaten to complicate if not weaken regional security developments. As Ronald Montaperto notes, "the almost daily manifestations of Chinese economic power, the effort to demonstrate commitment to the 'new' principle that the economic development of individual nations is inseparable from the development of the region as a whole, and the broad perception within the region that the Chinese are willing to engage actively in multilateral, cooperative policies have combined to provide Beijing with an unprecedented measure of influence and even clout."[6] The **Beijing** regime **is obsessed with economic stability**, because it fears that a severe downturn would trigger social and political upheaval. **The last thing it wants is a military confrontation with its biggest trading partner**, the United States, or with Japan or Taiwan, each of which are major trade and investment partners. It may go on playing the nationalist card over Taiwan to curry domestic political favor, but **there has been** **no massive military build-up** **and there is no plausible threat of impending war**. [7] To the contrary, China is investing heavily in creating a regional security framework to pursue its domestic development. The U.S. goal of achieving genuine regional maritime security would best be served through cooperation with China -- one of its most important creditors, suppliers, and markets -- rather than confrontation.

#### China strives for peace with Taiwan – semiconductor industry

**Hoffman 13**

Elizabeth Cobbs - author of "American Umpire." She is the Dwight E. Stanford chairwoman in U.S. foreign relations. at San Diego State University and a national fellow at Stanford University’s Hoover Institution. She has served on the Historical Advisory Committee to the State Department. “China as peacemaker” Reuters

Instead, to achieve its goals, China needs regional peace and stability. It has a far greater stake in capitalist South Korea’s health and happiness than even the United States, which has guaranteed Seoul’s safety for the past 60 years as part of its campaign to stop the worldwide spread of communism — a task now completed. South Korean companies such as Samsung are among the world’s largest producers of semiconductors, the electronic chips that nourish everything in the electronic food chain from toys to automobiles. Semiconductors are key to economic growth around the globe. Though China’s manufacturing base has gone viral, it does not make these precious chips in any significant amount — partly because foreign investors won’t set up shop, given the lax enforcement of intellectual-property rights. China depends heavily on imported semiconductors, for which its best and closest suppliers are South Korea and Taiwan. Semiconductor plants require enormous investment; a single factory costs $6 billion or more. They are geese, laying golden eggs. The last thing China wants is a nuclear or conventional war between its immediate neighbors that might destroy this industrial infrastructure. Li Baodong, China’s envoy to the United Nations, said as much in early March, after the last round of sanctions against North Korea to discourage Kim Jong-Un’s nuclear ambitions. “We are formally committed,” Li insisted, “to safeguarding peace and stability on the Korean Peninsula.”

### FINALS

#### Obama circumvents war-powers rules- covert action inevitable

**Hallowell 2-11**-13 [Billy, founder of Pathufind Media, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS,” <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>]

Regulations give teeth and specificity to laws are essential to their functioning even as they create bureaucratic bloat. Congress-skirting executive orders and similar presidential directives are less numerous and generally have less reach than laws. But every president uses them and often tests how far they can go, especially in times of war and other crises.¶ President Harry Truman signed an executive order in 1952 directing the Commerce Department to take over the steel industry to ensure U.S. troops fighting in Korea were kept supplied with weapons and ammunition. The Supreme Court struck it down.¶ Other significant actions have stood. President Franklin D. Roosevelt issued an order in February 1942 to relocate more than 110,000 Japanese-Americans living on the West Coast to internment camps after Japan’s attack on the Pearl Harbor naval base. Decades later, Congress passed legislation apologizing and providing $20,000 to each person who was interned.¶ After the terrorist attacks of Sept. 11, 2001, President George W. Bush approved a series of executive orders that created an office of homeland security, froze the assets in U.S. banks linked to al-Qaida and other terrorist groups, and authorized the military services to call reserve forces to active duty for as long as two years.¶ Bush’s most contentious move came in the form of a military order approving the use of the military tribunals to put accused terrorists on trial faster and in greater secrecy than a regular criminal court.¶ Obama also has wielded considerable power in secret, upsetting the more liberal wing of his own party. He has carried forward Bush’s key anti-terrorism policies and expanded the use of unmanned drone strikes against terrorist targets in Pakistan and Yemen.¶ When a promised immigration overhaul failed in legislation, Obama went part way there simply by ordering that immigrants brought illegally to the United States as children be exempted from deportation and granted work permits if they apply. So, too, the ban on gays serving openly in the military was repealed before the election, followed now by the order lifting the ban on women serving in combat.¶ Those measures did not prove especially contentious. Indeed, the step on immigration is thought to have helped Obama in the election. It may be a different story as the administration moves more forcefully across a range of policy fronts that sat quiet in much of his first term.¶ William Howell, a political science professor at the University of Chicago and the author of “Power Without Persuasion: The Politics of Direct Presidential Action,” isn’t surprised to see commandments coming at a rapid clip.¶ “In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”

#### Obama can ignore restrictions without consequence

**Druck ‘12** [Judah A. Druck, law associate at Sullivan & Cromwell LLP, Cornell Law School graduate, magna cum laude graduate from Brandeis University, “Droning On: The War Powers Resolution and the Numbing Effect of Technology-Driven Warfare,” <http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf>]

Notably, in each of these situations, the serving President did not¶ simply ignore the WPR, despite his general belief that it was unconstitutional.46 Rather, the presidents circumvented the WPR’s application by proffering suspect rationales to avoid compliance. One of the¶ more common methods of achieving this end involves denying the¶ existence of the WPR’s “hostilities”-triggering requirement.47 In those¶ situations, presidents have emphasized the limited nature of the military action, either by focusing on whether there was an actual exchange of fire between the United States and hostile forces,48 whether¶ the United States introduced ground troops into the hostile area,49 or,¶ as seen during the recent actions in Libya, whether the United States¶ had suffered any casualties.50 Despite the often negative treatment of¶ these justifications,51 presidents have nevertheless faced few repercussions from employing them. Given this background, it should be no¶ surprise that President Obama was able to circumvent the WPR in a¶ similar manner without any major political scars to show for it

#### Obama ignores restrictions- tons of loopholes

**Kumar 3-19**-13 [Anita, White House correspondent for McClatchy Newspapers, former writer for The Washington Post, covering Virginia politics and government, and spent a decade at the St. Petersburg Times, writing about local, state and federal government both in Florida and Washington, “Obama turning to executive power to get what he wants,” <http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Ue18CdK1FSE>]

President Barack Obama came into office four years ago skeptical of pushing the power of the White House to the limit, especially if it appeared to be circumventing Congress.¶ Now, as he launches his second term, Obama has grown more comfortable wielding power to try to move his own agenda forward, particularly when a deeply fractured, often-hostile Congress gets in his way.¶ He’s done it with a package of tools, some of which date to George Washington and some invented in the modern era of an increasingly powerful presidency. And he’s done it with a frequency that belies his original campaign criticisms of predecessor George W. Bush, invites criticisms that he’s bypassing the checks and balances of Congress and the courts, and whets the appetite of liberal activists who want him to do even more to advance their goals.¶ While his decision to send drones to kill U.S. citizens suspected of terrorism has garnered a torrent of criticism, his use of executive orders and other powers at home is deeper and wider.¶ He delayed the deportation of young illegal immigrants when Congress wouldn’t agree. He ordered the Centers for Disease Control and Prevention to research gun violence, which Congress halted nearly 15 years ago. He told the Justice Department to stop defending the Defense of Marriage Act, deciding that the 1996 law defining marriage as between a man and a woman was unconstitutional. He’s vowed to act on his own if Congress didn’t pass policies to prepare for climate change.¶ Arguably more than any other president in modern history, he’s using executive actions, primarily orders, to bypass or pressure a Congress where the opposition Republicans can block any proposal.¶ “It’s gridlocked and dysfunctional. The place is a mess,” said Rena Steinzor, a law professor at the University of Maryland. “I think (executive action) is an inevitable tool given what’s happened.”¶ Now that Obama has showed a willingness to use those tactics, advocacy groups, supporters and even members of Congress are lobbying him to do so more and more.¶ The Center for Progressive Reform, a liberal advocacy group composed of law professors, including Steinzor, has pressed Obama to sign seven executive orders on health, safety and the environment during his second term.¶ Seventy environmental groups wrote a letter urging the president to restrict emissions at existing power plants.¶ Sen. Barbara Mikulski, D-Md., the chairwoman of the Appropriations Committee, sent a letter to the White House asking Obama to ban federal contractors from retaliating against employees who share salary information.¶ Gay rights organizations recently demonstrated in front of the White House to encourage the president to sign an executive order to bar discrimination based on sexual orientation or gender identity by companies that have federal contracts, eager for Obama to act after nearly two decades of failed attempts to get Congress to pass a similar bill.¶ “It’s ridiculous that we’re having to push this hard for the president to simply pick up a pen,” said Heather Cronk, the managing director of the gay rights group GetEQUAL. “It’s reprehensible that, after signing orders on gun control, cybersecurity and all manner of other topics, the president is still laboring over this decision.”¶ The White House didn’t respond to repeated requests for comment.¶ In January, Obama said he continued to believe that legislation was “sturdier and more stable” than executive actions, but that sometimes they were necessary, such as his January directive for the federal government to research gun violence.¶ “There are certain issues where a judicious use of executive power can move the argument forward or solve problems that are of immediate-enough import that we can’t afford not to do it,” the former constitutional professor told The New Republic magazine.¶ Presidents since George Washington have signed executive orders, an oft-overlooked power not explicitly defined in the Constitution. More than half of all executive orders in the nation’s history – nearly 14,000 – have been issued since 1933.

#### Obama will circumvent Congress and the courts

**Kumar 3-19**-13 [Anita, White House correspondent for McClatchy Newspapers, former writer for The Washington Post, covering Virginia politics and government, and spent a decade at the St. Petersburg Times, writing about local, state and federal government both in Florida and Washington, “Obama turning to executive power to get what he wants,” <http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Ue18CdK1FSE>]

“The expectation is that they all do this,” said Ken Mayer, a political science professor at the University of Wisconsin-Madison who wrote “With the Stroke of a Pen: Executive Orders and Presidential Power.” “That is the typical way of doing things.”¶ But, experts say, Obama’s actions are more noticeable because as a candidate he was critical of Bush’s use of power. In particular, he singled out his predecessor’s use of signing statements, documents issued when a president signs a bill that clarifies his understanding of the law.¶ “These last few years we’ve seen an unacceptable abuse of power at home,” Obama said in an October 2007 speech.. “We’ve paid a heavy price for having a president whose priority is expanding his own power.”¶ Yet Obama’s use of power echoes that of his predecessors. For example, he signed 145 executive orders in his first term, putting him on track to issue as many as the 291 that Bush did in two terms.¶ John Yoo, who wrote the legal opinions that supported an expansion of presidential power after the 2001 terrorist attacks, including harsh interrogation methods that some called torture, said he thought that executive orders were sometimes appropriate – when conducting internal management and implementing power given to the president by Congress or the Constitution – but he thinks that Obama has gone too far.¶ “I think President Obama has been as equally aggressive as President Bush, and in fact he has sometimes used the very same language to suggest that he would not obey congressional laws that intrude on his commander-in-chief power,” said Yoo, who’s now a law professor at the University of California at Berkeley. “This is utterly hypocritical, both when compared to his campaign stances and the position of his supporters in Congress, who have suddenly discovered the virtues of silence.”¶ Most of Obama’s actions are written statements aimed at federal agencies that are published everywhere from the White House website to the Federal Register. Some are classified and hidden from public view.¶ “It seems to be more calculated to prod Congress,” said Phillip J. Cooper, the author of “By Order of the President: The Use and Abuse of Executive Direct Action.” “I can’t remember a president being that consistent, direct and public.”¶ Bush was criticized for many of his actions on surveillance and interrogation techniques, but attention has focused on Obama’s use of actions mostly about domestic issues.¶ In his first two years in the White House, when fellow Democrats controlled Capitol Hill, Obama largely worked through the regular legislative process to try to achieve his domestic agenda. His biggest achievements – including a federal health care overhaul and a stimulus package designed to boost the economy –came about with little or no Republican support.¶ But Republicans took control of the House of Representatives in 2010, making the task of passing legislation all the more difficult for a man with a detached personality who doesn’t relish schmoozing with lawmakers. By the next year, Obama wasn’t shy about his reasons for flexing his presidential power.¶ In fall 2011, he launched the “We Can’t Wait” campaign, unveiling dozens of policies through executive orders – creating jobs for veterans, adopting fuel efficiency standards and stopping drug shortages – that came straight from his jobs bills that faltered in Congress.¶ “We’re not waiting for Congress,” Obama said in Denver that year when he announced a plan to reduce college costs. “I intend to do everything in my power right now to act on behalf of the American people, with or without Congress. We can’t wait for Congress to do its job. So where they won’t act, I will.”¶ When Congress killed legislation aimed at curbing the emissions that cause global warming, Obama directed the Environmental Protection Agency to write regulations on its own incorporating some parts of the bill.¶ When Congress defeated pro-union legislation, he had the National Labor Relations Board and the Labor Department issue rules incorporating some parts of the bill.¶ “The president looks more and more like a king that the Constitution was designed to replace,” Sen. Charles Grassley, R-Iowa, said on the Senate floor last year.¶ While Republicans complain that Obama’s actions cross a line, experts say some of them are less aggressive than they appear.¶ After the mass shooting in Newtown, Conn., in December, the White House boasted of implementing 23 executive actions to curb gun control. In reality, Obama issued a trio of modest directives that instructed federal agencies to trace guns and send information for background checks to a database.¶ In his State of the Union address last month, Obama instructed businesses to improve the security of computers to help prevent hacking. But he doesn’t have the legal authority to force private companies to act.¶ “The executive order can be a useful tool but there are only certain things he can do,” said Melanie Teplinsky, an American University law professor who’s spoken extensively on cyber-law.¶ Executive actions often are fleeting. They generally don’t settle a political debate, and the next president, Congress or a court may overturn them.¶ Consider the so-called Mexico City policy. With it, Reagan banned federal money from going to international family-planning groups that provide abortions. Clinton rescinded the policy. George W. Bush reinstated it, and Obama reversed course again.¶ But congressional and legal action are rare. In 1952, the Supreme Court threw out Harry Truman’s order authorizing the seizure of steel mills during a series of strikes. In 1996, the District of Columbia Court of Appeals dismissed an order by Clinton that banned the government from contracting with companies that hire workers despite an ongoing strike.¶ Obama has seen some pushback.¶ Congress prohibited him from spending money to move inmates from the Guantanamo Bay U.S. naval base in Cuba after he signed an order that said it would close. A Chinese company sued Obama for killing its wind farm projects by executive order after he said they were too close to a military training site. A federal appeals court recently ruled that he’d exceeded his constitutional powers when he named several people to the National Labor Relations Board while the Senate was in recess.¶ But Obama appears to be undaunted.¶ “If Congress won’t act soon to protect future generations,” he told Congress last month, “I will.”

#### Congressional micromanagement creates confusion – hinders presidential action

**Washington Post 11**, “Congressional meddling on terror cases, to little effect,” December 13th, http://www.washingtonpost.com/opinions/congressional-meddling-on-terror-cases-to-little-effect/2011/12/13/gIQAyBShsO\_story.html

Flexibility is preferable to flat and often unworkable directives, but in this case it also raises questions about why lawmakers insist on codifying these provisions when they have made it relatively easy for the executive to disregard them. In trying to respond to administration concerns, lawmakers have watered down language and introduced confusion in the form of directives that threaten to bollix up law enforcement and military personnel when they most need to be decisive. Congress also would inexcusably prevent the Defense Department from bringing detainees currently at the U.S. naval base at Guantanamo Bay, Cuba, into the country and from adapting U.S. facilities to hold these detainees. Almost from the start of the Obama administration, lawmakers, led by conservatives, have unjustifiably circumscribed presidential authority on many terrorism-related issues. Also from the beginning, President Obama has not fought these congressional incursions with sufficient vigor. Now Congress is once again overstepping its bounds as it attempts to micromanage the president in battlefield and law enforcement operations. Mr. Obama finds himself in an unenviable position because the measures are included in a defense bill, likely to be voted on this week, that includes provisions dealing with military pay and other important issues. But the muddled detainee measures certainly are veto-worthy.

#### Congress would destroy the president

Yoo 2012 served as a political appointee, the Deputy Assistant US Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration (John Yoo. “War Powers Belong to the President” Posted Feb 1, 2012, <http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president>)

For when the framers wrote the Constitution in 1787 they rejected these failed experiments and restored an independent, unified chief executive with its own powers in national security and foreign affairs. The most important of the president’s powers are commander in chief and chief executive. As Alexander Hamilton wrote in Federalist 74, “The direction of war implies the direction of the common strength, and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority.” Presidents should conduct war, he wrote, because they could act with “decision, activity, secrecy and dispatch.” In perhaps his most famous words, Hamilton wrote: “Energy in the executive is a leading character in the definition of good government. ... It is essential to the protection of the community against foreign attacks.”

The framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Instead, they can demand **swift, decisive action**—sometimes under pressured or even emergency circumstances—that is best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. Congress is too large and unwieldy to take the swift and decisive action required in wartime. Our framers replaced the Articles of Confederation, which had failed in the management of foreign relations because they had no single executive, with the Constitution’s single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, **Congress’ loose, decentralized structure would [undermine]** ~~paralyze~~ **American policy while foreign threats grow**.

Congress has no political incentive to mount and see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid like the plague any vote that will anger large segments of the electorate. They prefer that the president take the political risks and be held accountable for failure.

#### Makes attack on the US more likely

Zeisberg, ‘4 [Mariah Zeisberg, PhD in Politics from Princeton, Postdoc Research Associate at the Political Theory Project of Brown University; “INTERBRANCH CONFLICT AND CONSTITUTIONAL MAINTENANCE: THE CASE OF WAR POWERS”; June 2004; found in Word document, can be downloaded from www.brown.edu/Research/ppw/files/Zeisberg%20Ch5.doc]

The first significant argument of pro-Presidency insularists is that flexibility is a prime value in the conduct of foreign affairs, and especially war. Implicit in this argument is the recognition that the executive is functionally superior to Congress in achieving flexibility and swiftness in war operations, a recognition I share. The Constitution cannot be meant to curtail the very flexibility that may be necessary to preserve the nation; and yet, according to the insularists, any general norm which would include Congress in decision-making about going to war could only undermine that flexibility. Writing on the War Powers Act, Eugene Rostow predicts that it would, “put the Presidency in a straightjacket of a rigid code, and prevent new categories of action from emerging, in response to the necessities of a tense and unstable world.” In fact, Rostow believes, “[t]he centralization of authority in the president is particularly crucial in matters of national defense, war, and foreign policy, where a unitary executive can evaluate threats, consider policy choices, and mobilize national resources with a speed and energy that is far superior to any other branch.” Pro-presidency insularists are fond of quoting Hamilton, who argued that “[o]f all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand.” This need for flexibility, some insularists argue, is especially acute given modern conditions, where devastating wars can develop quickly. Today, “many foreign states have the power to attack U.S. forces - and some even the U.S. mainland - almost instantly,” and in such a world it is impracticable to require the President to seek advance authorization for hostilities. Such a requirement would simply be too risky to U.S. security. We furthermore face a nuclear age, and the system of deterrence that operates to contain that threat requires that a single person be capable of responding to nuclear attack with nuclear weapons immediately. Rostow writes, “the requirement for advance authorization would collapse the system of deterrence, making preemptive strikes by our enemies more likely.” Hence, “modern conditions” require the President to “act quickly, and often alone.” While this does not mean that Congress has no role to play in moments of crisis, it does mean that Congress should understand its role largely in terms of cooperating with the President to support his negotiations and decisions regarding relationships with foreign powers. Rostow writes, “Congress should be able to act effectively both before and after moments of crisis or potential crisis. It may join the President in seeking to deter crisis by publicly defining national policy in advance, through the sanctioning of treaties or other legislative declarations. Equally, Congress may participate formally in policymaking after the event through legislative authorization of sustained combat, either by means of a declaration of war, or through legislative action having more limited legal and political consequences. Either of these devices, or both in combination, should be available in situations where cooperation between the two branches is indicated at many points along an arc ranging from pure diplomacy at one end to a declaration of war at the other.” In other words, for Congress to understand itself as having any justifiable role in challenging executive security determinations, especially at moments of crisis, would be to undermine the strength that the executive requires in order to protect the nation. Conflict in this domain represents political degradation.