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**Immigration reform will pass now – momentum is building and the GOP is on board**

Best 12/30/13 (Tony, "Immigration Reform Logjam on Capitol Hill Can End Early in New Year" AERO)

There may be some light at the end of the long stalled comprehensive immigration reform tunnel in Washington, a development that can bring relief to hundreds of thousands of Caribbean immigrants in the U.S.  And the Black Institute, the New York Immigration Coalition, members of the Congressional Black Caucus in New York City — Hakeem Jeffries and Yvette Clarke in Brooklyn, Gregory Meeks in Queens and Charlie Rangel in Manhattan – along with millions of foreign-born residents across the U.S. are keeping their proverbial fingers crossed that at last the immigration measure that has been bottled up by Republicans in the House of Representatives may spring to life in 2014.  The civil war that has broken out between America’s conservative lawmakers and their financial backers outside of the House of Representatives and the Senate is likely to have the salutary effect of breaking the logjam that has prevented the House leadership from bringing the immigration bill to the floor of the chamber for debate and ultimately a vote, say analysts and lawmakers.  There is now talk of a bipartisan deal to legalize the more than 11 million people living in the country as undocumented immigrants, residents who are out of status.  Although House Speaker John Boehner (D-Ohio), the person mainly responsible for the immigration bottleneck has not spoken about his intention but has chastised extremist conservative forces in and out of Congress for their opposition to the recent budget deal agreed to by the Republicans and the Democrats, outside Republican groups have complained that his sharp attacks on the right was simply clearing the way for immigration reform to be placed high on the Congressional agenda in the New Year when Congress reconvenes after the Christmas recess.  Indeed, Heritage Action, a fund-raising and lobbying group that has supported many tea party representatives complained openly that Boehner’s verbal assault on certain right-wing backers of his party, accusing them of losing “all credibility” with the American people said in a statement that the House leader was clearing the political deck to place immigration reform on the docket for consideration.  Just as important, Boehner added a prominent immigration expert, Becky Tallent, to his staff, presumably to pave the way for a debate on the reform proposals. She had worked with Sen. John McCain (R-Ariz.) on his immigration reform plan that eventually failed to gain traction several years ago.  “It seems very unlikely that Becky would have gone to work for the Speaker on this unless there was a serious plan to move on this in the New Year,” said Ted Alden, a specialist on immigration at the Council on Foreign Relations. Rep. Luis Gutierrez (D-Ill.), a major Hispanic immigration voice on Capitol Hill, has hinted that that his party would consider a deal in order to get the immigration bill moving.

**The plan sparks an inter-branch fight derailing the agenda**

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 67-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital

Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea."

While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races." Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.6°

In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's highest second-term domestic priorities, such as Social Security and immigration reform, failedperhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.

When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena

**Capital’s key but limited – the plan disrupts Obama’s careful strategy**

Eilperin and Tumulty 12/10 (Juliet, House of Representatives reporter for Washington Post, and Karen, national political correspondent for The Washington Post, “Podesta, Schiliro to return to White House,”<http://www.washingtonpost.com/politics/podesta-schiliro-to-return-to-white-house/2013/12/10/194b22f4-61a7-11e3-94ad-004fefa61ee6_story.html>)

President Obama is embarking on his biggest organizational overhaul of the White House since 2010, bringing in Washington veterans and rethinking the way he approaches some of the most pressing policy decisions he will make during the remainder of his second term. The decision to enlist influential Democratic strategist John D. Podesta, just days after bringing back his former legislative affairs chief Phil Schiliro, signals a larger shift in how the White House will operate in coming months. Eager to salvage his landmark health-care law and advance climate-change policy before he leaves office, Obama and his aides are open to empowering a handful of advisers with broader policy portfolios to ensure the administration achieves its goals. The president and his aides have been discussing a possible reorganization with some trusted outside advisers for at least a month, according to a senior White House official, who spoke on the condition of anonymity because of the topic’s sensitive nature. The staff ­changes will continue in the coming weeks, the official said. The moves mark a recognition by the White House that it needed to change its operations in light of the botched Oct. 1 rollout of the health-care law, particularly given that Pete Rouse, the president’s longest-serving aide, will be leaving by the end of the year. Obama has been hesitant to replace many within his small inner circle operating in the West Wing, in part because his limited time in Washington before the presidency left him with relatively few trusted advisers. While he replaced several key members of his Cabinet after his 2012 re­election — including his secretaries of state, Treasury and defense — it is a measure of how static White House staff has been that the recruitment of two former advisers, on a temporary basis, amounts to a staff shake-up. “Obama still has an opportunity to get one or two major initiatives through Congress, possibly immigration reform, **but he doesn’t have much gas left in the tank**,” New York University public affairs professor Paul C. Light wrote in an e-mail. “Podesta and Schiliro may be able to ration Obama’s declining political capital, and hold the line on House Republican attacks. The door is closing on Obama’s presidency — these two advisers know how to do it as well as it can be done.” The White House’s handling of the health-care law’s implementation, Obama’s lack of knowledge about the scope of the National Security Agency’s eavesdropping program and other missteps have damaged the president’s credibility and raised questions about the West Wing’s competence. Republican critics and Democratic allies have called on Obama to fire at least one senior staff member, a step Obama has so far resisted. Podesta has done multiple stints on Capitol Hill and served twice in the Clinton White House, taking over as chief of staff in 1998 and steering the ship through Clinton’s House impeachment. After Clinton left office, Podesta founded the Center for American Progress (CAP), a liberal think tank, and managed Obama’s transition team in 2008. Obama officials emphasized that the two recent hires were distinct: Schiliro will serve only for a few months and is focused exclusively on steering the administration’s health-care policy. But the moves, along with Rouse’s imminent departure, mark one of the most significant shifts in White House staffing since the ­changes Obama made in the wake of Democratic losses in the 2010 midterms. After that election, senior aides David Axelrod, Jim Messina and Mona Sutphen left and the political director’s job occupied by Patrick Gaspard was eliminated. Obama political strategist David Plouffe came on as a senior adviser, and William Daley took over as chief of staff. Former White House deputy senior adviser Stephanie Cutter, now a partner at the consulting firm Precision Strategies, wrote in an e-mail that adding the two advisers “brings some fresh thinking and brain power, because they haven’t been in the foxhole these last several months or even years.” “They also bring institutional knowledge of the workings of the West Wing” and other parts of Washington, she added. Several former administration officials and Obama supporters said the realignment amounts to an acknowledgment that the current policy and legislative affairs operations have key vulnerabilities. The president felt the need to quiet “the chattering classes” who have suggested his team needs “more inside Washington experience,” the senior White House aide said. One former White House official, who asked for anonymity in order to speak frankly, said the ­changes reflect a recognition that the White House’s insular leadership was no longer capable of managing the administration’s myriad problems. Much of the key decision making rests with White House Chief of Staff Denis McDonough, Rouse and senior adviser Valerie Jarrett. Several White House officials said recruiting Podesta was McDonough’s idea. Schiliro will be focused on bolstering the administration’s relationship with lawmakers who are nervous about the health-care law’s impact and head off any further problems with the law’s implementation. The decision to bring in Podesta reflects the president’s intent to exercise his executive authority on several key fronts. White House communications director Jennifer Palmieri said Podesta will help the administration strategize about “how do you leverage all the resources you have in the federal government to advance your agenda in a political year.” In an interview with The Washington Post this fall, Podesta said Obama’s “path to success is going to come through every single place that you can squeeze some authority which he has. That is where you’ve got to focus your attention and where you could spend your political capital.”

**That’s key to economy**

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.

**Decline goes nuclear**

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.

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**---Interpretation – authority refers to response to emergency threats to the nation, NOT humanitarian intervention.**

Bajesky 2013

2013¶ Mississippi College Law Review¶ 32 Miss. C. L. Rev. 9¶ LENGTH: 33871 words ARTICLE: Dubitable Security Threats and Low Intensity Interventions as the Achilles' Heel of War Powers NAME: Robert Bejesky\* BIO: \* M.A. Political Science (Michigan), M.A. Applied Economics (Michigan), LL.M. International Law (Georgetown). The author has taught international law courses for Cooley Law School and the Department of Political Science at the University of Michigan, American Government and Constitutional Law courses for Alma College, and business law courses at Central Michigan University and the University of Miami.

A numerical comparison indicates that the Framer's intended for Congress to be the dominant branch in war powers. Congressional war powers include the prerogative to "declare war;" "grant Letters of Marque and Reprisal," which were operations that fall short of "war"; "make Rules for Government and Regulation of the land and naval Forces;" "organize, fund, and maintain the nation's armed forces;" "make Rules concerning Captures on Land and Water," "raise and support Armies," and "provide and maintain a Navy." n25 In contrast, the President is endowed with one war power, named as the Commander-in-Chief of the Army and Navy. n26¶ The Commander-in-Chief authority is a core preclusive power, predominantly designating that the President is the head of the military chain of command when Congress activates the power. n27 Moreover, peripheral Commander-in-Chief powers are bridled by statutory and treaty restrictions n28 because the President "must respect any constitutionally legitimate restraints on the use of force that Congress has enacted." n29 However, even if Congress has not activated war powers, the President does possess inherent authority to expeditiously and unilaterally react to defend the nation when confronted with imminent peril. n30 Explicating the intention behind granting the President this latitude, Alexander Hamilton explained that "it is impossible to foresee or to define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them." n31 The Framers drew a precise distinction by specifying that the President was empowered "to repel and not to commence war." n32

**Vote neg**

**Limits – they blow the lid off the topic – there are an infinite number of justifications**

**Ground – all neg ground relies on the aff restricting authority not justifications – we lose warfighting, process CPs, politics links, shift DAs, etc.**

# 1nc

**The affirmative re-inscribes the primacy of liberal legalism as a method of restraint—that paradoxically collapses resistance to Executive excesses.**

**Margulies ’11** Joseph, Joseph Margulies is a Clinical Professor, Northwestern University School of Law. He was counsel of record for the petitioners in Rasul v. Bush and Munaf v. Geren. He now is counsel of record for Abu Zubaydah, for whose torture (termed harsh interrogation by some) Bush Administration officials John Yoo and Jay Bybee wrote authorizing legal opinions. Earlier versions of this paper were presented at workshops at the American Bar Foundation and the 2010 Law and Society Association Conference in Chicago., Hope Metcalf is a Lecturer, Yale Law School. Metcalf is co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama. She has written numerous amicus briefs in support of petitioners in suits against the government arising out of counterterrorism policies, including in Munaf v. Geren and Boumediene v. Bush., “Terrorizing Academia,” http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf

In an observation more often repeated than defended, we are told that the attacks of September 11 “changed everything.” Whatever merit there is in this notion, it is certainly true that 9/11—and in particular the legal response set in motion by the administration of President George W. Bush—left its mark on the academy. Nine years after 9/11, it is time to step back and assess these developments and to offer thoughts on their meaning. In Part II of this essay, we analyze the post-9/11 scholarship produced by this “emergency” framing. We argue that legal scholars writing in the aftermath of 9/11 generally fell into one of three groups: unilateralists, interventionists, and proceduralists. Unilateralists argued in favor of tilting the allocation of government power toward the executive because the state’s interest in survival is superior to any individual liberty interest, and because the executive is best able to understand and address threats to the state. Interventionists, by contrast, argued in favor of restraining the executive (principally through the judiciary) precisely to prevent the erosion of civil liberties. Proceduralists took a middle road, informed by what they perceived as a central lesson of American history.1 Because at least some overreaction by the state is an inevitable feature of a national crisis, the most one can reasonably hope for is to build in structural and procedural protections to preserve the essential U.S. constitutional framework, and, perhaps, to minimize the damage done to American legal and moral traditions. Despite profound differences between and within these groups, legal scholars in all three camps (as well as litigants and clinicians, including the authors) shared a common perspective—viz., that repressive legal policies adopted by wartime governments are temporary departures from hypothesized peacetime norms. In this narrative, metaphors of bewilderment, wandering, and confusion predominate. The country “loses its bearings” and “goes astray.” Bad things happen until at last the nation “finds itself” or “comes to its senses,” recovers its “values,” and fixes the problem. Internment ends, habeas is restored, prisoners are pardoned, repression passes. In a show of regret, we change direction, “get back on course,” and vow it will never happen again. Until the next time, when it does. This view, popularized in treatments like All the Laws but One, by the late Chief Justice Rehnquist,2 or the more thoughtful and thorough discussion in Perilous Times by Chicago’s Geoffrey Stone,3 quickly became the dominant narrative in American society and the legal academy. **This narrative also figured heavily in the many challenges to Bush-era policies,** including by the authors. The narrative permitted litigators and legal scholars to draw upon what elsewhere has been referred to as America’s “civic religion”4 and to cast the courts in the role of hero-judges5 **whom we hoped would restore legal order.**6 But by framing the Bush Administration’s response as the latest in a series of regrettable but temporary deviations from a hypothesized liberal norm, the legal academy ignored the more persistent, and decidedly illiberal, authoritarian tendency in American thought to demonize communal “others” during moments of perceived threat. Viewed in this light, what the dominant narrative identified as a brief departure caused by a military crisis is more accurately seen as part of a recurring process of intense stigmatization tied to periods of social upheaval, of which war and its accompanying repressions are simply representative (and particularly acute) illustrations. It is worth recalling, for instance, that the heyday of the Ku Klux Klan in this country, when the organization could claim upwards of 3 million members, was the early-1920s, and that the period of greatest Klan expansion began in the summer of 1920, almost immediately after the nation had “recovered” from the Red Scare of 1919–20.7 Klan activity during this period, unlike its earlier and later iterations, focused mainly on the scourge of the immigrant Jew and Catholic, and flowed effortlessly from the anti-alien, anti-radical hysteria of the Red Scare. Yet this period is almost entirely unaccounted for in the dominant post-9/11 narrative of deviation and redemption, which in most versions glides seamlessly from the madness of the Red Scare to the internment of the Japanese during World War II.8 And because we were studying the elephant with the wrong end of the telescope, we came to a flawed understanding of the beast. In Part IV, we argue that the interventionists and unilateralists came to an incomplete understanding by focusing almost exclusively on what Stuart Scheingold called “the myth of rights”—the belief that if we can identify, elaborate, and secure judicial recognition of the legal “right,” **political structures and policies will adapt their behavior to the requirements of the law** and change will follow more or less automatically.9 Scholars struggled to define the relationship between law and security primarily through exploration of structural10 and procedural questions, and, to a lesser extent, to substantive rights. And they examined the almost limitless number of subsidiary questions clustered within these issues. Questions about the right to habeas review, for instance, generated a great deal of scholarship about the handful of World War II-era cases that the Bush Administration relied upon, including most prominently Johnson v. Eisentrager and Ex Parte Quirin. 11 Regardless of political viewpoint, a common notion among most unilateralist and interventionist scholars was that when law legitimized or delegitimized a particular policy, **this would have a direct and observable effect on actual behavior**. The premise of this scholarship, in other words, was that policies “struck down” by the courts, or credibly condemned as lawless by the academy, would inevitably be changed—and that this should be the focus of reform efforts. Even when disagreement existed about the substance of rights or even which branch should decide their parameters, it reflected shared acceptance of the primacy of law, often to the exclusion of underlying social or political dynamics. Eric Posner and Adrian Vermeule, for instance, may have thought, unlike the great majority of their colleagues, that the torture memo was “standard fare.”12 But their position nonetheless accepted the notion that if the prisoners had a legal right to be treated otherwise, then the torture memo authorized illegal behavior and must be given no effect.13 Recent developments, however, cast doubt on two grounding ideas of interventionist and unilateralist scholarship—viz., that post-9/11 policies were best explained as responses to a national crisis (and therefore limited in time and scope), and that the problem was essentially legal (and therefore responsive to condemnation by the judiciary and legal academy). One might have reasonably predicted that in the wake of a string of Supreme Court decisions limiting executive power, apparently widespread and bipartisan support for the closure of Guantánamo during the 2008 presidential campaign, and the election of President Barack Obama, which itself heralded a series of executive orders that attempted to dismantle many Bush-era policies, the nation would be “returning” to a period of respect for individual rights and the rule of law. Yet the period following Obama’s election has been marked by an increasingly retributive and venomous narrative surrounding Islam and national security. **Precisely when the dominant narrative would have predicted change** and redemption, we have seen retreat and retrenchment. This conundrum is not adequately addressed by dominant strands of post-9/11 legal scholarship. In retrospect, it is surprising that much post-9/11 scholarship appears to have set aside critical lessons from previous decades as to the relationship among law, society and politics.14 Many scholars have long argued in other contexts that rights—or at least the experience of rights—are subject to political and social constraints, particularly for groups subject to historic marginalization. Rather than self-executing, rights are better viewed as contingent political resources, capable of mobilizing public sentiment and generating social expectations.15 From that view, a victory in Rasul or Boumediene no more guaranteed that prisoners at Guantánamo would enjoy the right to habeas corpus than a victory in Brown v. Board16 guaranteed that schools in the South would be desegregated.17 Rasul and Boumediene, therefore, should be seen as part (and probably only a small part) of a varied and complex collection of events, including the fiasco in Iraq, the scandal at the Abu Ghraib prison, and the use of warrantless wiretaps, as well as seemingly unrelated episodes like the official response to Hurricane Katrina. These and other events during the Bush years merged to give rise to a powerful social narrative critiquing an administration committed to lawlessness, content with incompetence, and engaged in behavior that was contrary to perceived “American values.”18 Yet the very success of this narrative, culminating in the election of Barack Obama in 2008, produced quiescence on the Left, even as it stimulated massive opposition on the Right. The result has been the emergence of a counter-narrative about national security that has produced a vigorous social backlash such that most of the Bush-era policies will continue largely unchanged, at least for the foreseeable future.19 Just as we see a widening gap between judicial recognition of rights in the abstract and the observation of those rights as a matter of fact, there appears to be an emerging dominance of proceduralist approaches, which take as a given that rights dissolve under political pressure, and, thus, are best protected by basic procedural measures. But that stance falls short in its seeming readiness to trade away rights in the face of political tension. First, it accepts the tropes du jour surrounding radical Islam—namely, that it is a unique, and uniquely apocalyptic, threat to U.S. security. In this, proceduralists do not pay adequate heed to the lessons of American history and sociology. And second, it endorses too easily the idea that procedural and structural protections will protect against substantive injustice in the face of popular and/or political demands for an outcome-determinative system that cannot tolerate acquittals. Procedures only provide protection, however, if there is sufficient political support for the underlying right. Since the premise of the proceduralist scholarship is that such support does not exist, it is folly to expect the political branches to create meaningful and robust protections. In short, a witch hunt does not become less a mockery of justice when the accused is given the right to confront witnesses. And a separate system (especially when designed for demonized “others,” such as Muslims) cannot, by definition, be equal. In the end, we urge a fuller embrace of what Scheingold called “the politics of rights,” which recognizes the contingent character of rights in American society. We agree with Mari Matsuda, who observed more than two decades ago that rights are a necessary but not sufficient resource for marginalized people with little political capital.20 To be effective, therefore, we must look beyond the courts and grapple with the hard work of long-term change with, through and, perhaps, in spite of law. These are by no means new dilemmas, but the post-9/11 context raises difficult and perplexing questions that deserve study and careful thought as our nation settles into what appears to be a permanent emergency.

**That causes endless warfare**

Bacevich, 5 -- Boston University international relations professor [A. J., retired career officer in the United States Army, former director of Boston University's Center for International Relations (from 1998 to 2005), *The New American Militarism: How Americans Are Seduced by Wa*r, 2005 accessed 9-4-13, mss]

Today as never before in their history Americans are enthralled with military power. The global military supremacy that the United States presently enjoys--and is bent on perpetuating-has become central to our national identity. More than America's matchless material abundance or even the effusions of its pop culture, the nation's arsenal of high-tech weaponry and the soldiers who employ that arsenal have come to signify who we are and what we stand for. When it comes to war, Americans have persuaded themselves that the United States possesses a peculiar genius. Writing in the spring of 2003, the journalist Gregg Easterbrook observed that "the extent of American military superiority has become almost impossible to overstate." During Operation Iraqi Freedom, U.S. forces had shown beyond the shadow of a doubt that they were "the strongest the world has ever known, . . . stronger than the Wehrmacht in r94o, stronger than the legions at the height of Roman power." Other nations trailed "so far behind they have no chance of catching up. ""˜ The commentator Max Boot scoffed at comparisons with the German army of World War II, hitherto "the gold standard of operational excellence." In Iraq, American military performance had been such as to make "fabled generals such as Erwin Rommel and Heinz Guderian seem positively incompetent by comparison." Easterbrook and Booz concurred on the central point: on the modern battlefield Americans had located an arena of human endeavor in which their flair for organizing and deploying technology offered an apparently decisive edge. As a consequence, the United States had (as many Americans have come to believe) become masters of all things military. Further, American political leaders have demonstrated their intention of tapping that mastery to reshape the world in accordance with American interests and American values. That the two are so closely intertwined as to be indistinguishable is, of course, a proposition to which the vast majority of Americans subscribe. Uniquely among the great powers in all of world history, ours (we insist) is an inherently values-based approach to policy. Furthermore, we have it on good authority that the ideals we espouse represent universal truths, valid for all times. American statesmen past and present have regularly affirmed that judgment. In doing so, they validate it and render it all but impervious to doubt. Whatever momentary setbacks the United States might encounter, whether a generation ago in Vietnam or more recently in Iraq, this certainty that American values are destined to prevail imbues U.S. policy with a distinctive grandeur. The preferred language of American statecraft is bold, ambitious, and confident. Reflecting such convictions, policymakers in Washington nurse (and the majority of citizens tacitly endorse) ever more grandiose expectations for how armed might can facilitate the inevitable triumph of those values. In that regard, George W. Bush's vow that the United States will "rid the world of evil" both echoes and amplifies the large claims of his predecessors going at least as far back as Woodrow Wilson. Coming from Bush the war- rior-president, the promise to make an end to evil is a promise to destroy, to demolish, and to obliterate it. One result of this belief that the fulfillment of America's historic mission begins with America's destruction of the old order has been to revive a phenomenon that C. Wright Mills in the early days of the Cold War described as a "military metaphysics**"-a tendency to see international problems as military problems and to** discountthe likelihood of findinga solution except through military means.To state the matter bluntly, Americans in our own time have fallen prey to militarism, manifesting itself in a romanticized view of soldiers, a tendency to see military power as the truest measure of national greatness, and outsized expectations regarding the efficacy of force. To a degree without precedent in U.S. history, Americans have come to define the nation's strength and well-being in terms of military preparedness, military action, and the fostering of (or nostalgia for) military ideals? Already in the 19905 America's marriage of a militaristic cast of mind with utopian ends had established itself as the distinguishing element of contemporary U.S. policy. The Bush administrations response to the hor- rors of 9/11 served to reaffirm that marriage, as it committed the United States to waging an open-ended war on a global scale. Events since, notably the alarms, excursions, and full-fledged campaigns comprising the Global War on Terror, have fortified and perhaps even sanctified this marriage. Regrettably, those events, in particular the successive invasions of Afghanistan and Iraq, advertised as important milestones along the road to ultimate victory have further dulled the average Americans ability to grasp the significance of this union, which does not serve our interests and may yet prove our undoing. The New American Militarism examines the origins and implications of this union and proposes its annulment. Although by no means the first book to undertake such an examination, The New American Militarism does so from a distinctive perspective. The bellicose character of U.S. policy after 9/11, culminating with the American-led invasion of Iraq in March 2003, has, in fact, evoked charges of militarism from across the political spectrum. Prominent among the accounts advancing that charge are books such as The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic, by Chalmers Johnson; Hegemony or Survival: Americas Quest for Global Dominance, by Noam Chomsky; Masters of War; Militarism and Blowback in the Era of American Empire, edited by Carl Boggs; Rogue Nation: American Unilateralism and the Failure of Good Intentions, by Clyde Prestowitz; and Incoherent Empire, by Michael Mann, with its concluding chapter called "The New Militarism." Each of these books appeared in 2003 or 2004. Each was not only writ- ten in the aftermath of 9/11 but responded specifically to the policies of the Bush administration, above all to its determined efforts to promote and justify a war to overthrow Saddam Hussein. As the titles alone suggest and the contents amply demonstrate, they are for the most part angry books. They indict more than explain, and what- ever explanations they offer tend to be ad hominem. The authors of these books unite in heaping abuse on the head of George W Bush, said to combine in a single individual intractable provincialism, religious zealotry, and the reckless temperament of a gunslinger. Or if not Bush himself, they fin- ger his lieutenants, the cabal of warmongers, led by Vice President Dick Cheney and senior Defense Department officials, who whispered persua- sively in the president's ear and used him to do their bidding. Thus, accord- ing to Chalmers Johnson, ever since the Persian Gulf War of 1990-1991, Cheney and other key figures from that war had "Wanted to go back and finish what they started." Having lobbied unsuccessfully throughout the Clinton era "for aggression against Iraq and the remaking of the Middle East," they had returned to power on Bush's coattails. After they had "bided their time for nine months," they had seized upon the crisis of 9/1 1 "to put their theories and plans into action," pressing Bush to make Saddam Hussein number one on his hit list." By implication, militarism becomes something of a conspiracy foisted on a malleable president and an unsuspecting people by a handful of wild-eyed ideologues. By further implication, the remedy for American militarism is self-evi- dent: "Throw the new militarists out of office," as Michael Mann urges, and a more balanced attitude toward military power will presumably reassert itself? As a contribution to the ongoing debate about U.S. policy, The New American Militarism rejects such notions as simplistic. It refuses to lay the responsibility for American militarism at the feet of a particular president or a particular set of advisers and argues that no particular presidential election holds the promise of radically changing it. Charging George W. Bush with responsibility for the militaristic tendencies of present-day U.S. for- eign policy makes as much sense as holding Herbert Hoover culpable for the Great Depression: Whatever its psychic satisfactions, it is an exercise in scapegoating that lets too many others off the hook and allows society at large to abdicate responsibility for what has come to pass. The point is not to deprive George W. Bush or his advisers of whatever credit or blame they may deserve for conjuring up the several large-scale campaigns and myriad lesser military actions comprising their war on ter- ror. They have certainly taken up the mantle of this militarism with a verve not seen in years. Rather it is to suggest that well before September 11, 2001 , and before the younger Bush's ascent to the presidency a militaristic predisposition was already in place both in official circles and among Americans more generally. In this regard, 9/11 deserves to be seen as an event that gave added impetus to already existing tendencies rather than as a turning point. For his part, President Bush himself ought to be seen as a player reciting his lines rather than as a playwright drafting an entirely new script. In short, the argument offered here asserts that present-day **American militarism** has deep roots in the American past. It **represents a bipartisan project.** As a result, it is unlikely to disappear anytime soon, a point obscured by the myopia and personal animus tainting most accounts of how we have arrived at this point. The New American Militarism was conceived not only as a corrective to what has become the conventional critique of U.S. policies since 9/11 but as a challenge to the orthodox historical context employed to justify those policies. In this regard, although by no means comparable in scope and in richness of detail, it continues the story begun in Michael Sherry's masterful 1995 hook, In the Shadow of War an interpretive history of the United States in our times. In a narrative that begins with the Great Depression and spans six decades, Sherry reveals a pervasive American sense of anxiety and vulnerability. In an age during which War, actual as well as metaphorical, was a constant, either as ongoing reality or frightening prospect, national security became the axis around which the American enterprise turned. As a consequence, a relentless process of militarization "reshaped every realm of American life-politics and foreign policy, economics and technology, culture and social relations-making America a profoundly different nation." Yet Sherry concludes his account on a hopeful note. Surveying conditions midway through the post-Cold War era's first decade, he suggests in a chapter entitled "A Farewell to Militarization?" that America's preoccupation with War and military matters might at long last be waning. In the mid- 1995, a return to something resembling pre-1930s military normalcy, involving at least a partial liquidation of the national security state, appeared to be at hand. Events since In the Shadow of War appear to have swept away these expectations. The New American Militarism tries to explain why and by extension offers a different interpretation of America's immediate past. The upshot of that interpretation is that far from bidding farewell to militariza- tion, the United States has nestled more deeply into its embrace. f ~ Briefly told, the story that follows goes like this. The new American militarism made its appearance in reaction to the I96os and especially to Vietnam. It evolved over a period of decades, rather than being sponta- neously induced by a particular event such as the terrorist attack of Septem- ber 11, 2001. Nor, as mentioned above, is present-day American militarism the product of a conspiracy hatched by a small group of fanatics when the American people were distracted or otherwise engaged. Rather, it devel- oped in full view and with considerable popular approval. The new American militarism is the handiwork of several disparate groups that shared little in common apart from being intent on undoing the purportedly nefarious effects of the I96OS. Military officers intent on reha- bilitating their profession; intellectuals fearing that the loss of confidence at home was paving the way for the triumph of totalitarianism abroad; reli- gious leaders dismayed by the collapse of traditional moral standards; strategists wrestling with the implications of a humiliating defeat that had undermined their credibility; politicians on the make; purveyors of pop cul- turc looking to make a buck: as early as 1980, each saw military power as the apparent answer to any number of problems. The process giving rise to the new American militarism was not a neat one. Where collaboration made sense, the forces of reaction found the means to cooperate. But on many occasions-for example, on questions relating to women or to grand strategy-nominally "pro-military" groups worked at cross purposes. Confronting the thicket of unexpected developments that marked the decades after Vietnam, each tended to chart its own course. In many respects, the forces of reaction failed to achieve the specific objectives that first roused them to act. To the extent that the 19603 upended long-standing conventions relating to race, gender, and sexuality, efforts to mount a cultural counterrevolution failed miserably. Where the forces of reaction did achieve a modicum of success, moreover, their achievements often proved empty or gave rise to unintended and unwelcome conse- quences. Thus, as we shall see, military professionals did regain something approximating the standing that they had enjoyed in American society prior to Vietnam. But their efforts to reassert the autonomy of that profession backfired and left the military in the present century bereft of meaningful influence on basic questions relating to the uses of U.S. military power. Yet the reaction against the 1960s did give rise to one important by-prod: uct, namely, the militaristic tendencies that have of late come into full flower. In short, the story that follows consists of several narrative threads. No single thread can account for our current outsized ambitions and infatua- tion with military power. Together, however, they created conditions per- mitting a peculiarly American variant of militarism to emerge. As an antidote, the story concludes by offering specific remedies aimed at restor- ing a sense of realism and a sense of proportion to U.S. policy. It proposes thereby to bring American purposes and American methods-especially with regard to the role of military power-into closer harmony with the nation's founding ideals. The marriage of military metaphysics with eschatological ambition is a misbegotten one, contrary to the long-term interests of either the American people or the world beyond our borders. It invites endless war and the ever-deepening militarization of U.S. policy. As it subordinates concern for the common good to the paramount value of military effectiveness, it promises not to perfect but to distort American ideals. As it concentrates ever more authority in the hands of a few more concerned with order abroad rather than with justice at home, it will accelerate the hollowing out of American democracy. As it alienates peoples and nations around the world, it will leave the United States increasingly isolated. If history is any guide, it will end in bankruptcy, moral as well as economic, and in abject failure. "Of all the enemies of public liberty," wrote James Madison in 1795, "war is perhaps the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies. From these proceed debts and taxes. And armies, debts and taxes are the known instruments for bringing the many under the domination of the few .... No nation could preserve its freedom in the midst of continual Warfare." The purpose of this book is to invite Americans to consider the continued relevance of Madison's warning to our own time and circumstances.

**The alternative is to vote negative to endorse political, rather than legal restrictions on Presidential war powers authority.**

**Goldsmith ‘12**

Jack, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, p. 205-209

DAVID BRIN is a science-fiction writer who in 1998 turned his imagination to a nonfiction book about privacy called The Transparent Society. Brin argued that individual privacy was on a path to extinction because government surveillance tools—tinier and tinier cameras and recorders, more robust electronic snooping, and bigger and bigger databases—were growing irreversibly more powerful. His solution to this attack on personal space was not to erect privacy walls, which he thought were futile, but rather to induce responsible government action by turning the surveillance devices on the government itself. A government that citizens can watch, Brin argued, is one subject to criticism and reprisals for its errors and abuses, and one that is more careful and responsible in the first place for fear of this backlash. A transparent government, in short, is an accountable one. "If neo-western civilization has one great trick in its repertoire, a technique more responsible than any other for its success, that trick is accountability," Brin argues, "[e]specially the knack—which no other culture ever mastered—of making accountability apply to the mighty."' Brin's notion of reciprocal transparency is in some ways the inverse of the penological design known as a "panopticon," made famous by the eighteenth-century English utilitarian philosopher Jeremy Bentham. Bentham's brother Samuel had designed a prison in Paris that allowed an "inspector" to monitor all of the inmates from a central location without the prisoners knowing whether or when they were being watched (and thus when they might be sanctioned for bad behavior). Bentham described the panopticon prison as a "new mode of obtaining power of mind over mind" because it allowed a single guard to control many prisoners merely by conveying that he might be watching.' The idea that a "watcher" could gain enormous social control over the "watched" through constant surveillance backed with threats of punishment has proved influential. Michel Foucault invoked Bentham's panopticon as a model for how modern societies and governments watch people in order to control them.' George Orwell invoked a similar idea three decades earlier with the panoptical telescreen in his novel 1984. More recently, Yale Law School professor Jack Balkin used the panopticon as a metaphor for what he calls the "National Surveillance State," in which governments "use surveillance, data collection, and data mining technologies not only to keep Americans safe from terrorist attacks but also to prevent ordinary crime and deliver social services." **The direction of the panopticon can be reversed, however, creating a "synopticon" in which many can watch one, including the government**.' The television is a synopticon that enables millions to watch the same governmental speech or hearing, though it is not a terribly robust one because the government can control the broadcast. Digital technology and the Internet combine to make a more powerful synopticon that allows many individuals to record and watch an official event or document in sometimes surprising ways. Video recorders placed in police stations and police cars, cell-phone video cameras, and similar tools increase citizens' ability to watch and record government activity. This new media content can be broadcast on the Internet and through other channels to give citizens synoptical power over the government—a power that some describe as "sousveillance" (watching from below)! These and related forms of watching can have a disciplining effect on government akin to Brin's reciprocal transparency. The various forms of watching and checking the presidency described in this book constitute a vibrant presidential synopticon. Empowered by legal reform and technological change, the "many"—in the form of courts, members of Congress and their staff, human rights activists, journalists and their collaborators, and lawyers and watchdogs inside and outside the executive branch—constantly gaze on the "one," the presidency. Acting alone and in mutually reinforcing networks that crossed organizational boundaries, these institutions extracted and revealed information about the executive branch's conduct in war—sometimes to adversarial actors inside the government, and sometimes to the public. The revelations, in turn, forced the executive branch to account for its actions and enabled many institutions to influence its operations. **The presidential synopticon** also **promoted responsible executive action merely through its broadening gaze.** One consequence of a panopticon, in Foucault's words, is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."' The same thing has happened in reverse but to similar effect within the executive branch, where officials are much more careful merely by virtue of being watched. The presidential synopticon is in some respects not new. Victor Davis Hanson has argued that "war amid audit, scrutiny, and self-critique" has been a defining feature of the Western tradition for 2,500 years.' From the founding of the nation, American war presidents have been subject to intense scrutiny and criticism in the unusually open society that has characterized the United States. And many of the accountability mechanisms described in this book have been growing since the 1970s in step with the modern presidency. What is new, however, is the scope and depth of these modern mechanisms, their intense legalization, and their robust operation during wartime. In previous major wars the President determined when, how, and where to surveil, target, detain, transfer, and interrogate enemy soldiers, often without public knowledge, and almost entirely without unwanted legal interference from within the executive branch itself or from the other branches of government.' Today these **decisions are known inside and outside the government to an unprecedented degree** and are heavily regulated by laws and judicial decisions that are enforced daily by lawyers and critics inside and outside the presidency. Never before have Congress, the courts, and lawyers had such a say in day-to-day military activities; never before has the Commander in Chief been so influenced, and constrained, by law. This regime has many historical antecedents, but it came together and hit the Commander in Chief hard for the first time in the last decade. It did so because of extensive concerns about excessive presidential power in an indefinite and unusually secretive war fought among civilians, not just abroad but at home as well. These concerns were exacerbated and given credibility by the rhetoric and reality of the Bush administration's executive unilateralism—a strategy that was designed to free it from the web of military and intelligence laws but that instead galvanized forces of reaction to presidential power and deepened the laws' impact. Added to this mix were enormous changes in communication and collaboration technologies that grew to maturity in the decade after 9/11. These changes helped render executive branch secrets harder to keep, and had a flattening effect on the executive branch just as it had on other hierarchical institutions, making connections between (and thus accountability to) actors inside and outside the presidency **much more extensive**.

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**The plan decimates Obama and the military’s credibility to calm alliances and deter enemies ---- makes terrorism and global nuclear war more likely --- INDEPENDENTLY prevents ability to negotiate Iranian miscalc**

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.

**Iran miscalc would spark nuclear war**

Ben-Meir, 2/6/2007 (Alon – professor of international relations at the Center for Global Affairs, Ending iranian defiance, United Press International, p. lexis)

That Iran stands today able to challenge or even defy the United States in every sphere of American influence in the Middle East attests to the dismal failure of the Bush administration's policy toward it during the last six years. Feeling emboldened and unrestrained, Tehran may, however, miscalculate the consequences of its own actions, which could precipitate a catastrophic regional war. The Bush administration has less than a year to rein in Iran's reckless behavior if it hopes to prevent such an ominous outcome and achieve, at least, a modicum of regional stability. By all assessments, Iran has reaped the greatest benefits from the Iraq war. The war's consequences and the American preoccupation with it have provided Iran with an historic opportunity to establish Shiite dominance in the region while aggressively pursuing a nuclear weapon program to deter any challenge to its strategy. Tehran is fully cognizant that the successful pursuit of its regional hegemony has now become intertwined with the clout that a nuclear program bestows. Therefore, it is most unlikely that Iran will give up its nuclear ambitions at this juncture, unless it concludes that the price will be too high to bear. That is, whereas before the Iraq war Washington could deal with Iran's nuclear program by itself, now the Bush administration must also disabuse Iran of the belief that it can achieve its regional objectives with impunity. Thus, while the administration attempts to stem the Sunni-Shiite violence in Iraq to prevent it from engulfing other states in the region, Washington must also take a clear stand in Lebanon. Under no circumstances should Iranian-backed Hezbollah be allowed to topple the secular Lebanese government. If this were to occur, it would trigger not only a devastating civil war in Lebanon but a wider Sunni-Shiite bloody conflict. The Arab Sunni states, especially, Saudi Arabia, Egypt and Jordan, are terrified of this possible outcome. For them Lebanon may well provide the litmus test of the administration's resolve to inhibit Tehran's adventurism but they must be prepared to directly support U.S. efforts. In this regard, the Bush administration must wean Syria from Iran. This move is of paramount importance because not only could Syria end its political and logistical support for Hezbollah, but it could return Syria, which is predominantly Sunni, to the Arab-Sunni fold. President Bush must realize that Damascus' strategic interests are not compatible with Tehran's and the Assad regime knows only too well its future political stability and economic prosperity depends on peace with Israel and normal relations with the United States. President Bashar Assad may talk tough and embrace militancy as a policy tool; he is, however, the same president who called, more than once, for unconditional resumption of peace negotiation with Israel and was rebuffed. The stakes for the United States and its allies in the region are too high to preclude testing Syria's real intentions which can be ascertained only through direct talks. It is high time for the administration to reassess its policy toward Syria and begin by abandoning its schemes of regime change in Damascus. Syria simply matters; the administration must end its efforts to marginalize a country that can play such a pivotal role in changing the political dynamic for the better throughout the region. Although ideally direct negotiations between the United States and Iran should be the first resort to resolve the nuclear issue, as long as Tehran does not feel seriously threatened, it seems unlikely that the clergy will at this stage end the nuclear program. In possession of nuclear weapons Iran will intimidate the larger Sunni Arab states in the region, bully smaller states into submission, threaten Israel's very existence, use oil as a political weapon to blackmail the West and instigate regional proliferation of nuclear weapons' programs. In short, if unchecked, Iran could plunge the Middle East into a deliberate or inadvertent **nuclear conflagration**. If we take the administration at its word that it would not tolerate a nuclear Iran and considering these regional implications, Washington is left with no choice but to warn Iran of the severe consequences of not halting its nuclear program.

# 1nc

**Extra-T – they claim advantages based off of the discourse of the 1ac – that’s a voting issue because it makes the aff a moving target and blows the lid off neg prep**

# 1nc

**The President of the United States should issue an Executive Order committing the executive branch to Solicitor General representation and advance consultation with the Office of Legal Counsel over decisions regarding the war powers authority of the President to introduce the United States Armed Forces into hostilities for humanitarian intervention. The Department of Justice officials involved should counsel that the president does not have such authority. The Executive Order should also require written publication of relevant Office of Legal Counsel opinions.**

**Executive pre-commitment to DOJ advice solves the aff**

**Pillard 2005** – JD from Harvard, Faculty Director of Supreme Court Institute at Georgetown University Law Center, former Deputy Assistant Attorney General in the DOJ (February, Cornelia T., Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758, http://scholarship.law.georgetown.edu/facpub/189/)

V. ENABLING EXECUTIVE CONSTITUTIONALISM

The courts indisputably do not and cannot fully assure our enjoyment of our constitutional rights, and it is equally clear that the federal executive has an independent constitutional duty to fulfill the Constitution's promise. Executive constitutionalism seems ripe with promise. Yet, it is striking how limited and court-centered the executive's normative and institutional approaches to constitutional questions remain. One conceivable way to avoid the pitfalls of court-centric executive lawyering on one hand and constitutional decisions warped by political expedience on the other would be to make the Solicitor General and Office of Legal Counsel - or perhaps the entire Department of Justice - as structurally independent as an independent counsel or independent agency.207 Making the SG and OLC independent in order to insulate them from politics presumably would alleviate the "majoritarian difficulty" resulting from their service to elected clients. Promoting fuller independence in that sense does not, however, appear to be clearly normatively attractive, constitutionally permissible, nor particularly feasible. In all the criticism of our current constitutionalism, there is little call for an SG or OLC that would act, in effect, as a fully insulated and jurisprudentially autonomous constitutional court within the executive branch, operating with even less transparency and accountability than the Supreme Court. Moreover, as a practical matter it would be complex and problematic to increase the independence of the SG and OLC. The federal government faces Article II obstacles to formally insulating executive lawyers from politics and institutional pressures, and the president and his administration likely would be less amenable to guidance from such unaccountable lawyers.208 The challenge, rather, is to draw forth from the executive a constitutional consciousness and practice that helps the government actively to seek to fulfill the commitments of the Constitution and its Bill of Rights, interpreted by the executive as guiding principles for government. Adjustments to executive branch constitutional process and culture should be favored if they encourage the executive to use its experience and capacities to fulfill its distinctive role in effectuating constitutional guarantees. There is transformative potential in measures that break ingrained executive branch habits of looking to the Constitution only as it is mediated through the courts, and of reflexively seeking, where there is no clear doctrinal answer, to minimize constitutional constraint. It is difficult fully to imagine what kinds of changes would best prompt executive lawyers and officials to pick up constitutional analysis where the courts leave off, and to rely on the Constitution as an affirmative, guiding mandate for government action; what follows are not worked-out proposals, but are meant to be merely suggestive. A. Correcting the Bias Against Constitutional Constraint As we have seen, the SG's and OLC's default interpretive approach to individual rights and other forms of constitutional constraints on government is to follow what clear judicial precedents there are and, where precedents are not squarely to the contrary, to favor interpretations that minimize constitutional rights or other constitutional obligations on federal actors. Those court-centered and narrowly self-serving executive traditions produce a systematic skew against individual rights. 1. Encourage Express Presidential Articulation of Commitment to Constitutional Rights To the extent that a president articulates his own rights-protective constitutional vision with any specificity, he ameliorates the tension his constitutional lawyers otherwise face between advancing individual rights and serving their boss's presumed interest in maximum governing flexibility. Case or controversy requirements and restrictions against courts issuing advisory opinions do not, of course, apply to the executive's internal constitutional decisionmaking, and presidents can better serve individual rights to the extent that they expressly stake out their constitutional commitments in general and in advance of any concrete controversy."° When the president takes a stand for advancing abortion rights, property rights, disability rights, "charitable choice," a right to bear arms, or full remediation of race and sex discrimination, he signals to his lawyers that they should, in those areas, set aside their default bias in favor of preserving executive prerogative, even if it requires extra executive effort or restraint to do so. If presented in a concrete setting with a choice between interpreting and applying the Constitution in fully rights-protective ways or sparing themselves the effort where Supreme Court precedent can be read not to require it, government officials typically default to the latter course without considering whether they might thereby be giving short shrift to a constitutional duty. A president's stated commitment to protection of particular rights, however, flips the default position with respect to those rights, acting as a spur to executive-branch lawyers and other personnel to work to give effect to constitutional rights even where, for a range of institutional reasons, the courts would not. A president is thus uniquely situated to facilitate full executive-branch constitutional compliance by precommitting himself to a rights-protective constitutional vision, and thereby making clear that respect for constitutional rights is part of the executive's interest, not counter to it.

# Case

**Obama will circumvent the aff**

**Kumar 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,” 3/19 <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.”

**Consequentialism is best**

**Murray 97** (Alastair, Professor of Politics at U. Of Wales-Swansea, *Reconstructing Realism*, p. 110)

Weber emphasised that, while the 'absolute ethic of the gospel' must be taken seriously, it is inadequate to the tasks of evaluation presented by politics. Against this 'ethic of ultimate ends' — Gesinnung — he therefore proposed the 'ethic of responsibility' — Verantwortung. First, whilst the former dictates only the purity of intentions and pays no attention to consequences, the ethic of responsibility commands acknowledgement of the divergence between intention and result. Its adherent 'does not feel in a position to burden others with the results of his [OR HER] own actions so far as he was able to foresee them; he [OR SHE] will say: these results are ascribed to my action'. Second, the 'ethic of ultimate ends' is incapable of dealing adequately with the moral dilemma presented by the necessity of using evil means to achieve moral ends: Everything that is striven for through political action operating with violent means and following an ethic of responsibility endangers the 'salvation of the soul.' If, however, one chases after the ultimate good in a war of beliefs, following a pure ethic of absolute ends, then the goals may be changed and discredited for generations, because responsibility for consequences is lacking. The 'ethic of responsibility', on the other hand, can accommodate this paradox and limit the employment of such means, because it accepts responsibility for the consequences which they imply. Thus, Weber maintains that only the ethic of responsibility can cope with the 'inner tension' between the 'demon of politics' and 'the god of love'. 9 The realists followed this conception closely in their formulation of a political ethic.10 This influence is particularly clear in Morgenthau.11 In terms of the first element of this conception, the rejection of a purely deontological ethic, Morgenthau echoed Weber's formulation, arguing tha/t:the political actor has, beyond the general moral duties, a special moral responsibility to act wisely ... The individual, acting on his own behalf, may act unwisely without moral reproach as long as the consequences of his inexpedient action concern only [HER OR] himself. What is done in the political sphere by its very nature concerns others who must suffer from unwise action. What is here done with good intentions but unwisely and hence with disastrous results is morally defective; for it violates the ethics of responsibility to which all action affecting others, and hence political action par excellence, is subject.12 This led Morgenthau to argue, in terms of the concern to reject doctrines which advocate that the end justifies the means, that the impossibility of the logic underlying this doctrine 'leads to the negation of absolute ethical judgements altogether'.13

**Utilitarianism is inevitable**

**Ratner 84**, professor of law at USC, 1984 (Leonard G. Ratner p.727, professor of law at USC, 1984 Hofstra Law Journal. “The Utilitarian Imperative: Autonomy, Reciprocity, and Evolution” heinonline)

Utilitarianism reconciles autonomy and reciprocity, surmounts the strident intuitionist attack, and exposes the utilitarian underpinning of a priori rights." In the context of the information provided by biology, anthropology, economics, and other disciplines, a functional description of evolutionary utilitarianism identities enhanced per capita need/want fulfillment as the long-term utilitarian-majoritarian goal, illuminates the critical relationship of self interest to that goal, and discloses the trial-and-error process of accommodation and priority assignment that implements it.” The description confirms that process as arbiter of the tension between individual welfare and group welfare (i.e., between autonomy and reciprocity)\*° and suggests a utilitarian imperative: that utilitarianism is unavoidable, that morality rests ultimately on utilitarian self interest, that in the final analysis all of us are personal utilitarians and most of us are social utilitarians.

**Extinction comes first**

**BOSTROM 11** (Nick, Prof. of Philosophy at Oxford, The Concept of Existential Risk (Draft), <http://www.existentialrisk.com/concept.html>)

Holding probability constant, risks become more serious as we move toward the upper-right region of figure 2. For any fixed probability, **existential risks are** thus **more serious than other** risk categories. But just how much more serious might not be intuitively obvious. One might think we could get a grip on how bad an existential catastrophe would be by considering some of the worst historical disasters we can think of—such as the two world wars, the Spanish flu pandemic, or the Holocaust—and then imagining something just a bit worse. Yet if we look at global population statistics over time, we find that these horrible events of the past century **fail to register** (figure 3).

[Graphic Omitted]

Figure 3: World population over the last century. Calamities such as the Spanish flu pandemic, the two world wars, and the Holocaust scarcely register. (If one stares hard at the graph, one can perhaps just barely make out a slight temporary reduction in the rate of growth of the world population during these events.)

But even this reflection fails to bring out the seriousness of existential risk. What makes existential catastrophes especially bad is not that they would show up robustly on a plot like the one in figure 3, causing a precipitous drop in world population or average quality of life. Instead, their significance lies primarily in the fact that they would **destroy the future**. The philosopher Derek Parfit made a similar point with the following thought experiment:

I believe that if we destroy mankind, as we now can, this outcome will be much worse than most people think. Compare three outcomes:

(1) Peace.

(2) A nuclear war that kills 99% of the world’s existing population.

(3) A nuclear war that kills 100%.

(2) would be worse than (1), and (3) would be worse than (2). Which is the greater of these two differences? Most people believe that the greater difference is between (1) and (2). I believe that the difference between (2) and (3) is very **much greater**. … The Earth will remain habitable for at least another billion years. Civilization began only a few thousand years ago. If we do not destroy mankind, these few thousand years may be only **a tiny fraction of** the whole of civilized human **history**. The difference between (2) and (3) may thus be the difference between this tiny fraction and all of the rest of this **history**. If we compare this possible history to a day, what has occurred so far is only a fraction of a second. (10: 453-454)

To calculate the loss associated with an existential catastrophe, we must consider how much value would come to exist in its absence. It turns out that the ultimate potential for Earth-originating intelligent life is literally astronomical.

One gets a large number even if one confines one’s consideration to the potential for biological human beings living on Earth. If we suppose with Parfit that our planet will remain habitable for at least another billion years, and we assume that at least one billion people could live on it sustainably, then the potential exist for at least **1018 human lives**. These lives could also be considerably **better than** the **average** contemporary **human life**, which is so often marred by disease, poverty, injustice, and various biological limitations that could be partly overcome through continuing technological and moral progress.

However, the relevant figure is not how many people could live on Earth but how many descendants we could have in total. One lower bound of the number of biological human life-years in the future accessible universe (based on current cosmological estimates) is **1034** years.[10] Another estimate, which assumes that future minds will be mainly implemented in computational hardware instead of biological neuronal wetware, produces a lower bound of 1054 human-brain-emulation subjective life-years (or 1071 basic computational operations).(4)[11] If we make the less conservative assumption that future civilizations could eventually press close to the absolute bounds of known physics (using some as yet unimagined technology), we get radically higher estimates of the amount of computation and memory storage that is achievable and thus of the number of years of subjective experience that could be realized.[12]

Even if we use the **most conservative** of these estimates, which entirely ignores the possibility of space colonization and software minds, we find that the expected **loss of an existential catastrophe is greater than** the value of **1018 human lives**. This implies that the expected **value of reducing existential risk by** a mere **one millionth of one percentage** point **is** at least **ten times** the value of **a billion** human **lives**. The more technologically comprehensive estimate of 1054 human-brain-emulation subjective life-years (or 1052 lives of ordinary length) makes the same point even more starkly. Even if we give this allegedly lower bound on the cumulative output potential of a technologically mature civilization a mere 1% chance of being correct, we find that the expected value of reducing existential risk by a mere one billionth of one billionth of one percentage point is worth a hundred billion times as much as a billion human lives.

One might consequently argue that **even** the **tiniest reduction** of existential risk **has** an expected **value greater than** that of the definite provision of any **“ordinary” good, such** as the direct benefit of **saving 1 billion lives**. And, further, that the absolute value of the indirect effect of saving 1 billion lives on the total cumulative amount of existential risk—positive or negative—is almost certainly larger than the positive value of the direct benefit of such an action.[13]

**Reps not first**

**Tuathail, 96** (Gearoid, Department of Georgraphy at Virginia Polytechnic Institute, Political Geography, 15(6-7), p. 664, science direct)

While theoretical debates at academic conferences are important to academics, the discourse and concerns of foreign-policy decisionmakers are quite different, so different that they constitute a distinctive problemsolving, theory-averse, policy-making subculture. There is a danger that academics assume that the discourses they engage are more significant in the practice of foreign policy and the exercise of power than they really are. This is not, however, to minimize the obvious importance of academia as a general institutional structure among many that sustain certain epistemic communities in particular states. In general, I do not disagree with Dalby’s fourth point about politics and discourse except to note that his statement-‘Precisely because reality could be represented in particular ways political decisions could be taken, troops and material moved and war fought’-evades the important question of agency that I noted in my review essay. The assumption that it is representations that make action possible is inadequate by itself. Political, military and economic structures, institutions, discursive networks and leadership are all crucial in explaining social action and should be theorized together with representational practices. Both here and earlier, Dalby’s reasoning inclines towards a form of idealism. In response to Dalby’s fifth point (with its three subpoints), it is worth noting, first, that his book is about the CPD, not the Reagan administration. He analyzes certain CPD discourses, root the geographical reasoning practices of the Reagan administration nor its public-policy reasoning on national security. Dalby’s book is narrowly textual; the general contextuality of the Reagan administration is not dealt with. Second, let me simply note that I find that the distinction between critical theorists and poststructuralists is a little too rigidly and heroically drawn by Dalby and others. Third, Dalby’s interpretation of the reconceptualization of national security in Moscow as heavily influenced by dissident peace researchers in Europe is highly idealist, an interpretation that ignores the structural and ideological crises facing the Soviet elite at that time. Gorbachev’s reforms and his new security discourse were also strongly selfinterested, an ultimately futile attempt to save the Communist Party and a discredited regime of power from disintegration. The issues raised by Simon Dalby in his comment are important ones for all those interested in the practice of critical geopolitics. While I agree with Dalby that questions of discourse are extremely important ones for political geographers to engage, there is a danger of fetishizing this concern with discourse so that we neglect the institutional and the sociological, the materialist and the cultural, the political and the geographical contexts within which particular discursive strategies become significant. Critical geopolitics, in other words, should not be a prisoner of the sweeping ahistorical cant that sometimes accompanies ‘poststructuralism nor convenient reading strategies like the identity politics narrative; it needs to always be open to the patterned mess that is human history.

**Privileging representations locks in violence --- policy analysis is the best way to challenge power**

**Taft-Kaufman ’95 -** (Jill, Professor of Speech – CMU, *Southern Communication Journal*, Vol. 60, Issue 3, Spring)

The postmodern passwords of "polyvocality," "Otherness," and "difference," unsupported by substantial analysis of the concrete contexts of subjects, creates a solipsistic quagmire. The political sympathies of the new cultural critics, with their ostensible concern for the lack of power experienced by marginalized people, aligns them with the political left. Yet, despite their adversarial posture and talk of opposition, their discourses on intertextuality and inter-referentiality isolate them from and ignore the conditions that have produced leftist politics--conflict, racism, poverty, and injustice. In short, as Clarke (1991) asserts, postmodern emphasis on new subjects conceals the old subjects, those who have limited access to good jobs, food, housing, health care, and transportation, as well as to the media that depict them. Merod (1987) decries this situation as one which leaves no vision, will, or commitment to activism. He notes that academic lip service to the oppositional is underscored by the absence of focused collective or politically active intellectual communities. Provoked by the academic manifestations of this problem Di Leonardo (1990) echoes Merod and laments: Has there ever been a historical era characterized by as little radical analysis or activism and as much radical-chic writing as ours? Maundering on about Otherness: phallocentrism or Eurocentric tropes has become a lazy academic substitute for actual engagement with the detailed histories and contemporary realities of Western racial minorities, white women, or any Third World population. (p. 530) Clarke's assessment of the postmodern elevation of language to the "sine qua non" of critical discussion is an even stronger indictment against the trend. Clarke examines Lyotard's (1984) The Postmodern Condition in which Lyotard maintains that virtually all social relations are linguistic, and, therefore, it is through the coercion that threatens speech that we enter the "realm of terror" and society falls apart. To this assertion, Clarke replies: I can think of few more striking indicators of the political and intellectual impoverishment of a view of society that can only recognize the discursive. If the worst terror we can envisage is the threat not to be allowed to speak, we are appallingly ignorant of terror in its elaborate contemporary forms. It may be the intellectual's conception of terror (what else do we do but speak?), but its projection onto the rest of the world would be calamitous....(pp. 2-27) The realm of the discursive is derived from the requisites for human life, which are in the physical world, rather than in a world of ideas or symbols.(4) Nutrition, shelter, and protection are basic human needs that require collective activity for their fulfillment. Postmodern emphasis on the discursive without an accompanying analysis of how the discursive emerges from material circumstances hides the complex task of envisioning and working towards concrete social goals (Merod, 1987). Although the material conditions that create the situation of marginality escape the purview of the postmodernist, the situation and its consequences are not overlooked by scholars from marginalized groups. Robinson (1990) for example, argues that "the justice that working people deserve is economic, not just textual" (p. 571). Lopez (1992) states that "the starting point for organizing the program content of education or political action must be the present existential, concrete situation" (p. 299). West (1988) asserts that borrowing French post-structuralist discourses about "Otherness" blinds us to realities of American difference going on in front of us (p. 170). Unlike postmodern "textual radicals" who Rabinow (1986) acknowledges are "fuzzy about power and the realities of socioeconomic constraints" (p. 255), most writers from marginalized groups are clear about how discourse interweaves with the concrete circumstances that create lived experience. People whose lives form the material for postmodern counter-hegemonic discourse do not share the optimism over the new recognition of their discursive subjectivities, because such an acknowledgment does not address sufficiently their collective historical and current struggles against racism, sexism, homophobia, and economic injustice. They do not appreciate being told they are living in a world in which there are no more real subjects. Ideas have consequences. Emphasizing the discursive self when a person is hungry and homeless represents both a cultural and humane failure. The need to look beyond texts to the perception and attainment of concrete social goals keeps writers from marginalized groups ever-mindful of the specifics of how power works through political agendas, institutions, agencies, and the budgets that fuel them.

#### Linear thinking is about anticipation, not explanation—allows us to become resilient in the face of complexity

Kent ’11 -- directs the Humanitarian Futures Programme at Kings College, London.

(Dr. Randolph C., “Planning from the future: an emerging agenda”, International Review of the Red Cross, 2011, <http://www.icrc.org/eng/assets/files/review/2011/irrc-884-kent.pdf>)

The art of anticipation is not about prediction; it is about promoting a sense that exploring the ‘what might be’s’ is a recognized asset for the objectives of the organization and its ensuing policies. 38 While it would be wrong to argue against the fact that there are growing scientiﬁc and technological capacities to predict a vast range of phenomena – social as well as natural – it would be equally wrong to ignore the ever-present prospect of ‘black swan’ events and the extraordinary consequences of ‘the ﬂap of the wings of a butterﬂy’. 39 The organization has to be sensitive to the possibility that it will have to contend with the unforeseen and that its conventional standard operating procedures and repertoires will not necessarily be adequate for dealing with the unforeseen. Anticipation is ultimately about ensuring that the organization and policy-makers promote and foster the ﬂexibility and creativity necessary to deal with uncertainty and complexity. In so saying, there is a combination of inter-related steps that can achieve those aims for the institution as a whole and for individuals within those institutions, two of which are noted below. From a process perspective, it is essential that throughout the organization there is a sense that speculation – new ways of thinking and exploring at the limits of plausibility – is not only accepted but valued. All too often, the creative essence needed to speculate about the ‘what might be’s’ is sacriﬁced by managers’ pursuit of productivity, efﬁciency, and control. As noted by the Asian Development Bank’s Knowledge Solution, To manage for creativity and innovation in ways that keep clients, audiences, and partners satisﬁed, they have ﬁve levers: i) the amount of challenge they give to personnel to stimulate minds, ii) the degree of freedom they grant around procedures and processes to minimize hassle, iii) the way they design work groups to tap ideas from all ranks, (iv) the encouragement and incentives they give, which should include rewards and recognition, and (v) the nature of organizational support. 40 From a more instrumental perspective, a study of future consequences of climate change suggests that an essential way to develop means to deal with the possible consequences of change is to identify ‘a sequence of steps, each with associated uncertainties’. The ﬁrst emissions of greenhouse gases and aerosols need to be speciﬁed, but so, too, will their dependence on unknown socio-economic behaviour. These unknowns can be tackled by using scenarios designed to produce indicative rather than deﬁnitive analysis. 41 The scenario – both as a concept and as a practical planning device – accepts the value of relative probabilities. In other words, one accepts that deﬁnitive explanation will be less probable in attempting to understand the future and that one will have to accept the need to plan based on a set of compelling probabilities. Scenario planning is intended to help management ‘think outside the box’, or to serve as ‘mind-shifting exercises’. At the same time, it is used to provide ‘high-level descriptions that help to clarify very long-term strategic direction, threats and opportunities’. 42 Scenario planning begins with making various assumptions and track them through different worlds, to provide an array of possibilities.

**Predictions are feasible. They can be made logically from empirical evidence.**

**Chernoff 09** – (Fred, Prof. IR and Dir. IR – Colgate U., European Journal of International Relations, “Conventionalism as an Adequate Basis for Policy-Relevant IR Theory”, 15:1, Sage)

For these and other reasons, many social theorists and social scientists have come to the conclusion that prediction is impossible. Well-known IR reflexivists like Rick Ashley, Robert Cox, Rob Walker and Alex Wendt have attacked naturalism by emphasizing the interpretive nature of social theory. Ashley is explicit in his critique of prediction, as is Cox, who says quite simply, ‘It is impossible to predict the future’ (Ashley, 1986: 283; Cox, 1987: 139, cf. also 1987: 393). More recently, Heikki Patomäki has argued that ‘qualitative changes and emergence are possible, but predictions are not’ defective and that the latter two presuppose an unjustifiably narrow notion of ‘prediction’.14 A determined prediction sceptic may continue to hold that there is too great a degree of complexity of social relationships (which comprise ‘open systems’) to allow any prediction whatsoever. Two very simple examples may circumscribe and help to refute a radical variety of scepticism. First, we all make reliable social predictions and do so with great frequency. We can predict with high probability that a spouse, child or parent will react to certain well-known stimuli that we might supply, based on extensive past experience. More to the point of IR prediction – scepticism, we can imagine a young child in the UK who (perhaps at the cinema) (1) picks up a bit of 19th-century British imperial lore thus gaining a sense of the power of the crown, without knowing anything of current balances of power, (2) hears some stories about the US–UK invasion of Iraq in the context of the aim of advancing democracy, and (3) hears a bit about communist China and democratic Taiwan. Although the specific term ‘preventative strike’ might not enter into her lexicon, it is possible to imagine the child, whose knowledge is thus limited, thinking that if democratic Taiwan were threatened by China, the UK would (possibly or probably) launch a strike on China to protect it, much as the UK had done to help democracy in Iraq. In contrast to the child, readers of this journal and scholars who study the world more thoroughly have factual information (e.g. about the relative military and economic capabilities of the UK and China) and hold some cause-and-effect principles (such as that states do not usually initiate actions that leaders understand will have an extremely high probability of undercutting their power with almost no chances of success). Anyone who has adequate knowledge of world politics would predict that the UK will not launch a preventive attack against China. In the real world, China knows that for the next decade and well beyond the UK will not intervene militarily in its affairs. While Chinese leaders have to plan for many likely — and even a few somewhat unlikely — future possibilities, they do not have to plan for various implausible contingencies: they do not have to structure forces geared to defend against specifically UK forces and do not have to conduct diplomacy with the UK in a way that would be required if such an attack were a real possibility. Any rational decision-maker in China may use some cause-and-effect (probabilistic) principles along with knowledge of specific facts relating to the Sino-British relationship to predict (P2) that the UK will not land its forces on Chinese territory — even in the event of a war over Taiwan (that is, the probability is very close to zero). The statement P2 qualifies as a prediction based on DEF above and counts as knowledge for Chinese political and military decision-makers. A Chinese diplomat or military planner who would deny that theory-based prediction would have no basis to rule out extremely implausible predictions like P2 and would thus have to prepare for such unlikely contingencies as UK action against China. A reflexivist theorist sceptical of ‘prediction’ in IR might argue that the China example distorts the notion by using a trivial prediction and treating it as a meaningful one. But the critic’s temptation to dismiss its value stems precisely from the fact that it is so obviously true. The value to China of knowing that the UK is not a military threat is significant. The fact that, under current conditions, any plausible cause-and-effect understanding of IR that one might adopt would yield P2, that the ‘UK will not attack China’, does not diminish the value to China of knowing the UK does not pose a military threat. A critic might also argue that DEF and the China example allow non-scientific claims to count as predictions. But we note that while physics and chemistry offer precise ‘point predictions’, other natural sciences, such as seismology, genetics or meteorology, produce predictions that are often much less specific; that is, they describe the predicted ‘events’ in broader time frame and typically in probabilistic terms. We often find predictions about the probability, for example, of a seismic event in the form ‘some time in the next three years’ rather than ‘two years from next Monday at 11:17 am’. DEF includes approximate and probabilistic propositions as predictions and is thus able to catagorize as a prediction the former sort of statement, which is of a type that is often of great value to policy-makers. With the help of these ‘non-point predictions’ coming from the natural and the social sciences, leaders are able to choose the courses of action (e.g. more stringent earthquake-safety building codes, or procuring an additional carrier battle group) that are most likely to accomplish the leaders’ desired ends. So while ‘point predictions’ are not what political leaders require in most decision-making situations, critics of IR predictiveness often attack the predictive capacity of IR theory for its inability to deliver them. The critics thus commit the straw man fallacy by requiring a sort of prediction in IR (1) that few, if any, theorists claim to be able to offer, (2) that are not required by policy-makers for theory-based predictions to be valuable, and (3) that are not possible even in some natural sciences.15 The range of theorists included in ‘reflexivists’ here is very wide and it is possible to dissent from some of the general descriptions. From the point of view of the central argument of this article, there are two important features that should be rendered accurately. One is that reflexivists reject explanation–prediction symmetry, which allows them to pursue causal (or constitutive) explanation without any commitment to prediction. The second is that almost all share clear opposition to predictive social science.16 The reflexivist commitment to both of these conclusions should be evident from the foregoing discussion.

Realism is inevitable and alternatives would be worse

**Mearsheimer** **95** (John, Professor of Political Science at the University of Chicago, *International Security*, Summer)

Realists believe that state behavior is largely shaped by the *material structure* of the international system. The distribution of material capabilities among states is the key factor for understanding world politics. For realists, some level of security competition among great powers is inevitable because of the material structure of the international system. Individuals are free to adopt non-realist discourses, but in the final analysis, the system forces states to behave according to the dictates of realism, or risk destruction. Critical theorists, on the other hand, focus on the *social structure* of the international system. They believe that “world politics is socially constructed,” which is another way of saying that shared discourse, or how communities of individuals think and talk about the world, largely shapes the world. Wendt recognizes that “material resources like gold and tanks exist,” but he argues that “such capabilities...only acquire meaning for human action through the structure of shared knowledge in which they are embedded.” Significantly for critical theorists, discourse can change, which means that realism is not forever, and that therefore it might be possible to move beyond realism to a world where institutionalized norms cause states to behave in more communitarian and peaceful ways. The most revealing aspect of Wendt’s discussion is that he did not respond to the two main charges leveled against critical theory in “False Promise.” The first problem with critical theory is that although the theory is deeply concerned with radically changing state behavior, it says little about how change comes about. The theory does not tell us why particular discourses become dominant, and others fall by the wayside. Specifically, Wendt does not explain why realism has been the dominant discourse in world politics for well over a thousand years, although I explicitly raised this question in “False Promise” (p. 42). Moreover, he sheds no light on why the time is ripe for unseating realism, nor on why realism is likely to be replaced by a more peaceful, communitarian discourse, although I explicitly raised both questions. Wendt’s failure to answer these questions has important ramifications for his own arguments. For example, he maintains that if it is possible to change international political discourse and alter state behavior, “then it is irresponsible to pursue policies that perpetuate destructive old orders [i.e., realism], especially if we care about the well-being of future generations.” The clear implication here is that realists like me are irresponsible and do not care much about the welfare of future generations. However, even if we change discourses and move beyond realism, a fundamental problem with Wendt’s argument remains: because his theory cannot predict the future, he cannot know whether the discourse that ultimately replaces realism will be more benign than realism. He has no way of knowing whether a fascistic discourse more violent than realism will emerge as the hegemonic discourse. For example, he obviously would like another Gorbachev to come to power in Russia, but he cannot be sure we will not get a Zhirinovsky instead. So even from a critical theory perspective, defending realism might very well be the more responsible policy choice.

**Its biological**

**Thayer 2004** – Thayer has been a Fellow at the Belfer Center for Science and International Affairs at the Kennedy School of Government at Harvard University and has taught at Dartmouth College and the University of Minnesota [*Darwin and International Relations: On the Evolutionary Origins of War and Ethnic Conflict*, University of Kentucky Press, 2004, pg. 75-76]

The central issue here is what causes states to behave as offensive realists predict. Mearsheimer advances a powerful argument that anarchy is the fundamental cause of such behavior. The fact that there is no world government compels the leaders of states to take steps to ensure their security, such as striving to have a powerful military, aggressing when forced to do so, and forging and maintaining alliances. This is what neorealists call a self-help system: leaders of states arc forced to take these steps because nothing else can guarantee their security in the anarchic world of international relations. I argue that evolutionary theory also offers a fundamental cause for offensive realist behavior. Evolutionary theory explains why individuals are motivated to act as offensive realism expects, whether an individual is a captain of industry or a conquistador. My argument is that anarchy is even more important than most scholars of international relations recognize. The human environment of evolutionary adaptation was **anarchic**; our ancestors lived in a state of nature in which resources were poor and dangers from other humans and the environment were great—so great that it is truly remarkable that a mammal standing three feet high—without claws or strong teeth, not particularly strong or swift—survived and evolved to become what we consider human. Humans endured because natural selection gave them the right behaviors to last in those conditions. This environment produced the behaviors examined here: egoism, domination, and the in-group/out-group distinction. These specific traits arc sufficient to explain why leaders will behave, in the proper circumstances, as offensive realists expect them to behave. That is, **even if they must hurt other humans** or risk injury to themselves, they will strive to **maximize their power**, defined as either control over others (for example, through wealth or leadership) or control over ecological circumstances (such as meeting their own and their family's or tribes need for food, shelter, or other resources).

In-group/out-group distinctions are human nature – two reasons.

A.) Resource conflicts

Thayer 2004 – Thayer has been a Fellow at the Belfer Center for Science and International Affairs at the Kennedy School of Government at Harvard University and has taught at Dartmouth College and the University of Minnesota [*Darwin and International Relations: On the Evolutionary Origins of War and Ethnic Conflict*, University of Kentucky Press, 2004, pg. 77-78 //adi]

Humans make in-group/out-group distinctions for three reasons. First, humans seek resources—food, water, and shelter—to care for themselves and relatives, and they seek mates to reproduce their genotype; in sum, they are egoistic for the reasons advanced by Darwin, William Hamilton, and other evolutionary theorists, as I described in chapter 1 and in the discussion above. They are unlikely to assist those who are not related, but may do so occasionally, expecting reciprocal behavior. Humans behave in these ways because resources were scarce in the late-Pliocene, Pleistocene, and Holoccne environments in which we evolved. In that environment, it is easy to understand why humans would prefer more resources to fewer: more strength is preferable to less strength, more wealth to less wealth, domination to being dominated. Most people do indeed prefer more resources to fewer; the rich want even more wealth, and seldom say they are too wealthy. Rather, they seem to worry about protecting their wealth from those who may take it from them, such as revolutionaries or the government. In essence, in prehistoric times when there was too little to go around, humans discriminated between self and others, family and others, tribe and others, in-groups and out-groups. This behavior remains today. We humans are likely to perceive out-groups as threats to our resources, the resources we need to maintain ourselves and our families and extended in-groups such as the tribe or state.

B.) Threat assessment

Thayer 2004 – Thayer has been a Fellow at the Belfer Center for Science and International Affairs at the Kennedy School of Government at Harvard University and has taught at Dartmouth College and the University of Minnesota [*Darwin and International Relations: On the Evolutionary Origins of War and Ethnic Conflict*, University of Kentucky Press, 2004, pg. 78 //adi]

Second, living and evolving in dangerous environments, humans, like other animals, need the ability to assess threats rapidly and react quickly. The in-group/out-group distinction may be thought of as the human minds immediate threat assessment. It is a mechanism for determining whether or not nonrelated conspecifics presented a threat. In sum, our mind rapidly debates: no threat/threat. Is the outsider a threat to oneself or to ones family? As a result, over the course of human evolution, strangers were first likely to fear one another, at least until they became familiar.

# a/t: recenters prez

**CP has OLC publish memos saying Obama doesn’t have authority – solves**

**internal constraints are key to external oversight**

Gillian Metzger 9, prof, Columbia Law, THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS 59 Emory L.J. 423

I therefore see benefits from paying greater attention to internal administrative design and in particular to analyzing what types of administrative structures are likely to prove effective and appropriate in different contexts.9 But I believe that attending to internal constraints alone is too narrow a focus because it excludes the crucial relationship between internal and external checks on the Executive Branch. Internal checks can be, and often are, reinforced by a variety of external forces—including not just Congress and the courts, but also state and foreign governments, international bodies, the media, and civil society organizations. Moreover, the reinforcement can also work in reverse, with internal constraints serving to enhance the ability of external forces, in particular Congress and the courts, to exert meaningful checks on the Executive Branch. Greater acknowledgment of this reciprocal relationship holds import both for fully understanding the separation of powers role played by internal constraints and for identifying effective reform strategies.

**That means the CP leads to the aff**

**Brecher 12** Aaron, JD Candidate, University of Michigan Law, "Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations," October, <http://www.michiganlawreview.org/assets/pdfs/111/3/Brecher.pdf>

The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of constraining future administrations or preempting legislative intervention.149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation.150 Additionally, while executive orders are hardly binding, the inertia following adoption of an order may help constrain future administrations, which may be more or less trustworthy than the current one. Creating a presumption through an executive order also establishes a stable legal framework for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

**CP sends the most powerful signal**

Zbigniew Brzezinski 12, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas\_moment

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the authentic voice of America. To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America. This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

**it outweighs legal restrictions**

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

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

**the CP has the same political influence**

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 61)

CONCLUSION

American government in the period 2001 to 2008 bears little resemblance to the constitutional framework erected, or wished for, by liberal legalism. In the liberal-legalist view, legislatures are said or at least hoped to be the primary actors, with executive and judicial power following suit—through law-execution and law-interpretation respectively. Both legislatures and courts are supposed to check and monitor the executive, keeping its power tightly cabined. In these episodes, however, executive officials take center stage, setting the agenda and determining the main lines of the government’s response, with legislatures and courts offering second-decimal modifications. Legislative and judicial monitoring and checking is largely hopeless, in part because of the necessarily ad hoc character of the government’s initial reaction (“regulation by deal”).88 in part because legislatures and courts come too late to the scene. The overall impression is that the constitutional framework of liberal legalism has collapsed under the pressure of fact, especially the brute fact that the rate of change in the policy environment is too great for traditional modes of lawmaking and policymaking to keep pace. Although crises demonstrate the problem with particular clarity, it is embedded in the structure of the administrative state. None of this means that the president is all-powerful; that is not our claim. As political science assessments of executive power show,89 the president does face some checks even from a generally supine Congress and even in the domains of war and foreign affairs where presidential power reaches its zenith.90 However, these checks are not primarily legal. Even Congress’s main weapon for affecting presidential behavior is not the cumbersome and costly legal mechanism of legislation. Rather legislators appeal to the court of public opinion, which in turn constrains the president. Oversight and various forms of “soft law”91—congressional statements and resolutions short of legally binding legislation—affect public support for presidential action in the realm of foreign policy, and in many other domains as well. There are real constraints on executive government, but formal constitutional procedures are not their source.

# a/t: perm

**Legislation causes intra-branch fights which jack solvency**

**Lobel 8**—Professor of Law @ University of Pittsburgh [Jules Lobel, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, Vol. 69, 2008, pg. 391]

The critical difficulty with a contextual approach is its inherent ambiguity and lack of clarity, which tends to sharply shift the balance of power in favor of a strong President acting in disregard of congressional will. For example, the application of the Feldman and Issacharoff test asking whether the congressional restriction makes realistic sense in the modern world would yield no coherent separation of powers answer if applied to the current Administration’s confrontation with Congress. It would undoubtedly embolden the President to ignore Congress’s strictures. The President’s advisors would argue that the McCain Amendment’s ban on cruel and inhumane treatment, or FISA’s requirement of a warrant, does not make realistic sense in the context of the contemporary realities of the war on terror in which we face a shadowy, ruthless nonstate enemy that has no respect for laws or civilized conduct, a conclusion hotly disputed by those opposed to the President’s policies. Focusing the debate over whether Congress has the power to control the treatment of detainees on the President’s claim that the modern realities of warfare require a particular approach will merge the separation of powers inquiry of who has the power with the political determination of what the policy ought to be. Such an approach is likely to encourage the President to ignore and violate legislative wartime enactments whenever he or she believes that a statute does not make realistic sense—that is, when it conflicts with a policy the President embraces. 53 The contextual approach has a “zone of twilight” quality that Justice Jackson suggested in Youngstown. 54 Often constitutional norms matter less than political realities—wartime reality often favors a strong President who will overwhelm both Congress and the courts. While it is certainly correct— as Jackson noted—that neither the Court nor the Constitution will preserve separation of powers where Congress is too politically weak to assert its authority, a fluid contextual approach is an invitation to Presidents to push beyond the constitutional boundaries of their powers and ignore legislative enactments that seek to restrict their wartime authority. Moreover, another substantial problem with a contextual approach in the war powers context is that the judiciary is unlikely to resolve the dispute. 55 The persistent refusal of the judiciary to adjudicate the constitutionality of the War Powers Resolution strongly suggests that courts will often refuse to intervene to resolve disputes between the President and Congress over the constitutionality of a statute that a President claims impermissibly interferes with her conduct of an ongoing war. 56 This result leaves the political branches to engage in an intractable dispute over the statute’s constitutionality that saps the nation’s energy, diverts focus from the political issues in dispute, and endangers the rule of law. Additionally, in wartime it is often important for issues relating to the exercise of war powers to be resolved quickly. Prompt action is not usually the forte of the judiciary. If, however, a constitutional consensus exists or could be consolidated that Congress has the authority to check the President’s conduct of warfare, that consensus might help embolden future Congresses to assert their power. Such a consensus might also help prevent the crisis, chaos, and stalemate that may result when the two branches assert competing constitutional positions and, as a practical matter, judicial review is unavailable to resolve the dispute. Moreover, the adoption of a contextual, realist approach will undermine rather than aid the cooperation and compromise between the political branches that is so essential to success in wartime. In theory, an unclear, ambiguous division of power between the branches that leaves each branch uncertain of its legal authority could further compromise and cooperation. However, modern social science research suggests that the opposite occurs. 57 Each side in the dispute is likely to grasp onto aspects or factors within the ambiguous or complex reality to support its own self-serving position. This self-serving bias hardens each side’s position and allows the dispute to drag on, as has happened with the ongoing, unresolved dispute over the constitutionality of the War Powers Resolution. Pg. 407-409

**Legislation is distinct—causes a veto to protect authority—fiat means that gets overridden**

Covington 12 Megan Covington(School of Engineering, Vanderbilt University) “Humanities and Social Sciences: Executive Legislation and the Expansion of Presidential Power” Spring 2012 | Volume 8 | © 2012 • Vanderbilt University Board of Trust http://webcache.googleusercontent.com/search?q=cache:K7qBxiQpm5AJ:ejournals.library.vanderbilt.edu/index.php/vurj/article/download/3556/1738+&cd=2&hl=en&ct=clnk&gl=us //Chappell

In actuality, however, Congress is generally unwilling or unable to respond to the president’s use of executive legislation. Congress can override a presidential veto but does not do it very often; of 2,564 presidential vetoes in our nation’s history, only 110 have ever been overridden. 44 The 2/3 vote of both houses needed to override a veto basically means that unless the president’s executive order is grossly unconstitutional – and thus capable of earning bipartisan opposition - one party needs to have a supermajority of both houses. Even passing legislation to nullify an executive order can be difficult to accomplish, especially with Congress as polarized and bitterly divided along party lines as it is today. Congress could pass legislation designed to limit the power of the president, but such a bill would be difficult to pass and any veto on it – which would be guaranteed – would be hard to override. In addition, if such legislation was passed over a veto, there is no guarantee that the bill would successfully limit the president’s actions; the War Powers Act does little to restrain the president’s ability to wage war.45 Impeachment is always an option, but the gravity of such a charge would prevent many from supporting it unless the president was very unpopular and truly abused his power.

**That destroys the agenda**

**Slezak, 7 -** Center for the Study of the Presidency Fellow 2006-2007 at UCLA, MA in Security Studies at Georgetown (Nicole, “The Presidential Veto: A Strategic Asset” https://host.genesis4100.net/thepresidency/pubs/fellows2007/Slezak.pdf)

Although the veto offers the president a significant advantage in dealing with a sometimes combative and divisive Congress, James Gattuso discusses four “caveats” that should be considered by presidents when devising a veto strategy. First, presidents should not veto without care, for if Congress overrides it is politically damaging to the president.8 This means that if the president does not garner the required one-third plus one in either house of Congress and his veto is overridden, he will not only lose face, but lose political capital that gives him leverage in dealing with Congress. If the president loses political capital he can put himself at a disadvantage for future interactions with Congress; hence, when vetoing he must consider his support in Congress and the potential ramifications of an override. However, Gattuso adds that worse than having a veto overridden is a president who threatens to veto and does not follow through once Congress has passed legislation.9 This is even more damaging than an override because the president is caught making “empty threats.” Therefore, Congress will continue to produce legislation to their liking rather than revising it because Congress is inclined to believe the president is no longer serious about his veto threats.

**Obama will attach a signing statement to the aff**

**Kimbrell 12**, Thomas Matthew, B.A., California State University, Bakersfield, A Thesis Submitted to the Graduate Faculty of The University of Georgia in partial fulfillment of the requirements for a Master of Arts, “Pursuing the Presidents Program: Presidential Program Size and Unilateral Action,” May 1st, https://getd.libs.uga.edu/pdfs/kimbrell\_thomas\_m\_201205\_ma.pdf

First, the legislative bargaining and unilateral action strategies are not completely independent of each other either. For example, Kelley and Marshall (2009) show that presidents strategically use vetoes, veto threats, and signing statements in concert. Bills that were vetoed or received veto threats are much more likely to have a presidential signing statement attached to them. Essentially, presidents use vetoes and veto threats to gain policy concessions from Congress during the legislative bargaining process. At the end of this process, when Congress has passed a bill, presidents sometimes attach signing statements to influence policy implementation where they feel congressional policy concessions are not satisfactory or to preserve executive authority where they feel it has been encroached.

**Signing statements makes the aff meaningless—destroys the aff’s clarity and signal—AND causes a huge fight**

Jeffrey Crouch 13, assistant professor of American politics at American University, Mark J. Rozell, acting dean and a professor of public policy at George Mason University, and Mitchel A. Sollenberger, associate professor of political science at the University of Michigan-Dearborn, December 2013, The Law: President Obama's Signing Statements and the Expansion of Executive Power, Presidential Studies Quarterly 43.4

Signing statements become objectionable when a president attempts to transform statutory authority and circumvent the rule of law. To be sure, a president may find that certain provisions of legislative enactments violate executive authority or principles of separation of powers. Such weighty issues are appropriate for resolution through a process of deliberation and accommodation between the political branches or, if not settled in that fashion, through the courts. However, signing statements do not, as some suggest, start a productive dialogue (Ostrander and Sievert 2013b, 60). Instead, they **invite interbranch conflict** and encourage additional acts of presidential unilateralism. From Andrew Jackson through Obama's 2009 objection to various provisions of the Supplemental Appropriations Act, signing statements have resulted in unnecessary battles between the branches. Members of Congress often object to signing statements because the presence of one sometimes means that the administration is attempting to settle a policy debate without legislative input. The proper time to exchange views is during the legislative process, which takes place before a bill is submitted to the president to sign. Presidents often make deals with members of Congress on legislation in order to secure its passage. In 2009, President Obama did just that. In the process of convincing Congress to pass a funding measure for the International Monetary Fund and the World Bank “Obama agreed to allow the Congress to set conditions on how the money would be spent” and to attach a reporting requirement provision. However, the president turned around and issued a signing statement arguing that those restrictions would “interfere with my constitutional authority to conduct foreign relations.” Congress was not happy. Representative Barney Frank (D-MA) wrote to the president and accused him of breaking his word. The House even passed a bill that barred funding of the president's challenges (Kelley 2012, 11-12). Instead of encouraging dialogue and political accommodations, such actions by presidents actually short circuit the free exchange of ideas and poison relations with Congress, including lawmakers of the president's own party. If a proposed statute so clearly violates what the president views as vital constitutional principles, then he has an obligation to veto it. He should not agree to the provisions during the legislative process and then turn around and effectively challenge them. Not only does this approach increase distrust and promote greater polarization on Capitol Hill, but it also goes against the text of the Constitution. Nowhere in Article I or Article II does the Constitution provide line-item veto authority to the chief executive. As George Washington explained, “From the nature of the constitution I must approve all the parts of a bill, or reject it in toto” (Washington 1889-93, XII, 327). Even if a president makes constitutional objections during the lawmaking process, such protests do not make credible his actions of signing a bill and later challenging certain provisions through a signing statement. As Representative Frank remarked, presidents “have a legitimate right to tell us their constitutional concerns—that's different from having a signing statement.” However, he explained that “Anyone who makes the argument that ‘once we have told you we have constitutional concerns and then you pass it anyway, that justifies us in ignoring it'—that is a constitutional violation. Those play very different roles and you can't bootstrap one into the other” (Savage 2010). Louis Fisher cuts to the core of the problem with constitutional signing statements that purport to nullify statutory provisions. He argues that such statements “encourage the belief that the law is not what Congress puts in public law but what the administration decides to do later on.” Continuing, Fisher notes that “if the volume of signing statements gradually replaces Congress-made law with executive-made law and treats a statute as a mere starting point on what executive officials want to do, the threat to the rule of law is grave” (Fisher 2007, 210). We agree. It is unilateral presidential decision making itself that in this context strikes a serious blow against the core principles of separation of powers. Another problem with constitutional signing statements is that they generally lack clarity and precision, which greatly hinders the idea that they could be used to help facilitate a dialogue between a president and Congress in the first place (Fisher 2007, 210). As noted earlier, signing statements are often crafted in a world of doublespeak where words are distorted to create confusion, and ambiguity is preferred in order to muddle the president's true intent. President Bush received frequent criticism for his vague statements. Likewise, as Christopher Kelley explained, “there are numerous instances where Obama's signing statements resort to the vagaries seen in the Bush signing statements, where it becomes difficult to discern precisely what is being challenged or why” (2012, 10). The benefits of the obfuscating language are clear. Even when a president intends to ignore a statutory provision, there will be sufficient confusion among reporters, scholars, members of Congress, and certainly the public to prevent any kind of universal response. Consider, for example, President Obama's April 15, 2011, signing statement dealing with the provision to cut off funding for certain czar positions within the White House. In his analysis of that statement, presidential scholar Robert J. Spitzer argued that it merely “expresses displeasure, not disobedience to the law” (2012, 11). Two of us took the opposite view and declared that the president's statement “effectively nullified” the anti-czars provision (Sollenberger and Rozell 2011, 819). If scholars can disagree about the intended meaning of presidential signing statements, it is doubtful that a layperson can clearly discern the president's intentions.

# a/t: object fiat

**Topic education – the CP tests whether war powers should be limited or just not exercised – this is the core of the topic**

**Vladeck 13**, Steve, professor of law and the associate dean for scholarship at American University Washington College of Law, “What’s Really Wrong With the Targeted Killing White Paper,” February 5th, http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/

Indeed, whether because the Department of Justice has been tone-deaf to these criticisms or because it is too constrained by other considerations that are lost upon me, the fact that this is the white paper they’ve chosen to release suggests that they’ve totally missed the point of these demands for public justification: It’s the process that we’re all interested in–how, exactly, the government decides that the various criteria it articulates for these strikes are met, who is in the room when such decisions are made, and whether anyone tries to argue the opposite side. Accepting, as I do, that there are necessarily some number of cases in which the government may lawfully use lethal force even against its own citizens, the issue reduces to how the government decides that such a case is presented–and what checks there are to minimize false positives… Nothing in the white paper provides any further elaboration on this point–and because of that, it’s that much more mind-boggling that it took this long (and even then, only through a leak) for even this discussion to be publicly disclosed. After all, it’s not like anything in this white paper is classified… II. My Idiosyncratic View That the Substantive Discussion is Beside the Point The above helps to explain why I think my friend Kevin Heller is picking the wrong fight over at Opinio Juris when he takes issue with the substantive international law discussion in the white paper. First, I suspect the discussion of imminence in the white paper has little to do with international law (at least in situations in which we’re in a non-international armed conflict with the group of which the target is a senior operational leader), and is more about the domestic constitutional analysis (more on that in a minute). Second, and in any event, as I mentioned above, I imagine that almost all of us would agree that there are some circumstances in which the government is allowed to use lethal force even against its own citizens. I also suspect we could reach a fair amount of consensus on the relevant criteria that should apply to justify such uses of force. This is why, per the above, I’ve always thought this debate was principally about the process questions, not the substantive ones. And, as noted above, the white paper is useless, if not counterproductive, on that point.

**Process Education – key to policy making**

**Schuck 99 –** Professor, Yale Law School, and Visiting Professor, New York Law School (Peter H., Spring (“Delegation and Democracy” – Cardozo Law Review) <http://www.constitution.org/ad_state/schuck.htm>)

God and the devil are in the details of policymaking, as they are in most other important things—and the details are to be found at the agency level. This would remain true, moreover, even if the nondelegation doctrine were revived and statutes were written with somewhat greater specificity, for many of the most significant impacts on members of the public would still be indeterminate until the agency grappled with and defined them. Finally, the agency is often the site in which public participation is most effective. This is not only because the details of the regulatory impacts are hammered out there. It is also because the agency is where the public can best educate the government about the true nature of the problem that Congress has tried to address. Only the interested parties, reacting to specific agency proposals for rules or other actions, possess (or have the incentives to ac-quire) the information necessary to identify, explicate, quantify, and evaluate the real-world consequences of these and alternative proposals. Even when Congress can identify the first-order effects of the laws that it enacts, these direct impacts seldom exhaust the laws’ policy consequences. Indeed, first-order effects of policies usually are less significant than the aggregate of more remote effects that ripple through a complex, interrelated, opaque society. When policies fail, it is usually not because the congressional purpose was misunderstood. More commonly, they fail because Congress did not fully appreciate how the details of policy implementation would confound its purpose. Often, however, this knowledge can only be gained through active public participation in the policymaking process at the agency level where these implementation issues are most clearly focused and the stakes in their correct resolution are highest.

# a/t: congress causes discussion

**there wont be debate in congress – they won’t engage**

**No Motive – Congresspeople are hacks concerned with elections**

**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>]

Of course, despite these various suits, Congress has received¶ much of the blame for the WPR’s treatment and failures. For example, Congress has been criticized for doing little to enforce the WPR¶ in using other Article I tools, such as the “power of the purse,”76 or by¶ closing the loopholes frequently used by presidents to avoid the WPR in the first place.77 Furthermore, in those situations where Congress¶ has decided to act, it has done so in such a disjointed manner as to¶ render any possible check on the President useless. For example, during President Reagan’s invasion of Grenada, Congress failed to reach¶ an agreement to declare the WPR’s sixty-day clock operative,78 and¶ later faced similar “deadlock” in deciding how best to respond to President Reagan’s actions in the Persian Gulf, eventually settling for a bill¶ that reflected congressional “ambivalence.”79 Thus, between the **lack**¶ **of a “backbone**” to check rogue presidential action and **general ineptitude** when it actually decides to act, Congress has demonstrated its¶ inability to remedy WPR violations.¶ Worse yet, much of Congress’s interest in the WPR is politically¶ motivated, leading to inconsistent review of presidential military decisions filled with post-hoc rationalizations. Given the political risk associated with wartime decisions,81 Congress **lacks any incentive to act**¶ unless and until it can gauge public reaction—a process that often¶ occurs after the fact.82 As a result, missions deemed successful by the¶ public will rarely provoke “serious congressional concern” about presidential compliance with the WPR, while failures will draw scrutiny.83¶ For example, in the case of the Mayaguez, “liberals in the Congress¶ generally praised [President Gerald Ford’s] performance” despite the¶ constitutional questions surrounding the conflict, simply because the public deemed it a success.84 Thus, even if Congress was effective at¶ checking potentially unconstitutional presidential action, it would only act when politically safe to do so. This result should be unsurprising: making a wartime decision provides little advantage for politicians, especially if the resulting action succeeds.85 Consequently,¶ Congress itself has taken a role in the continued disregard for WPR¶ enforcement.¶ The current WPR framework is broken: presidents avoid it, courts¶ will not rule on it, and Congress will not enforce it. This cycle has¶ culminated in President Obama’s recent use of force in Libya, which¶ created little, if any, controversy,86 and it provides a clear pass to future presidents, judges, and congresspersons looking to continue the¶ system of passivity and deferment.

**That means the aff isn’t enforced**

Nzelibe 7—Professor of Law @ Northwestern University [Jide Nzelibe, “Are Congressionally Authorized Wars Perverse?” Stanford Law Review, Vol. 59, 2007]

These assumptions are all questionable. As a preliminary matter, there is not much causal evidence that supports the institutional constraints logic. As various commentators have noted, Congress's bark with respect to war powers is often much greater than its bite. Significantly, skeptics like Barbara Hinckley suggest that any notion of an activist Congress in war powers is a myth and members of Congress will often use the smokescreen of "symbolic resolutions, increase in roll calls and lengthy hearings, [and] addition of reporting requirements" to create the illusion of congressional participation in foreign policy.' 0 Indeed, even those commentators who support a more aggressive role for Congress in initiating conflicts acknowledge this problem," but suggest that it could be fixed by having Congress enact more specific legislation about conflict objectives and implement new tools for monitoring executive behavior during wartime. 12 Yet, even if Congress were equipped with better institutional tools to constrain and monitor the President's military initiatives, it is not clear that it would significantly alter the current war powers landscape. As Horn and Shepsle have argued elsewhere: "[N]either specificity in enabling legislation ... nor participation by interested parties is necessarily optimal or self-fulfilling; therefore, they do not ensure agent compliance. Ultimately, there must be some enforcement feature-a credible commitment to punish ....Thus, no matter how much well-intentioned and specific legislation Congress passes to increase congressional oversight of the President's military initiatives, it will come to naught if members of Congress lack institutional incentives to monitor and constrain the President's behavior in an international crisis. Various congressional observers have highlighted electoral disincentives that members of Congress might face in constraining the President's military initiatives. 14 Others have pointed to more institutional obstacles to congressional assertiveness in foreign relations, such as collective action problems. 15 Generally, lawmaking is a demanding and grueling exercise. If one assumes that members of Congress are often obsessed with the prospect of reelection, 16 then such members will tend to focus their scarce resources on district-level concerns and hesitate to second-guess the President's response in an international crisis. 17 Even if members of Congress could marshal the resources to challenge the President's agenda on national issues, the payoff in electoral terms might be trivial or non-existent. Indeed, in the case of the President's military initiatives where the median voter is likely to defer to the executive branch's judgment, the electoral payoff for members of Congress of constraining such initiatives might actually be negative. In other words, regardless of how explicit the grant of a constitutional role to Congress in foreign affairs might be, few members of Congress are willing to make the personal sacrifice for the greater institutional goal. Thus, unless a grand reformer is able to tweak the system and make congressional assertiveness an electorally palatable option in war powers, calls for greater congressional participation in war powers are likely to fall on deaf ears. Pg. 912-913

# a/t: links to politics

**No it doesn’t – we’ve only read losers lose links – congressional criticism wrecks Obama**

**And, XO’s don’t cause backlash**

Sovacool 9

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

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

**And, err neg – there’s link differential between the plan and CP – the CP links less than the aff**

**Warshaw 6** (Shirley Anne Warshaw, MAD QUALZ! An authority on the American presidency, presidential elections, the president's Cabinet, and organizational decision structures for presidential policy making, Warshaw is a frequent speaker and commentator on network radio, television, and print media on presidential leadership and related topics, including CNN, BBC, CBS, NPR, The NewsHour with Jim Lehrer, Washington Post, New York Times, Reuters, Associated Press, Christian Science Monitor, USA Today, Wall Street Journal, and others. Warshaw has written several books on presidential decision-making, Gettysburg College, The Administrative Strategies of President George W. Bush, http://www.ou.edu/special/albertctr/extensions/spring2006/Warshaw.pdf

As presidents segue from the campaign into governance, they develop various strategies for moving their policy agenda forward. The most common strategy for presidents to secure their policy goals has been to submit their legislative proposals to Congress, building on the tools of public persuasion and party supremacy. When presidents capture public support, as President George W. Bush did with his tax cut proposal, Congress follows with legislative approval. However, in recent administrations, particularly since the Reagan administration, presidents have often bypassed Congress using administrative actions. They have opted for a strategy through administrative actions that is less time-consuming and clearly **less demanding of their political capital**. Using an array of both formal and informal executive powers, presidents have effectively directed the executive departments to implement policy without any requisite congressional authorization. In effect, presidents have been able to govern without Congress. The arsenal of administrative actions available to presidents includes the power of appointment, perhaps **the most important of the arsenal, executive orders**, executive agreements, proclamations, signing statements, and a host of national security directives. 1 More than any past president, George W. Bush has utilized administrative actions as his primary tool for governance.

## A2 Linear Predictions Bad

#### Linear predictions are good and there is no alternative even if they are not – weighing relative probabilities of whether or not something will is empirically successful - kent

#### Complexity cannot be applied to the social sciences—it’s nothing more than a metaphor

Ford ’11

(Christopher, “Policymaking at the Edge of Chaos: Musings on Political Ideology Through the Lens of Complexity”, Hudson Institute, January 2011, <http://www.hudson.org/files/publications/Conceptualizing%20Ideology.pdf>)

How might one respond to this predicament? Despair, of course, is one option. After losing money in the collapse of the infamous South Sea Bubble investment scheme, Sir Isaac Newton allegedly observed in frustration that “I can calculate the motions of heavenly bodies, but not the madness of men.” If the human world of complex adaptive social systems is indeed fundamentally non-predictable and non-manipulable in any kind of deliberate way over the long term, is public policymaking in the end no more than a vain conceit – a sort of joke we play on ourselves rather than admit our powerlessness, or perhaps an outright fraud promulgated by those in positions of power in order to justify their existence? Such despair seems premature, however, in part because we cannot be entirely sure how to translate lessons from Complexity Theory from the realm of mathematics and hard science into the world of human interactions. As a tentative response to Complexity’s seeming subversion of the policymaking paradigm, in fact, we might suspect it possible – without too much traducing our emerging understanding of Complexity in social science applications – that some types of policy input seem more likely to have significant effects upon operational behavior and long-term systemic patterns in the human world than others. We might also suspect that some of these inputs may indeed also operate in ways that are less stubbornly “unpredictable” than Complexity might at first seem to indicate. The key point here is that human actors are not easily analogized to the constituent elements of most of the complex adaptive systems studied by Complexity scientists. Complexity thinkers have indeed been intrigued by the possibilities their insights might offer when applied to social systems. They are also often rightly concerned, however, that human organizations “cannot be totally assimilated to natural systems, where laws are immutable,” because the structure of a human system probably changes in special ways due to “the action of actors inside and outside the organization.” 26 In this vein, Complexity scholars have sometimes suggested that the very humanity of the unit-level components of a human social system may to some extent make the lessons of Complexity themselves somewhat unpredictable. David Harvey and Michael Reed, for instance, have noted “the ‘wild card’ nature of human beings and their innovative abilities” as a sort of potential “exceptionality … in dissipative systems theory.” This does not necessarily mean that Complexity cannot be used in the study of social systems, but they stress that one must always be aware of the wild card and “recognize the indeterminate aspect of human nature.” 27 There seems, in fact, to be some debate not just about whether Complexity insights offer any real “tangible solutions” to the problems studied in the social sciences, but about whether Complexity can be applied there – at all – in anything more than a “metaphorical” fashion. 28 Peter Stewart, for instance, questions the possibility of applying Complexity analytically in the social sciences. He suspects that adequate analysis of complex phenomena cannot really be done there at all, 29 because “[s]ocial processes and phenomena are far too complex for complexity theory to deal with, or profoundly elucidate,” and “complexity theories do not provide a particularly effective metatheory of social processes” in the first place. 30 Harvey and Reid appear more optimistic, but even they seem to think that merely metaphorical or impressionistic analyses may sometimes be all that one can bring to bear on human problems. In fact, they suggest the greater use of what they call “iconological modeling” – a “heavily intuitive” approach “rooted in a pictorial method, in visual correspondences rather than in deductive reasoning” and conventional methods of social scientific data collection and analysis. 31

#### Policymaking is possible in complex systems

(Christopher, “Policymaking at the Edge of Chaos: Musings on Political Ideology Through the Lens of Complexity”, Hudson Institute, January 2011, <http://www.hudson.org/files/publications/Conceptualizing%20Ideology.pdf>)

It is important to keep such concerns in mind when attempting to leap from the hard to the soft sciences, but it seems too early to give up. In fact, one might imagine there to be reason to believe that the policymaker’s paradox is not quite as debilitating as it might at first appear. Just how different human interactions are from those of molecules or the bundles of software code used in agent-based modeling, for instance, is no doubt a question on which experts will disagree. It would certainly seem to be true, however, that complex adaptive social systems – that is, the subset of complex adaptive systems the unit-level constituents of which happen to be sentient humans – are capable of responding to a type of input that no other complex system seems to be: ideational ones. Inputs at the level of conceptual organizing frameworks, narratives that structure people’s understandings and expectations of the world around them, seem to be important motivators for behavior in social systems and the political world. As Robert Artigiani has noted, complex systems – including societies and idea-systems – have ways to police themselves in order to maintain a degree of stability as they dance at the “Edge of Chaos.” This he conceives as helping give rise to the phenomenon of purpose or telos in a self-organized system, and the need for systemic self-maintenance “exerts top-down constraints on how members perceive and react to the world and ... how the world responds to their actions.” 32 It is in this fashion that “values, ethics, and morals” can be seen as helping “reprogram” behavior of individual humans in a system by mapping desired and undesired social states. Moral symbols stored in individual minds shape – though by no means rigidly determine – how individuals react in society. 33 Idea frameworks, therefore, can be important drivers for situational outcomes within complex adaptive social systems. Just as importantly – especially if one is looking for some way to escape, or at least attenuate, the erosive impact of Complexity upon the very possibility of public policy – it must also be observed that ideational inputs clearly can be deliberately manipulated, for good or ill, by members of the policymaking community. If there are ways to escape or at least attenuate the policymaker’s paradox, one of them may lie along these lines. Perhaps the deliberate shaping of ideas offers us a chance to affect behavior within complex systems in ways that are not utterly unpredictable, at least to the extent that such inputs will tend to exert recognizable patterning influences over time. This insight is, on one level, simply common sense. The units of a social system – human beings – are capable of purposive action motivated not merely by biological needs and raw emotions but by ideas: thought structures that shape their interpretation of the environment and evaluations of internal states, and which structure their responses to environmental conditions. The human units in a complex adaptive social system, in other words, exhibit a remarkable tendency to act upon ideas they have come to possess. These units also seem prone to act in ways that are, if not quite predictable, then at least identifiably related to the substantive content of the ideas they come to possess. One might thus suspect that interventions at the level of idea-systems – that is, policy inputs designed shape conceptual paradigms – offer at least some hope of deliberately achieving transformative effects in a complex adaptive social system.

## 1NR Link Wall

#### Kriner – checks on president make him look weak

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

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

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

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

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

## 1NR PC Key

**Capital’s key to comprehensive legislation**

**Helderman and Nakamura 13**, Rosalind S. Helderman covers Congress and politics for the Washington Post, staff writer for The Washington Post “Senators nearing agreement on broad immigration reform proposal,” 1/25, http://www.washingtonpost.com/politics/senators-nearing-agreement-on-broad-immigration-reform-proposal/2013/01/25/950fb78a-6642-11e2-9e1b-07db1d2ccd5b\_story.html

But obstacles abound. For instance, Rubio has said he thinks immigrants who came to the country illegally should be able to earn a work permit but should be required to seek citizenship through existing avenues after those who have come here legally. Many Democrats and immigration advocates fear Rubio’s approach would result in wait-times stretching for decades, creating a class of permanent legal residents for whom the benefits of citizenship appear unattainable. They have pushed to create new pathways to citizenship specifically available to those who achieve legal residency as part of a reform effort. It is not yet clear whether the Senate group will endorse a mechanism allowing such people to eventually become citizens — something Obama is expected to champion. Schumer said it would be “relatively detailed” but would not “get down into the weeds.” A source close to Rubio said he joined the group in December at the request of other members only after they agreed their effort would line up with his own principles for reform. As a possible 2016 presidential contender widely trusted on the right, Rubio could be key to moving the bipartisan effort. Rubio and other Republicans have said they would prefer to split up a comprehensive immigration proposal into smaller bills that would be voted on separately, but the White House will pursue comprehensive legislation that seeks to reform the process in a single bill. “I doubt if there will be a macro, comprehensive bill,” said Sen. Johnny Isakson (R-Ga.), who supported the 2007 effort. “Anytime a bill’s more than 500 pages, people start getting suspicious. If it’s 2,000 pages, they go berserk.” But Schumer said Friday that a single package will be key for passage. “**We’ll not get it done in pieces**,” he said. “**E**very time you do a piece, everyone says what about my piece, and you get more people opposing it.” Eliseo Medina, secretary treasurer of the Service Employees International Union, which spent millions recruiting Hispanic voters last year, said immigration advocates expect Obama to be out front on the issue. “The president needs to lead and then the Republicans have a choice,” Medina said. “The best way to share the credit is for them to step up and engage and act together with the president.”

## A2 Immigration = Structural Violence

**This impact outweighs and internal link turns all of their aff and their criticisms of the politics disadvantage**

Jacome 12 (Felipe, "Trans-Mexican Migration: a Case of Structural Violence," London School of Economics, March 7, clas.georgetown.edu/files/Trans-Mexican%20Migration%20-%20Felipe%20Jacome.pdf)

This paper has argued that the afflictions experienced by trans-Mexican migrants needs to be understood as a case of structural violence. This approach allowed us to grasp the complexities and the dynamics of the violence encountered in the migrant route such as the different kinds of violence afflicting migrants, its systematic perpetration, and the social structures that hold this systems of oppression in place. Through the life stories of Julio and Marilú, which are representative of the suffering of thousands of trans-Mexican migrants, we observe how the constraining of agency and the physical marginalization of migrants are crucial elements in allowing for the systematic perpetuation of both direct and indirect violence. The case of trans-Mexican migration also sheds light on the role of indirect violence as a perpetuator for direct violence and a guarantor for the impunity of its perpetrators. Moreover, in looking at the patterns of the focalization of violence along the route, we perceive that the dynamics of violence are different from place to place and that they constantly evolve and adapt to changes in the migrant flux and to broader sociopolitical trends. The task of understanding the violence of the migrant route has also contributed in exploring how structures of violence are constructed around trans-migrants as a particular social group. Admittedly, this is an un-orthodox application of the structural violence framework. Unlike most pieces written by “anthropologists of suffering” See Schepper-Hughes 1992; Farmer 2005. which look broadly at groups or people “who belong to the lowest social strata” as the object of inquiry (Kleinman 2000, 226), this paper looks at a group which dwells in a geographically constrained universe within society. Thus, they are trapped in a parallel machinery of oppression from that affecting the poorest and most disenfranchised of Mexican citizens. The implications of the existence of this parallel structure of violence are noteworthy. The complete powerlessness of trans-Mexican migrants derived from their physical marginalization and their inability to access justice opens up the machinery of oppression for anyone that wants to partake. Everyone—from a poor villager, to a power-thirsty policeman, to some of the most-dangerous drug-traffickers in the world— can take their share of profit from the violence suffered by trans-migrants. This way, the structural violence affecting trans-migrants links up as escape valve for other parallel structures of violence.

## UQ Wall

#### Extend Best – Boehner budging, bipartisan talks and budget compromise mean there’s momentum now. Prefer recency in politics – days are years in congress

#### GOP support

Lopez 1/1/14 (Oscar, New Year 2014: 4 REasons Immigration Reform Will Pass in 2014")

1. Republican Support: A fundamental [lack of support](http://www.hanfordsentinel.com/news/local/valadao-decries-lack-of-republican-support-for-immigration-reform/article_81532f94-4d94-11e3-a057-0019bb2963f4.html) from the GOP has always been one of the major obstacles for passing comprehensive reform legislation, and indeed this seemed to be the case this year after the Bill passed by the Senate was [struck down](http://www.npr.org/blogs/itsallpolitics/2013/07/10/200860744/house-gop-we-wont-consider-senate-immigration-bill) by Congress. However, more and more GOP members are realizing the significance of the Latino vote and understanding that passing comprehensive immigration reform is the most significant way of securing support from Latino voters. A July poll from [Latino Decisions](http://www.latinodecisions.com/files/8313/7468/8088/AV_LD_Battleground_CD_Topline_Results.pdf) found that immigration reform was the most important issue facing the Latino community for 60 percent of those surveyed. The poll also found that 70 percent of those questioned were dissatisfied with the job Republicans were doing on the issue. The survey also found the 39 percent would be more likely to support a Republican congressional candidate if immigration reform was passed with Republican leadership. Republican candidates have become aware of the significance of immigration reform for the party. Even in traditionally conservative Republican strongholds like Texas, candidates are turning towards immigration reform. [According](http://www.star-telegram.com/2013/12/31/5453298/republican-gains-at-risk-with.html) to Republican strategist and CNN en Español commentator Juan Hernandez, "it also wouldn’t surprise me if after the primary, the candidates move to the center and support reform. For Republicans to stay in leadership in Texas, we must properly address immigration.”

**Capital’s key to making the pieces comprehensive**

PRI **13**. 1-29, www.pri.org/stories/politics-society/social-justice/comprehensive-immigration-reform-has-run-up-against-hurdles-in-the-past-12819.html

President Barack Obama has spoken a lot about the need for “comprehensive” immigration reform.¶ That means taking on a lot. Securing the border, providing more visas, protecting worker’s right, and figuring out how to deal with an estimated 11 million unauthorized immigrants living in the United States.¶ That’s a lot to sort out. Some argue, too much to take on at once, especially when the parties already agree on small pieces of the immigration debate¶ One of the downsides of this all-or-nothing approach is that a lot of the proposals that have bipartisan support don’t get done.¶ Consider agriculture, and the fruit and vegetable farms in Arizona and California.¶ “The existing workforce is approximately 70 percent illegal, or undocumented, or falsely documented workers,” said Tom Nasif, president of Western Growers, an association that represents fruit, vegetable, and nut farmers in Arizona and California.¶ Nasif arrived at that 70 percent figure from university and think tank studies, along with statistics from W-2 forms that have mismatched social security numbers.¶ Every farmer will insist they check documents before they hire anyone. But it’s well known that phony documents are rampant on American farms. It’s a risky game: Workers with fraudulent papers can get deported. The farmer can lose his workforce — and his harvest.¶ Politicians on both sides of the aisle agree that the system needs fixing. A bill in Congress called AgJobs has enjoyed bipartisan support. It offers a path to citizenship for undocumented agricultural workers and makes it easier for growers to hire temporary immigrant workers.¶ But the bill has died, mostly because politicians couldn’t reach a bigger compromise on the entire immigration problem.¶ Nasif said American agriculture can’t go on like this.¶ “When the legislature wants to act on a sticky issue, such as immigration reform, they can do it very quickly,” said Nasif, pointing to the example of Major League Baseball.¶ When baseball teams exceeded their visa allotments, Congress quickly made things right in 2006.¶ “We have an adequate supply of outstanding baseball players in the United States. And so if anyone is taking jobs Americans would love to have, it’s foreign baseball players,” Nasif said.¶ Nasif makes this point for effect, not because he wants foreign baseball players out of the country. Meanwhile, plenty of other interest groups want their own issues addressed as well. So-called “Dreamers,” young people brought to this country illegally by their parents as children, want a path to citizenship.¶ And then there are high-tech companies that want more visas granted to foreign engineers and scientists.¶ On tech worker and agricultural visas, Democrats and Republicans actually agree on key points. But as political scientist Mark Jones at Houston’s Rice University points out, politics over who gives up what, or who gets what, in a massive immigration debate can kill smaller bills. With the AgJobs bill, the Democrats blocked it.¶ “They don’t want to give away what they know is the one immigration reform that most Republicans want without getting something in return,” Jones said.¶ Of course, Republicans have stopped immigration-related bills that Democrats want too.¶ Frustrating, for many, but avoiding the piecemeal approach to immigration reform makes political sense to Edward Alden, a senior fellow at the Council on Foreign Relations.¶ “It’s a very tough tactical question and it always has been. And the reason has to do with the most difficult issue of all, which is: Do you do some kind of legalization for the 10 to 11 million unauthorized immigrants living in the United States?," he said. "And every time the discussion comes of doing immigration reform piecemeal, the problem is that that’s the issue that gets left to last. And if that’s the issue that left to last, it probably does not happen."¶ That’s why many people on the bottom of the food chain in America — undocumented immigrants — favor going after comprehensive reform during this presidential term.¶ “It’s harder to do, but it’s harder if we keep another four years separating families, thousands of families,” said Alain Cisneros, a community organizer in Houston with the Texas Organizing Project.¶ Cisneros said working immigrants without papers are basically trapped — they can’t return to their home countries to visit family and they’re afraid to speak out against abusive employers. When he came here, he worked as a janitor cleaning buildings in downtown Houston.¶ “Clean up every single night for hours," he said. "I see many, many people just come in and for any reason get fired. And the companies pay less, like in the black market. And (the workers) don’t receive protection for the time working.”¶ Cisneros said with comprehensive immigration reform, everybody’s rights and needs will be on the table.¶ Like many who follow the immigration debate, Jones said if comprehensive reform has a chance of passing, now is the time.¶ “In the end, I think a lot will depend on what type of priority President Obama and the Democratic Party give to comprehensive immigration reform. If he really does make this the healthcare reform of his second term, it’s likely to be passed,” he said.

#### Obama lobbying republicans

Fox News 12/22/13 ("Obama, Top Dems Now Appear to Be Pushing for Comprehensive Immigration Reform")

President Obama and his top Democrats on Capitol Hill appear to have reset their sights on the Republican-controlled House passing comprehensive immigration reform, instead of a step-by-step process, as lawmakers leave Washington for the Christmas holiday break.¶ The president on Friday appeared to urge the House to back the comprehensive, bipartisan immigration bill the Senate passed this summer -- a departure from recent comments that suggested Obama was OK with the lower chamber’s apparent piecemeal plan.¶ “The Senate bill has the main components of comprehensive immigration reform that would boost our economy, give us an opportunity to attract more investment and high-skilled workers who are doing great things in places like Silicon Valley and around the country,” Obama said in the year-end press conference. “So let’s go ahead and get that done.”¶ Though Obama has pressed House Republicans hard in the final months of 2013 on immigration reform, his remarks this week appear in contrast to him saying in November that he had no problem with House leaders carving the immigration bill into, say, five pieces.¶ “As long as all five pieces get done, I don't care what it looks like," he told The Wall Street Journal’s CEO Council. "What we don't want to do is simply carve out one piece of it . . . but leave behind some of the tougher stuff that still needs to get done."

#### top of the docket and will pass

Walsh 12/31/13 (Kenneth T., US News and World report, "Muscues of 2013 Loom over 2014 for Obama")

As he prepares for the political battles of 2014, President Obama is taking a more populist approach and combining it with a more combative attitude toward his adversaries.¶ He is advocating policies that have long been popular on the political left, such as scaling back the economic and social advantages enjoyed by the rich and big corporations, and he has served notice that he will address the problems of income inequality and lack of social mobility in a more aggressive way – all to the consternation of conservatives.¶ Obama is expected to describe his 2014 agenda in his State of the Union address on Jan. 28. But he has already indicated that he will be pushing hard for some long-standing priorities, such as overhauling the immigration laws to give millions of people who entered the United States illegally the chance to gain legal residency or citizenship.