## 1

#### Text: The Executive Branch of the United States should issue an executive order to restrict the war powers authority of the President of the United States to introduce nuclear armed forces into hostilities against a government for inadvertently releasing nuclear material used in an attack against the United States

#### De Facto and De Jure self-binding create accountability from the courts and risk political alienation for going back on promises

Posner and Vermeule 2010 [Eric A. , Professor of Law at the University of Chicago Law School and Editor of The Journal of Legal Studies; Adrian , Harvard Law Professor, The Executive Unbound: After the Madisonian Republic, Oxford Press, p. 138-139//wyo-sc]

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding.59 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is "yes, at least to the same extent that a legislature can." Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.60 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of selfbinding: 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so. 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.61 However, there may be political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it. In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president’s own future choices in ways that impose greater costs on ill-motivated presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.

## 2

#### **Exploring the legality of war leads focus away from whether or not war should be allowed at all– ensures a military mentality**

Cady 10

[Duane L., prof of phil @ hamline university, From Warism to Pacifism: A Moral Continuum, pp. 22-23]

The widespread, unquestioning acceptance of warism and the corresponding reluctance to consider pacifism as a legitimate option make it difficult to propose a genuine consideration of pacifist alternatives. Warism may be held implicitly or explicitly. Held in its implicit form, it does not occur to the warist to challenge the view that war is morally justified; war is taken to be natural and normal. No other way of understanding large-scale human conflict even comes to mind. In this sense warism is like racism, sexism, and homophobia: a prejudicial bias built into conceptions and judgments without the awareness of those assuming it. In its explicit form, warism is openly accepted, articulated, and deliberately chosen as a value judgment on nations in conflict. War may be defended as essential for justice, needed for national security, as “the only thing the enemy understands,” and so on. In both forms warism misguides judgments and institutions by reinforcing the necessity and inevitability of war and precluding alternatives. Whether held implicitly or explicitly, warism obstructs questioning the conceptual framework of the culture. If we assume (without realizing it) that war itself is morally justifiable, our moral considerations of war will be focused on whether a particular war is justified or whether particular acts within a given war are morally acceptable. These are important concerns, but addressing them does not get at the fundamental issue raised by the pacifist: the morality of war as such. In Just and Unjust Wars Michael Walzer explains that “war is always judged twice, first with reference to the reasons states have for fighting, secondly with reference to the means they adopt.”8 The pacifist suggestion is that there is a third judgment of war that must be made prior to the other two: might war, by its very nature, be morally wrong? This issue is considered by Walzer only as an afterthought in an appendix, where it is dismissed as naïve. Perhaps Walzer should not be faulted for this omission, since he defines his task as describing the conventional morality of war and, as has been argued above, conventional morality does take warism for granted. To this extent Walzer is correct. And this is just the point: our warist conceptual frameworks— our warist normative lenses— blind us to the root question. The concern of pacifists is to expose the hidden warist bias and not merely describe cultural values. Pacifists seek to examine cultural values and recommend what they ought to be. This is why the pacifist insists on judging war in itself, a judgment more fundamental than the more limited assessments of the morality of a given war or the morality of specific acts within a particular war.

#### Awareness of militarism key – our internalized acceptance of war guarantees endless violence that ensures planetary destruction and structural violence

Lawrence 9

[Grant, “Military Industrial "War" Consciousness Responsible for Economic and Social Collapse,” OEN—OpEdNews, March 27]

As a presidential candidate, [Barack Obama](http://obama.senate.gov/) called [Afghanistan](http://en.wikipedia.org/wiki/War_in_Afghanistan_%282001%E2%80%93present%29) ''the war we must win.'' He was absolutely right. Now it is time to win it... Senators [John McCain](http://www.imdb.com/name/nm0564587/) and Joseph Lieberman [calling](http://www.miamiherald.com/opinion/inbox/story/960269.html) for an expanded war in Afghanistan "How true it is that war can destroy everything of value." Pope Benedict XVI [decrying](http://www.google.com/hostednews/afp/article/ALeqM5iuue8kE-e0lYZVFpt4RlbX4M_IEw) the suffering of Africa Where troops have been quartered, brambles and thorns spring up. In the track of great armies there must follow lean years. Lao Tzu on [War](http://www.sacred-texts.com/tao/salt/salt09.htm) As Americans we are raised on the utility of war to conquer every problem. We have a drug problem so we wage war on it. We have a cancer problem so we wage war on it. We have a crime problem so we wage war on it. Poverty cannot be dealt with but it has to be warred against. Terror is another problem that must be warred against. In the [United States](http://maps.google.com/maps?ll=38.8833333333,-77.0166666667&spn=10.0,10.0&q=38.8833333333,-77.0166666667%20%28United%20States%29&t=h), solutions can only be found in terms of wars. In a society that functions to support a massive military industrial war machine and empire, it is important that the terms promoted support the conditioning of its citizens. We are conditioned to see war as the solution to major social ills and major political disagreements. That way when we see so much of our resources devoted to war then we don't question the utility of it. The term "war" excites mind and body and creates a fear mentality that looks at life in terms of attack. In war, there has to be an attack and a must win attitude to carry us to victory. But is this war mentality working for us? In an age when nearly half of our tax money goes to support the war machine and a good deal of the rest is going to support the elite that control the war machine, we can see that our present war mentality is not working. Our values have been so perverted by our war mentality that we see sex as sinful but killing as entertainment. Our society is dripping violence. The violence is fed by poverty, social injustice, the break down of family and community that also arises from economic injustice, and by the managed media. The cycle of violence that exists in our society exists because it is useful to those that control society. It is easier to sell the war machine when your population is conditioned to violence. Our military industrial consciousness may not be working for nearly all of the life of the planet but it does work for the very few that are the master manipulators of our values and our consciousness. Rupert Murdoch, the media monopoly man that runs the "Fair and Balanced" [Fox Network](http://www.fox.com/), Sky Television, and [News Corp](http://www.newscorp.com/) just to name a few, [had](http://en.wikipedia.org/wiki/Rupert_Murdoch) all of his 175 newspapers editorialize in favor of the [Iraq war](http://en.wikipedia.org/wiki/Iraq_War). Murdoch snickers when [he says](http://www.newscorpse.com/ncWP/?p=341) "we tried" to manipulate public opinion." The Iraq war was a good war to Murdoch [because,](http://www.americanprogress.org/issues/2004/07/b122948.html) "The death toll, certainly of Americans there, by the terms of any previous war are quite minute." But, to the media manipulators, the phony politicos, the military industrial elite, a million dead Iraqis are not to be considered. War is big business and it is supported by a war consciousness that allows it to prosper. That is why more war in Afghanistan, the war on Palestinians, and the other wars around the planet in which the [military industrial complex](http://en.wikipedia.org/wiki/Military-industrial_complex) builds massive wealth and power will continue. The military industrial war mentality is not only killing, maiming, and destroying but it is also contributing to the present social and economic collapse. As mentioned previously, the massive wealth transfer that occurs when the American people give half of their money to support death and destruction is money that could have gone to support a just society. It is no accident that after years of war and preparing for war, our society is crumbling. Science and technological resources along with economic and natural resources have been squandered in the never-ending pursuit of enemies. All of that energy could have been utilized for the good of humanity, ¶ instead of maintaining the power positions of the very few super wealthy. So the suffering that we give is ultimately the suffering we get. Humans want to believe that they can escape the consciousness that they live in. But that consciousness determines what we experience and how we live. As long as we choose to live in "War" in our minds then we will continue to get "War" in our lives. When humanity chooses to wage peace on the world then there will be a flowering of life. But until then we will be forced to live the life our present war consciousness is creating.

#### The alternative is to reject the 1AC in favor of a pacifistic solution to problems.

#### The only way to solve is by adopting a pacifistic mindset—the shift away from militarism is key

Demenchonok 9

[Worked as a senior researcher at the Institute of Philosophy of the Russian Academy of Sciences, Moscow, and is currently a Professor of Foreign Languages and Philosophy at Fort Valley State University in Georgia, listed in 2000 Outstanding Scholars of the 21st Century and is a recipient of the Twenty-First Century Award for Achievement in Philosophy from the International Biographical Centre --Edward, Philosophy After Hiroshima: From Power Politics to the Ethics of Nonviolence and Co-Responsibility, February, American Journal of Economics and Sociology, Volume 68, Issue 1, Pages 9-49]

Where, then, does the future lie? Unilateralism, hegemonic political anarchy, mass immiseration, ecocide, and global violence—a Hobbesian bellum omnium contra omnes? Or international cooperation, social justice, and genuine collective—political and human—security? Down which path lies cowering, fragile hope?¶ Humanistic thinkers approach these problems from the perspective of their concern about the situation of individuals and the long-range interests of humanity. They examine in depth the root causes of these problems, warning about the consequences of escalation and, at the same time, indicating the prospect of their possible solutions through nonviolent means and a growing global consciousness. Today's world is in desperate need of realistic alternatives to violent conflict. Nonviolent action—properly planned and executed—is a powerful and effective force for political and social change. The ideas of peace and nonviolence, as expressed by Immanuel Kant, Leo Tolstoy, Mahatma Gandhi, Martin Luther King, and many contemporary philosophers—supported by peace and civil rights movements—counter the paralyzing fear with hope and offer a realistic alternative: a rational approach to the solutions to the problems, encouraging people to be the masters of their own destiny.¶ Fortunately, the memory of the tragedies of war and the growing realization of this new existential situation of humanity has awakened the global conscience and generated protest movements demanding necessary changes. During the four decades of the Cold War, which polarized the world, power politics was challenged by the common perspective of humanity, of the supreme value of human life, and the ethics of peace. Thus, in Europe, which suffered from both world wars and totalitarianism, spiritual-intellectual efforts to find solutions to these problems generated ideas of "new thinking," aiming for peace, freedom, and democracy. Today, philosophers, intellectuals, progressive political leaders, and peace-movement activists continue to promote a peaceful alternative. In the asymmetry of power, despite being frustrated by war-prone politics, peaceful projects emerge each time, like a phoenix arising from the ashes, as the only viable alternative for the survival of humanity. The new thinking in philosophy affirms the supreme value of human and nonhuman life, freedom, justice, and the future of human civilization. It asserts that the transcendental task of the survival of humankind and the rest of the biotic community must have an unquestionable primacy in comparison to particular interests of nations, social classes, and so forth. In applying these principles to the nuclear age, it considers a just and lasting peace as a categorical imperative for the survival of humankind, and thus proposes a world free from nuclear weapons and from war and organized violence.44 In tune with the Charter of the United Nations, it calls for the democratization of international relations and for dialogue and cooperation in order to secure peace, human rights, and solutions to global problems. It further calls for the transition toward a cosmopolitan order.¶ The escalating global problems are symptoms of what might be termed a contemporary civilizational disease, developed over the course of centuries, in which techno-economic progress is achieved at the cost of depersonalization and dehumanization. Therefore, the possibility of an effective "treatment" today depends on whether or not humankind will be able to regain its humanity, thus establishing new relations of the individual with himself or herself, with others, and with nature. Hence the need for a new philosophy of humanity and an ethics of nonviolence and planetary co-responsibility to help us make sense not only of our past historical events, but also of the extent, quality, and urgency of our present choices.

## 3

#### Nuclear deal with Iran coming. Obama is holding off new sanctions from congress that would torpedo the deal – its all about politics.

CBS NEWS 11 – 13 – 13 Obama administration seeks time from Congress for Iran diplomacy, <http://www.cbsnews.com/8301-250_162-57612230/obama-administration-seeks-time-from-congress-for-iran-diplomacy/>

The Obama administration is pleading with Congress to allow more time for diplomacy with Iran, but faces sharp resistance from Republican and Democratic lawmakers determined to further squeeze the Iranian economy and wary of yielding any ground in nuclear negotiations. Back from a week of nuclear talks in Geneva and tense consultations with nervous Middle East allies, Secretary of State John Kerry arrived Wednesday on Capitol Hill to join Vice President Joe Biden in presenting the administration's case to their ex-colleagues in the Senate on Wednesday and ask them to hold off on a package of new, tougher Iran sanctions under consideration. Kerry told reporters as he arrived for the briefing that new sanctions "could be viewed as bad faith by the people we are negotiating with. It could destroy the ability to be able to get an agreement. And it could actually wind up setting us back in dialogue that has taken 30 years to be able to achieve." Still, Kerry added, "nothing is agreed until everything is agreed here." "The fact is, you know, we didn't put sanctions in place for the sake of sanctions; we did it to be able to negotiate, and to negotiate a final agreement," he said. "What we have negotiated, we believe, is a very strong protocol which will restrict Iran's ability to be able to grow its program." A House committee, meanwhile, held a hearing to vent its frustration with Kerry and an Obama administration they believe should adopt a far tougher line with Tehran. "The Iranian regime hasn't paused its nuclear program," said Rep. Ed Royce, a Republican and the House Foreign Affairs Committee chairman. "Why should we pause our sanctions efforts as the administration is pressuring Congress to do?" President Obama's disagreement with many if not most members of Congress concerns tactics, not substance: Each wants to stop Iran from reaching the capacity to produce nuclear weapons, and even hard-line hawks say they'd prefer diplomacy to U.S. military intervention. Almost everyone recognizes that Washington and its partners will have to offer some relief from the punitive measures that have crippled Iran's economy in exchange for concrete Iranian actions to roll back and dismantle elements of the nuclear program. But the road map for achieving what has been a central U.S. foreign policy goal for more than a decade is hotly politicized, with fierce debate over the parameters and sequencing of any deal. The Obama administration has offered Iran an initial opportunity to recoup some of the billions of dollars in frozen overseas assets if it begins the process, while insisting that the most severe restrictions would remain in place until Tehran conclusively eliminates fears that it is trying to assemble an atomic arsenal. Some legislators worry Obama is moving too quickly. Iran maintains that its uranium enrichment is for energy production and medical research, not for any covert military objective. But until the recent election of President Hassan Rouhani, it refused to compromise in talks with world powers. Responding to Rouhani's promise of flexibility, Obama has staked significant international credibility on securing a diplomatic agreement. His telephone chat with Rouhani in September was the first direct conversation between U.S. and Iranian leaders in more than three decades. The unprecedented outreach has angered U.S. allies such as Israel and Saudi Arabia. And lawmakers are deeply skeptical. "This is a decision to support diplomacy and a possible peaceful resolution to this issue," White House press secretary Jay Carney told reporters Tuesday. "The American people justifiably and understandably prefer a peaceful solution that prevents Iran from obtaining a nuclear weapon, and this agreement, if it's achieved, has the potential to do that. The American people do not want a march to war." The administration sees itself on the cusp of a historic breakthrough, so much so that Obama hastily dispatched Kerry to Switzerland last week for the highest-level nuclear negotiations to date. The talks broke down as Iran demanded formal recognition of what it says is its right to enrich uranium for peaceful purposes, and as France sought stricter limits on Iran's ability to make nuclear fuel and on its heavy water reactor to produce plutonium, according to diplomats. Still, officials said significant progress was made. The U.S., Britain, China, France, Germany, Iran and Russia will send top nuclear negotiators back to Geneva next week to see whether they can push the ball forward. And on Wednesday, Obama spoke by telephone with French President Francois Hollande. The two countries "are in full agreement" on Iran, the White House said in a statement. However, the administration is worried Congress could make an agreement more difficult. Kerry and top U.S. nuclear negotiator Wendy Sherman hope to persuade members of the Senate Banking Committee in their meeting Wednesday to hold off on additional punitive measures on the Iranian economy. After, Biden and the Treasury Department's sanctions chief, David Cohen, will join them for a separate briefing with Senate Democratic leaders.

**An adverse Court ruling will cause Obama defiance – triggers a Constitutional showdown**

**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. 207-210)

The **9/11** attack **provided a reminder of just how extensive the president’s power is.** The executive claimed the constitutional authority to, in effect, use emergency powers. Because Congress provided redundant statutory authority, and **the Supreme Court has steadfastly refused to address the ultimate merits of the executive’s constitutional claims**, these claims were never tested in a legal or public forum. But **it is worth trying to imagine what would have happened if Congress had refused to pass the Authorization for Use of Military Force and the Supreme Court had ordered the executive to release detainees** in a contested case. We think that **the executive, backed up as it was by popular opinion, would have refused to obey**. And, indeed, **for just that reason, Congress would never have refused** its imprimatur **and the Supreme Court would never have stood in the executive’s way**. **The major check on the executive’s power to declare an emergency and to use emergency powers is—political**.

#### Obama PC blocks sanctions that prevent Iranian prolif.

Walt 11/8

[Stephen Walt, Robert and Renée Belfer professor of international affairs at Harvard University's Kennedy School of Government, “Let’s Make a Deal…” Foreign Policy, November 8, 2013, [http://walt.foreignpolicy.com/posts/2013/11/08/lets\_make\_a\_deal //](http://walt.foreignpolicy.com/posts/2013/11/08/lets_make_a_deal%20//) wyo-ch]

Secretary of State John Kerry is now in Geneva, no doubt invigorated from his diplomatic triumph at the Israel-Palestine "peace" talks (not). He wouldn't be headed there if there wasn't some tangible progress to report (and take some credit for). The reported deal is straightforward: Iran will halt its nuclear program for six months in exchange for the U.S. lifting a few minor sanctions. This is a small first step. Its main purpose is building confidence, and buying time for the negotiators to work on a comprehensive permanent deal. Not surprisingly, opponents of an agreement are already working to derail it, by trashing any short-term deal in Geneva or by sponsoring new sanctions legislation designed to poison the atmosphere, discredit the diplomatic approach, and ultimately scuttle any deal. The battle lines on this issue are now easy to identify. On one side are Obama and Kerry, the U.S. negotiating team, most of the arms control community, and much of America's national security apparatus, including seventy-nine well-connected former officials who endorsed the administration's efforts yesterday. This broad group understands that Iran is not going to accept zero enrichment and that the United States cannot physically prevent Iran from acquiring a nuclear weapon if it really, really, wants to get one. Even if the US used force to damage Iran's nuclear infrastructure, they could rebuild it and disperse it and we would have to keep attacking them forever. This group believes -- correctly, in my view -- that Iran is not currently trying to build a nuclear weapon and that a deal can be struck that makes it hard for Iran to sprint toward a bomb if it ever changes its mind. This group recognizes that another Mideast war would be a disaster for us and for others and would merely increase Iran's desire to acquire an effective deterrent. Finally, this group understands that the deal is likely to get worse the longer we delay. On the other side are Israeli Prime Minister Benjamin Netanyahu (who has already denounced the interim deal), Saudi Arabia, the hardline elements within the Israel lobby, extremist journalists like Jennifer Rubin, and various Congresspersons who are overly beholden to some or all of the above. Despite a dearth of genuine evidence, they believe Iran is hell-bent on getting a bomb and that this development would have far-reaching negative effects on world politics. They think Iran is only negotiating now because we tightened sanctions, and that tightening the screws some more will get Tehran to say "uncle" and give us everything we want. Perhaps they haven't noticed that the United States could have gotten a better deal in 2006 -- before the latest round of sanctions was imposed -- but the Bush administration foolishly spurned Iran's offer. The opponents have a lot of energy and fervor on their side, but logic and evidence doesn't seem to be their strong suit. Which side will win? I don't know, but I do think this is a winnable fight for Obama if he tries. If the negotiators in Geneva can reach an agreement that 1) avoids war, 2) reduces Iran's incentive for a bomb, 3) moves them further from the nuclear threshold, and 4) strengthens the already-tough inspections regime, and presents it to the American people as a done deal, I think the public will support it strongly. The administration will have no trouble trotting out lots of former officials and bemedaled generals to endorse it, and to explain to skeptics or the undecided why the deal is in our interest. The rest of the P5+1 will be ecstatic (except maybe Russia and China, because they benefit from the United States and Iran being at odds), and they will be making supportive noises as well. Hardline opponents won't be able to attack the deal without engaging in transparently obvious special pleading, partly on behalf of a country that already has nuclear weapons and hasn't been all that cooperative lately. Under these circumstances, some of those diehard opponents in Congress might think twice about killing the deal, because their fingerprints would be all over the murder weapon. Indeed, that may be why they are now proposing new sanctions: better to kill the diplomatic process before it produces results than to try to discredit a reasonable deal later on.

#### Global nuclear war

Edelman, distinguished fellow – Center for Strategic and Budgetary Assessments, ‘11

(Eric S, “The Dangers of a Nuclear Iran,” *Foreign Affairs*, January/February)

The reports of the Congressional Commission on the Strategic Posture of the United States and the Commission on the Prevention Of Weapons of Mass Destruction Proliferation and Terrorism, as well as other analyses, have highlighted the risk that a nuclear-armed Iran could trigger additional nuclear proliferation in the Middle East, even if Israel does not declare its own nuclear arsenal. Notably, Algeria, Bahrain, Egypt, Jordan, Saudi Arabia,Turkey, and the United Arab Emirates— all signatories to the Nuclear Nonproliferation Treaty (npt)—have recently announced or initiated nuclear energy programs. Although some of these states have legitimate economic rationales for pursuing nuclear power and although the low-enriched fuel used for power reactors cannot be used in nuclear weapons, these moves have been widely interpreted as hedges against a nuclear-armed Iran. The npt does not bar states from developing the sensitive technology required to produce nuclear fuel on their own, that is, the capability to enrich natural uranium and separate plutonium from spent nuclear fuel. Yet enrichment and reprocessing can also be used to accumulate weapons-grade enriched uranium and plutonium—the very loophole that Iran has apparently exploited in pursuing a nuclear weapons capability. Developing nuclear weapons remains a slow, expensive, and di⁄cult process, even for states with considerable economic resources, and especially if other nations try to constrain aspiring nuclear states’ access to critical materials and technology. Without external support, it is unlikely that any of these aspirants could develop a nuclear weapons capability within a decade.

There is, however, at least one state that could receive significant outside support: Saudi Arabia. And if it did, proliferation could accelerate throughout the region. Iran and Saudi Arabia have long been geopolitical and ideological rivals. Riyadh would face tremendous pressure to respond in some form to a nuclear-armed Iran, not only to deter Iranian coercion and subversion but also to preserve its sense that Saudi Arabia is the leading nation in the Muslim world. The Saudi government is already pursuing a nuclear power capability, which could be the first step along a slow road to nuclear weapons development. And concerns persist that it might be able to accelerate its progress by exploiting its close ties to Pakistan. During the 1980s, in response to the use of missiles during the Iran-Iraq War and their growing proliferation throughout the region, Saudi Arabia acquired several dozen css-2 intermediate-range ballistic missiles from China. The Pakistani government reportedly brokered the deal, and it may have also oªered to sell Saudi Arabia nuclear warheads for the css-2s, which are not accurate enough to deliver conventional warheads eªectively. There are still rumors that Riyadh and Islamabad have had discussions involving nuclear weapons, nuclear technology, or security guarantees. This “Islamabad option” could develop in one of several diªerent ways. Pakistan could sell operational nuclear weapons and delivery systems to Saudi Arabia, or it could provide the Saudis with the infrastructure, material, and technical support they need to produce nuclear weapons themselves within a matter of years, as opposed to a decade or longer. Not only has Pakistan provided such support in the past, but it is currently building two more heavy-water reactors for plutonium production and a second chemical reprocessing facility to extract plutonium from spent nuclear fuel. In other words, it might accumulate more fissile material than it needs to maintain even a substantially expanded arsenal of its own. Alternatively, Pakistan might oªer an extended deterrent guarantee to Saudi Arabia and deploy nuclear weapons, delivery systems, and troops on Saudi territory, a practice that the United States has employed for decades with its allies. This arrangement could be particularly appealing to both Saudi Arabia and Pakistan. It would allow the Saudis to argue that they are not violating the npt since they would not be acquiring their own nuclear weapons. And an extended deterrent from Pakistan might be preferable to one from the United States because stationing foreign Muslim forces on Saudi territory would not trigger the kind of popular opposition that would accompany the deployment of U.S. troops. Pakistan, for its part, would gain financial benefits and international clout by deploying nuclear weapons in Saudi Arabia, as well as strategic depth against its chief rival, India. The Islamabad option raises a host of difficult issues, perhaps the most worrisome being how India would respond. Would it target Pakistan’s weapons in Saudi Arabia with its own conventional or nuclear weapons? How would this expanded nuclear competition influence stability during a crisis in either the Middle East or South Asia? Regardless of India’s reaction, any decision by the Saudi government to seek out nuclear weapons, by whatever means, would be highly destabilizing. It would increase the incentives of other nations in the Middle East to pursue nuclear weapons of their own. And it could increase their ability to do so by eroding the remaining barriers to nuclear proliferation: each additional state that acquires nuclear weapons weakens the nonproliferation regime, even if its particular method of acquisition only circumvents, rather than violates, the NPT.

n-player competition

Were Saudi Arabia to acquire nuclear weapons, the Middle East would count three nuclear-armed states, and perhaps more before long. It is unclear how such an n-player competition would unfold because most analyses of nuclear deterrence are based on the U.S.- Soviet rivalry during the Cold War. It seems likely, however, that the interaction among three or more nuclear-armed powers would be more prone to miscalculation and escalation than a bipolar competition. During the Cold War, the United States and the Soviet Union only needed to concern themselves with an attack from the other. Multipolar systems are generally considered to be less stable than bipolar systems because coalitions can shift quickly, upsetting the balance of power and creating incentives for an attack. More important, emerging nuclear powers in the Middle East might not take the costly steps necessary to preserve regional stability and avoid a nuclear exchange. For nuclear-armed states, the bedrock of deterrence is the knowledge that each side has a secure second-strike capability, so that no state can launch an attack with the expectation that it can wipe out its opponents’ forces and avoid a devastating retaliation. However, emerging nuclear powers might not invest in expensive but survivable capabilities such as hardened missile silos or submarinebased nuclear forces. Given this likely vulnerability, the close proximity of states in the Middle East, and the very short flight times of ballistic missiles in the region, any new nuclear powers might be compelled to “launch on warning” of an attack or even, during a crisis, to use their nuclear forces preemptively. Their governments might also delegate launch authority to lower-level commanders, heightening the possibility of miscalculation and escalation. Moreover, if early warning systems were not integrated into robust command-and-control systems, the risk of an unauthorized or accidental launch would increase further still. And without sophisticated early warning systems, a nuclear attack might be unattributable or attributed incorrectly. That is, assuming that the leadership of a targeted state survived a first strike, it might not be able to accurately determine which nation was responsible. And this uncertainty, when combined with the pressure to respond quickly,would create a significant risk that it would retaliate against the wrong party, potentially triggering a regional nuclear war.

## 4

#### Court will uphold key tenets of the Clean Air Act now in Homer – but its controversial and judicial capital is key

Hurley and Volcovici 13
[U.S. justices to hear EPA appeal over air pollution rule By Lawrence Hurley and Valerie Volcovici WASHINGTON | Mon Jun 24, 2013 < http://www.reuters.com/article/2013/06/24/us-usa-court-pollution-idUSBRE95N0OX20130624>//wyo-hdm]

In a win for the U.S. Environmental Protection Agency, the Supreme Court on Monday agreed to consider the legality of a controversial Obama administration effort to regulate air pollution that crosses state lines.¶ At the request of the administration, the American Lung Association and environmental groups, the justices will revisit an appeals court ruling that invalidated the Cross-State Air Pollution rule, which the EPA implemented to enforce a provision of the Clean Air Act.¶ Oral arguments and a decision are due in the court's next term, which starts in October and ends in June 2014.¶ The rule sets limits on nitrogen oxides and sulfur dioxide from coal-fired power plants in 28 upwind states in the eastern part of the country. Various power companies and 16 states successfully challenged the law in the U.S. Court of Appeals for the District of Columbia Circuit.¶ The appeals court ruled 2-1 in August that the EPA had exceeded its authority under the Clean Air Act by requiring states to curb air pollution to a greater extent than the statute requires.¶ Share prices for U.S. coal companies, which rose in August when the D.C. Circuit Court ruled, fell on Monday, in some cases reaching multi-year lows.¶ The appeals court also said the EPA acted prematurely by failing to tell states what emissions reductions they had to achieve to meet their obligations under the statute before going ahead with its own federal plan.¶ The appeals court ordered that a rule issued during President George W. Bush's administration, which the appeals court ruled in 2008 was insufficient, should remain in effect until the EPA comes up with a revised regulation.¶ Monday's decision was a boost for the EPA, whose rules tend to face automatic legal challenges in the D.C. Circuit Court.¶ The high court tends to avoid weighing in on highly technical cases involving the federal Clean Air Act, said John Walke, senior attorney and clean air director for Natural Resources Defense Council.¶ "The decision vaults the Cross-State Air Pollution Rule into the top five Clean Air Act cases heard by the Supreme Court," Walke said.¶ DEFERENCE TO AGENCY RULES¶ A central issue in the case will be the lower court's deference to agency rules and the agency's scientific expertise, legal experts said.¶ "The Supreme Court has said time and again that agencies and Congress that have chosen to implement such complex rules should be granted deference by courts," said Sean Donahue, a lawyer who represents environmental groups in the case.¶ Industry groups expect the high court to uphold or even extend the lower court's decision to vacate the rule.¶ "Under the guise of the Clean Air Act, the EPA has issued a string of regulations that have pushed the envelope of legal authority. National guidance could be helpful," said Scott Segal, director of the Electric Reliability Coordinating Council, a coalition of energy companies.¶ If the court sides with the EPA, however, it could aid in making other future complex agency rules, such as greenhouse gas regulations for power plants which the White House is expected to push forward in a speech by Obama on Tuesday.¶ "That Supreme Court decision will reinforce its message to the D.C. Circuit of the legal requirement that it respect and defer to EPA's scientific expertise in Clean Air Act standards-setting, which likewise comes into play with the carbon pollution standards," said Howard Learner, executive director of the Environmental Law & Policy Center.¶ On the New York Stock Exchange, Peabody Energy Corp, the largest U.S. coal producer by tonnage, closed down 7.2 percent and Arch Coal Inc, the No. 2 producer, ended the day down 6.6 percent.¶ The two consolidated cases the court agreed to hear are American Lung Association v. EME Homer City Generation, U.S. Supreme Court, No. 12-1183; and EPA v. EME Homer City Generation, U.S. Supreme Court, No. 1182.

#### Curtailing controversial executive action sparks backlash – empirics.

Bazzle, J.D., Georgetown University Law Center, ‘12

[Timothy, “SHUTTING THE COURTHOUSE DOORS: INVOKING THE STATE SECRETS PRIVILEGE TO THWART JUDICIAL REVIEW IN THE AGE OF TERROR”, Civil Rights Law Journal, Vol. 23, No. 1, 2012, RSR]

The war on terror has led to an increased use of the state secrets privilege by the Executive Branch—to dismiss legal challenges to widely publicized and controversial government actions—ostensibly aimed at protecting national security from terrorist threats.1 Faced with complaints that allege indiscriminate and warrantless surveillance,2 tortious detention, and torture that flouts domestic and international law,3 courts have had to reconcile impassioned appeals for private justice with the government’s unyielding insistence on protecting national security. Courts, almost unanimously, have cast their lot with national security, granting considerable deference to government assertions of the state secrets principle. This deference to state secrets shows no signs of abating; indeed, the growing trend is for courts to dismiss these legal challenges pre-discovery,4 even before the private litigants have had the chance to present actual, non-secret evidence to meet their burden of proof. Although many looked optimistically at President Obama’s inauguration as a chance to break decisively from the Bush Administration’s aggressive application of the state secrets privilege,5 the Obama Administration has largely disappointed on the state-secrets front, asserting the privilege with just as much fervor—if not as much regularity6 —as its predecessor.7 Judicial deference to such claims of state secrecy, whether the claims merit privileged treatment, exacts a decisive toll on claimants, permanently shutting the courthouse doors to their claims and interfering with public and private rights.8 Moreover, courts’ adoption of a sweeping view of the state secrets privilege has raised the specter of the government disingenuously invoking state secrets to conceal government misbehavior under the guise of national security.9 By granting greater deference to assertions of the state secrets privilege, courts share responsibility for eroding judicial review as a meaningful check on Executive Branch excesses. This Article argues for a return to a narrowly tailored state secrets privilege—one that ensures that individuals who allege a credible claim of government wrongdoing retain their due process rights.

#### Homer City decision key to cooperative federalism

Hartman ‘12

(Barry M. Hartman, Ankur K. Tohan, and Christine Jochim Boote “D.C. Circuit Calls Strike Two on EPA’s

Cross-State Air Pollution Rule” August 24, 2012 http://www.klgates.com/files/Publication/aa0dbc12-0116-4e22-a5bf-4006d39f371c/Presentation/PublicationAttachment/2035d837-df7b-4953-b656-f828be89a4c4/Environmental\_Alert\_08242012.pdf, TSW)

The Homer City Dissent ¶ The dissent, however, argues that the Court did not have jurisdiction to decide the issues before it ¶ because the petitioners in this case did not timely challenge the Transport Rule or challenge it with ¶ reasonable specificity. Judge Rogers criticizes the majority opinion because it ¶ is an unsettling of the consistent precedent of this court strictly enforcing ¶ jurisdictional limits, a redesign of Congress’s vision of cooperative ¶ federalism between the States and the federal government in implementing ¶ the [CAA] based on the court’s own notions of absurdity and logic that are ¶ unsupported by a factual record, and a trampling on this court’s precedent ¶ on which the [EPA] was entitled to rely in developing the Transport Rule ¶ rather than be blindsided by arguments raised for the first time in this ¶ court.26¶ Among other concerns, Judge Rogers argues that the petitioners in this case failed to challenge EPA’s ¶ two-step approach to determining a State’s air pollution reduction obligation during the administrative ¶ rulemaking process. For example, Judge Rogers objects to the majority’s reliance on a comment in ¶ another rulemaking first cited by petitioners during rebuttal oral arguments to establish jurisdiction to ¶ challenge EPA’s statutory authority.27¶ In addition, Judge Rogers asserts that the States were required to submit their “good neighbor” SIPs, ¶ regardless of whether EPA had determined the State’s air pollution reduction obligations.28¶ Consequently, the June 2010 EPA Federal Register notice, which determined that 29 States had failed ¶ to submit adequate “good neighbor” SIPs, started the two-year deadline for EPA to promulgate FIPs ¶ for those States.29 If any of those States objected to EPA’s SIP determination or the timing for when ¶ States must submit a SIP or SIP-revision, Judge Rogers argues, then those States should have raised ¶ their objections during that rulemaking process.30 The majority “fundamentally” disagreed with Judge ¶ Roger’s reading of the record and the Court’s jurisdiction.31 Implications ¶ Given the size and scope of this opinion, and the significant dissent, the air has hardly cleared ¶ regarding whether EPA will return to the drawing board and redraft its interstate air emission rules ¶ based on the Court’s interpretation of the CAA’s “good neighbor” provisions or seek rehearing or ¶ rehearing en banc. Some considerations that may impact whether rehearing is sought and/or granted ¶ include: ¶ Five of the Circuit’s judges participated in at least one of these three cases, with Judge Rogers ¶ participating in all three. ¶ Circuit Judge Rogers’s 44-page dissent strongly disagreed with the majority’s interpretation of ¶ Michigan and North Carolina. She was on both of the panels that issued per curiam opinion in ¶ both cases. ¶ One of the key issues on which there may be some dispute within the Circuit is whether or not ¶ certain key issues were adequately raised in the record for the purpose of determining whether they ¶ were properly before the Court. The impacts of this ruling could well extend beyond CAA cases. ¶ EPA and the States will have to address the impacts of the Homer City decision on other air rules. ¶ For example, regional haze reduction rules and trading schemes for power plants – i.e., the best ¶ available retrofit technology (BART) requirements for power plants – were modified and tied to ¶ the Transport Rule in the “Better than BART” rule. The “Better than BART” rule allows States to ¶ rely on the Transport Rule to satisfy BART requirements for power plants. ¶ Finally, the Homer City decision, which focuses on the important role of “cooperative federalism” ¶ and the shared responsibilities of the federal and state governments, could well have some impact ¶ on how EPA exercises its authority under other similarly structured statutes, such as the Clean ¶ Water Act and the Resource Conservation and Recovery Act. These implications could also ¶ influence whether rehearing is sought. ¶ Conclusion ¶ There is little doubt that Homer City will have an influence on how EPA, and possibly Congress, ¶ addresses the issue of interstate air pollution. Stay tuned for Part II, which will evaluate how various ¶ aspects of the decision may influence future challenges to agency rulemakings and similar ¶ administrative proceedings.

#### Solves warming

Osofsky 11

(Hari M., Associate Professor, University of Minnesota Law School; Associate Director of Law, Geography & Environment, Consortium on Law and Values in Health, Environment & the Life Sciences and Affiliated Faculty, Geography and Conservation Biology, University of Minnesota; 2011, “Diagonal Federalism and Climate Change Implications for the Obama Administration,” 62 Ala. L. Rev. 237 - Kurr)

Cooperative federalism's greatest advantage as a basis for climate change regulation is its ability to create coordinated multiscalar action in which each actor provides its unique contribution. A number of scholars and policymakers have taken significant steps to sketch a framework for cooperative action. They are exploring the nuances of how collaboration might work among specific entities in particular policy areas. This analysis makes clear that cooperative approaches, if crafted well, incentivize action while making room for innovation. For instance, a Center for Progressive Reform study by William Andreen and others presents how localities, [\*286] states, and the federal government can work together on this problem. n222 Alice Kaswan has also published an interesting cooperative federalism proposal bringing together these three levels of government, and Holly Doremus and W. Michael Hanemann have argued that the Clean Air Act provides a cooperative federalism model that could be used in crafting effective climate change legislation. n223 Some dynamic environmental approaches combine cooperative federalism with other theories. For example, Brad Karkkainen's analysis of information-forcing environmental regulation brings together cooperative federalism and new governance approaches to consider how "properly structured, penalty default rules might be used to induce meaningful participation in locally devolved, place-based, collaborative, public-private hybrid, new governance institutions, aimed at integrated, adaptive, experimentalist management of watersheds and other institutions." n224 This particular combination of cooperative federalism and new governance approaches allows for innovative structures that encompass the multidimensionality of these problems.

#### Warming threatens the existence of humanity: destroys biodiversity in multiple environments, increases the probability of violent natural disasters, and kills agriculture production

Srivastava 11

(Ashnu Srivastava is a frequent writer for the Journal of International Environmental Application. “Impact of Global Warming on Flora and Fauna” April-June 2011. Proquest//wyoccd)

Pollution is the real threat to mankind, as we emit contaminants into the environment. Since it being the main cause of instability and disorder of ecosystem, it has to be eradicated or at least controlled. The nature and all its components are interrelated and man relies on these components for its existence. The action of one affects the others and human evasion has caused the extinction of many species. The nature exists with us, both go side by side and both are inevitable. We have a responsibility to take care of the nature in an appropriate manner. One of the main threats which the Earth faces is global warming. It strips Mother Earth of her aura of invincibility. As the effect of global warming the sea level arises, and the catastrophic floods which follows, displace millions of people living in the coastal belt all over the world from their home land. The rise in global sea level affects the ocean circulation. The plains are being stripped of its moisture rich soil and we are on the verge of a fodder crisis. Many of the native temperature resistant plant species are being wiped out of the earth. Vector borne diseases like dengue malaria are expected to increase sharply across the globe as the temperature variations make it more conducive for mosquitoes to thrive. Diarrhoeal disease which is associated with drought and flood is also expected to register a sudden increase. The effect which global warming has on the flora and fauna of sea is unprecedented. Warmer sea ocean temperatures destroy vast coral reefs and the balance of marine life is lost. The increase in the number of violent hurricanes, unnaturally torrential rains, unusually hot summers are all indicators of the treacherous days which are yet to come. Renewable energy reduces the global warming. Hydroelectric energy, one of the dependable and eco-friendly renewable energy produces minimum pollution. The construction of dams for this purpose helps to control floods, provide water for irrigation and at the same time produce electricity. This energy source never pollutes water; but the vegetation, that is submerged on decaying produces methane, one of the deadly accelerators of global warming. This effect is more prominent in tropical region. The positive benefits of the hydroelectric power overweigh and hence people tend to turn a blind eye towards this problem. But we must not forget the fact that even though the source is localized the effect is universal. The present change in the Arctic Glaciers is the clear indicator of negative impacts of global warming. The temperature in the Arctic region is increasing gradually. It reduces the snow cover, the wide spread glaciers are melting down and the sea level is rising alarmingly. The frequency and intensity of floods are increasing. During autumn and winter, rain is occurring, rising permafrost temperature. The depletion of highly reflective Arctic cover is increasing the pace with which global warming is affecting our environment. The changes in ocean circulation pattern, which is another direct impact of glacier melting, are gradually affecting the global climate. Some birds are migratory and they rely on Arctic for breeding. The melting down of glaciers affects the biodiversity and extinction of these species. Polar bears are an example of a species which is on the verge of extinction as a result of this unwanted phenomenon. The reduction in sea level damages the marine habitat also. The coastal areas which are exposed to storms lead to coastal erosion. Change over ways so that we can protect the Arctic Ice Cap before it is too late. There is an increase in heat related deaths. The rise in average temperature increases the diseases carrying organisms like mosquitoes, rodents and bats. The respiratory illness increases due to global warming because grasses and allergic pollen grow more profusely in warmer environment. Violent storms and other extreme climate carrying deadly diseases occur frequently.

## Adv 1

#### No scenario for nuclear terror---consensus of experts

Matt Fay ‘13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

#### Terrorists aren’t pursuing nukes

**Wolfe 12 –** Alan Wolfe is Professor of Political Science at Boston College. He is also a Senior Fellow with the World Policy Institute at the New School University in New York. A contributing editor of The New Republic, The Wilson Quarterly, Commonwealth Magazine, and In Character, Professor Wolfe writes often for those publications as well as for Commonweal, The New York Times, Harper's, The Atlantic Monthly, The Washington Post, and other magazines and newspapers. March 27, 2012, "Fixated by “Nuclear Terror” or Just Paranoia?" [http://www.hlswatch.com/2012/03/27/fixated-by-“nuclear-terror”-or-just-paranoia-2/](http://www.hlswatch.com/2012/03/27/fixated-by-)

If one were to read the most recent unclassified report to Congress on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions, it does have a section on CBRN terrorism (note, not WMD terrorism). The intelligence community has a very toned down statement that says “several terrorist groups … probably remain interested in [CBRN] capabilities, but not necessarily in all four of those capabilities. … mostly focusing on low-level chemicals and toxins.” They’re talking about terrorists getting industrial chemicals and making ricin toxin, not nuclear weapons. And yes, Ms. Squassoni, it is primarily al Qaeda that the U.S. government worries about, no one else. The trend of worldwide terrorism continues to remain in the realm of conventional attacks. In 2010, there were more than 11,500 terrorist attacks, affecting about 50,000 victims including almost 13,200 deaths. None of them were caused by CBRN hazards. Of the 11,000 terrorist attacks in 2009, none were caused by CBRN hazards. Of the 11,800 terrorist attacks in 2008, none were caused by CBRN hazards.

**No successful detonation**

**Schneidmiller 9**(Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php)

There is an "almost vanishinglysmall" likelihood that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow itup. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to giveup their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, *Atomic Obsession*. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely tobe able to steala whole weapon, Mueller asserted, dismissingthe idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see *GSN*, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue withthe finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occurin the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim**,** which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give anuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weaponor use one that has been stolen.

## Adv2

#### No groupthink---there are several different checkpoints on the way to a targeting decision and objection at any point stops the entire op

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Based on this information, we can sketch a general picture of the kill-list approval process.210 First, military and intelligence officials from various agencies compile data and make recommendations based on internal vetting and validation standards.211 Second, those recommendations go through the NCTC, which further vets and validates rosters of names and other variables that are further tailored to meet White House standards for lethal targeting.212 Third, the president’s designee (currently the counterterrorism adviser) convenes a NSC deputies meeting to get input from senior officials, including top lawyers from the appropriate agencies and departments (i.e. CIA, FBI, DOD, State Department, NCTC, etc.).213 At this step is where the State Department’s Legal Adviser (previously Harold Koh) and the Department of Defense General Counsel (previously Jeh Johnson) along with other top lawyers would have an opportunity to weigh in with their legal opinions on behalf of their respective departments.214 Objections to a strike from top lawyers might prevent the decision from climbing further up the ladder absent more deliberation.215 In practice, an objection from one of these key attorneys almost certainly causes the president’s designee in the NSC process to hesitate before seeking final approval from the president. Finally, if the NSC gives approval, the president’s counterterrorism advisor shapes the product of the NSC’s deliberations and seeks final approval from the president.216 At this stage, targets are evaluated again to ensure that target information is complete and accurate, targets relate to objectives, the selection rationale is clear and detailed, and collateral damage concerns are highlighted.217 By this point in the bureaucratic process, just as in prior conflicts like Kosovo,218 there will be few targeting proposals that will reach the approval authority (the president) that will prompt absolute prohibitions under the law of armed conflict. Rather most decisions at this point will be judgment calls regarding the application of law to facts, or intelligence and analytic judgments regarding facts and expected outcomes.219

#### Groupthink doesn’t apply to this administration

Pillar 13 -- Brookings Foreign Policy Senior Fellow

[Paul, "The Danger of Groupthink," The National Interest, 2-26-13, webcache.googleusercontent.com/search?q=cache:6rnyjYlVKY0J:www.brookings.edu/research/opinions/2013/02/26-danger-groupthink-pillar+&cd=3&hl=en&ct=clnk&gl=us, accessed9-21-13, mss]

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

#### Deference is vital to effective executive crisis response

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

 [\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

 [\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

# 2NC

#### CP solves better- statutory is bound to fail and makes the impacts worse- executive exploits increasing Congressional limits

Moe and Howell 99

(Terry, prof of political science @ Stanford, and William, Associate Prof @ Harvard, "The Presidental Power of Unilateral Action") KH

While Congress will sometimes have incentives to make broad delegations, legislators are more often likely to see the value in putting statutory restrictions on what presidents can do. Presidents, after all, have broad national constituencies, are less susceptible to pressures from special interest groups, are concerned about their historical legacies as strong national leaders, and in general have different political stakes in policy than parochially oriented legislators do-and the coalitions behind particular pieces of legislation, especially on domestic issues, will often have good reason to fear that presidents might use any discretion delegated them in unwanted ways. If so, they will want to constrain the president's powers of unilateral action through narrow and strategically crafted delegations (Moe, 1990; Epstein and O'Halloran, 1999).

How well can this be expected to work? To begin with, legislators can only go so far with a strategy of truly narrow delegations. They are fundamentally concerned with making constituents happy, and thus with ensuring the flow of benefits. For policies of even moderate complexity in an ever-changing world, this unavoidably calls for placing most decisions in the hands of executives and allowing them to use their own expert judgment in fleshing out the details. Like the founders, then, the best legislators can do is to write statutory analogues to incomplete contracts, and thus to set up governing structures that, while perhaps restrictive in certain ways, still contain substantial discretion. And once these statutory governing structures are set up, it is the president and the agencies who do the governing, not the Congress.

To the extent that legislators find themselves proposing highly restrictive delegations, moreover, they have to reckon with the fact that presidents are pivotal players in the legislative process. They can veto any piece of legislation they want, and if they do, it is exceedingly difficult for Congress to override them. (Empirically, only about 7% of presidential vetoes have been overridden; see Cronin and Genovese, 1998). Since everyone is aware ex ante of how consequential the veto can be, presidents will have a major say in shaping the content of legislation, and as they do they will be highly sensitive to how legislation stands to affect their own formal power. Among other things, they will push hard for provisions that give them as much discretion as possible, and they will seriously discourage provisions that limit their prerogatives.

Even when restrictions are included in final bills, Congress faces the problem of making them stick in practice-for a president will not be easy to control once governing shifts to his bailiwick. In part, this is due to the same problem that owners face in trying to control the management of a private firm, for managers-like presidents and their agencies-have expertise, experience, and operational leverage that allow them to engineer outcomes to their own advantage. Although expected to faithfully execute the laws, managers have a very substantial capacity to shirk. The problem that Congress faces, however, is even more severe than this classic economic analogy can suggest. The president possesses all the resources for shirking that the corporate manager does, but his position is far stronger, precisely because he is not really Congress's agent. He is not a subordinate, but a coequal authority. As a result, Congress cannot hire him, cannot fire him, and cannot structure his powers and incentives in any way it might like, yet it is forced to entrust the execution of the laws to his hands. From a control standpoint, this is a nightmare come true.

Finally, whatever the discretion contained in specific pieces of legislation, and whatever opportunities for shirking they open up, it is crucial to recognize that the president is greatly empowered by the sheer proliferation of statutes over time. In part, the reasons are pretty obvious. When new statutes are passed, almost whatever they are, they increase the president's total responsibilities and give him a formal basis for extending his authoritative reach into new realms. At the same time, they add to the total discretion available for presidential control, as well as to the resources contained within the executive.

Less obviously, though, the proliferation of statutes creates substantial ambiguity about what the "take care" clause ought to mean in operation, ambiguity that presidents can use to their great advantage (Corwin, 1973, 1984). While it may seem that the burgeoning corpus of legislative requirements would tie the president up in knots, the aggregate impact is liberating. For the president, as chief executive, is responsible for all the laws, and inevitably the laws turn out to be interdependent and conflicting in ways that the individual statutes themselves do not recognize. In the aggregate, what they require of him is ambiguous. The president's proper role, as would be true for any executive, is to rise above a myopic focus on each statute in isolation, to coordinate policies by taking account of their interdependence, and to resolve statutory conflicts by balancing their competing requirements. All of this affords him enormous discretion to impose his own priorities on government unilaterally and to push out the boundaries of his own power-claiming all the while that he is faithfully executing the laws.

Even though presidents are mere executives, then, charged with "taking care that the laws be faithfully executed," Congress cannot be expected to use statutory constraints with great effectiveness in restricting the expansion of presidential power.

#### Presidential commitments are the gold standard to the international community-congress is seen as a circus and only a president’s words have cred

Marvin Kalb 13, Nonresident Senior Fellow at Foreign Policy, James Clark Welling Presidential Fellow, The George Washington University Edward R. Murrow Professor of Practice (Emeritus), Kennedy School of Government, Harvard University, 2013, "The Road to War," book,pg. 7-8, www.brookings.edu/~/media/press/books/2013/theroadtowar/theroadtowar\_samplechapter.pdf

As we learned in Vietnam and in the broader Middle East, a presidential commitment could lead to war, based on miscalculation, misjudgment, or mistrust. It could also lead to reconciliation. We live in a world of uncertainty, where even the word of a president is now questioned in wider circles of critical commentary. On domestic policy, Washington often resembles a political circus detached from reason and responsibility. But on foreign policy, when an international crisis erupts and some degree of global leadership is required, the word or commitment of an American president still represents the gold standard, even if the gold does not glitter as once it did.

**AT: Object Fiat Theory**

**No link: Object of the resolution is “authority” not “war powers”--restricting authority requires reducing the permission to act, not the ability to act.**

Taylor**, 19**96 **(Ellen, 21 Del. J. Corp. L. 870 (1996), Hein Online)**

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 **Power refers to an agent's** ability or **capacity to produce a change** in a legal relation (whether or not the principal approves of the change), **and authority refers to the power given (permission granted) to the agent** by the principal to affect the legal relations of the principal; **the distinction is between what the agent can do and what the agent may do**.

**This is a core legal distinction**

Rob **Jenkins**.—associate professor of English at Georgia Perim¶ 27-year veteran of higher education, as both a faculty member and an administrator April 3, **2012**, 12:22 pm¶ How Much Do You Work? <http://chronicle.com/blogs/onhiring/author/rjenkins/page/5>. **Gender edited**

**Anytime the President** of the United States **sends** American **servicemen and** **women into harm’s way**, politicians and **pundits** are sure to **argue over whether or not [s]he has the authority** to do so. I’m not qualified to participate in that kind of constitutional debate. But I can offer the following observation: **whether or not the President has the authority to deploy troops in a given situation, [s]he certainly has the power to do so.**  **That’s because authority and power are not the same thing**, even though many leaders fail to grasp the distinction. In particular, an alarming number of academic administrators these days don’t seem to understand the difference between exercising duly constituted authority and merely wielding power. **Authority is essentially the capacity to carry out one’s duties and responsibilities**. Faculty members have the authority to assign final grades, because doing so is one of their responsibilities. Likewise, department chairs have authority to evaluate faculty members, deans have authority to assign faculty lines, presidents have authority to determine budgets, and so on. **For authority to be valid**, **it must be ceded**, which is to say **derived from something larger than itself**. The officers of a college, for instance, typically derive their authority from elected or appointed boards. At an institution that truly embraces the principles of shared governance, other stakeholders are also ceded authority in certain areas by the properly constituted bylaws and policies of the institution–for example, the faculty’s authority over curricular issues. Even a college president does not have the authority, outside of the policies by which all are bound, to tell faculty members how to teach, how to conduct research, or what to write. However, this does not mean that presidents and other administrators do not sometimes take such authority upon themselves. They can do so, even if illegitimately, because of the enormous power they wield. **Power is something quite different from authority. It tends to be seized rather than ceded**. **It is** essentially **the ability to force others to conform to one’s wishes,** whether they want to or not, because of what might happen to them if they don’t. People with power can make other people’s lives miserable, prevent them from getting promotions and raises, perhaps cost them their jobs–even when such actions are not strictly within their properly ceded authority.

**If they win the link-**

**Interpretation: CP’s can’t fiat the direct object of the resolution.**

**The president is the beneficiary of the direct object, which is presidential war powers- means the CP restricts the INDIRECT object of the resolution.**

**Ground-impossible to compete without the counterplan -private bodies can’t affect statutes or courts AND impossible to predict aff mechanisms due to multitude of ways congress/courts can limit presidential powers – need the cp to soak all of them up**

**OR limits us to international actor counterplans which is infinitely worse- we’ll just pick a new country every round, impossible to predict**

**If you focus topic on the nature of the restriction, it achieves the legal purpose of the topic- which is the goal of the topic- not about determining actions good/bad but if his authority is**

 **-legal education is good- every other topic is a policy question, never learn about the ways policy interacts with law**

**Reject the argument not the team**

**Always evaluate the status quo because losing the cp doesn’t prove the aff is a good idea**

**And executive orders have the force of law:**

**Oxford** Dictionary of English **2010**

(Oxford Reference, Georgetown Library)

executive order

▶ noun US (Law) a rule or order issued by the President to an executive branch of the government and having the **force of law**.

### Interbranch

#### Impact empirically denied-Libya and history prove

Zeilizer 2011

[Julian E. Zelizer is a professor of history and public affairs at Princeton University. He is the author of "Jimmy Carter," published by Times Books, and editor of a book assessing former President George W. Bush's administration, published by Princeton University Press. 2011, War powers belong to Congress and the president, http://www.cnn.com/2011/OPINION/06/27/zelizer.war.powers/, uwyo//amp]

Still, tension over military action can develop between the White House and Congress. In the most recent chapter of the nation's inter-branch conflict, Speaker of the House John Boehner has charged that President Barack Obama violated the War Powers Resolution, which Congress passed in 1973 in an effort to seize war power back from the executive branch.

Obama is being criticized because he did not request congressional approval of the military operations in Libya even though they have lasted for more than 90 days. In a symbolic vote, 225 Republicans allied with 70 Democrats to vote down a measure authorizing the operations in Libya. They did not vote to cut funding, however.

#### Interbranch conflict is inevitable and built into the American constitution- greater degree of relationality guarantees greater chance for conflict

Zeisberg 04

[MARIAH ZEISBERG, Research Fellow, The Political Theory Project, Department of Political Science, "INTERBRANCH CONFLICT AND CONSTITUTIONAL MAINTENANCE: THE CASE OF WAR POWERS" SEPTEMBER 22, 2004]

¶ ¶ It is frequent for people to speak of the independent branches as systems of ‘separated powers.’ This can be misleading. Richard Neustadt, among others, has pointed out the inaccuracy of the term: he wrote, “[t]he Constitutional Convention of 1787 is supposed to have created a government of ‘separated powers.’ It did nothing of the sort. Rather, it created a government of separated institutions sharing powers.” I agree that the formulation of ‘separated powers’ is misleading. At best, the idea of separated powers is a simple misnomer whose deleterious consequences can be overcome by the invocation of other concepts of constitutional relationship, like ‘checks-and-balances.’ At worst, the concept of separated powers implies an authority by each branch ultimately reviewable only by the electorate, not by the other branches. ¶ Much of the ‘separation of powers’ dispute hinges on our definition of the branches’ “powers.” If we speak simply of the government’s power to make war, it is clear that this is a power shared by both the executive and Congress. To speak plainly, government simply cannot make war without the cooperation of these two branches. In fact, all of the sovereign powers of government—the power to regulate commerce, the power to tax, the power to convict and imprison criminals—all of these powers require the participation of more than one branch. ¶ We can also understand ‘powers’ more abstractly, as, for example, the power to decide general matters of public policy, the power to judge whether general determinations of law apply to particular people, or the power to disburse government funds. This is the understanding of power which lies behind classical doctrines of separated powers, and behind separation of powers jurisprudence at its best. On this understanding of power, the legislature makes law, the president implements law, and the judiciary decides on whether the law applies to particular individuals. And on this understanding, the distinctiveness of the capacities of the various branches is indeed significant. However, it is worth noting that even on this understanding, the American Constitution manifests significant departures from classical separation of powers theory. The executive can propose legislation, veto bills, call Congress into special session, and adjourn the houses under certain circumstances. Executive orders provide a significant locus for executive ‘lawmaking,’ especially with the rise of the administrative state, where so many of the government’s activities are conducted under the umbrella of the executive. Congress creates every executive office and agency, establishes lines of authority within the executive branch, and shares in the appointments power; and both the legislature and executive share in some judicial powers, the executive through his pardon power, his initiation of law suits, and his defense of the government when it is sued; and the legislature most especially through appointments and impeachments.. The courts exercise legislative and executive authority in their capacity to rectify legal wrongs through their equitable powers. Madison describes this pattern as “partial agency in, or . . . controul over the acts of each other.” The departures from classical separation of powers theory are meant to bring the branches into greater relationship with each other then they would otherwise be; to protect the integrity of each branch’s authority; and to ensure that the different branches have the capacity to review and evaluate each other’s actions.¶ This pattern, then, is a final noteworthy condition: their powers bring the branches into relationship with one another, activating the potential of their independent sources of authority and distinctive perspectives to bring them into conflict. These conditions mean that the possibility for interbranch conflict is endemic to American politics. The branches cannot destroy each other; and if officials within the branches care about making their political commitments operative, they cannot ignore each other. Because these conditions taken together are what activate the possibility for interbranch conflict, I will call them the conditions of conflict.

### Rollback

**Executive orders are permanent**

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

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

The trajectory of the evolution of the executive power in the United States, as seen through the prism of the growing edifice of executive orders have become increasingly **formal and permanent**. The evolution of executive power in the United States has shifted executive orders from mere legislative interpretation to ancillary legislation. **Executive orders continue to influence subsequent presidents**. The elaboration of executive order promulgation, as an autopoietic process was necessary to the very existence of presidential power. That is, the mechanisms for formalizing executive orders have always existed in the executive power in a government whose legitimacy lives in written pronouncements treated as delicate, sacred, and worth protecting at all cost. **Part of this formalization is** a consequence of **the reverence for precedent**. Thus, **prior presidents influence future presidents**, less because future presidents wish to mimic their predecessors, but more **because future presidents act within an edifice their predecessors have already erected**. Thus, the growth and elaboration of an ever more robust structure of executive orders resembles an autopoietic process. n561

**CP constrains future Presidents – it creates a legal framework**

**Brecher**, JD University of Michigan, December **2012**

(Aaron, Cyberattacks and the Covert Action Statute, 111 Mich. L. Rev. 423, Lexis)

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. n149 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. n150 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.

**Epirics prove**

**Jensen**, JD Drake University, Summer **2012**

(Jase, FIRST AMERICANS AND THE FEDERAL GOVERNMENT, 17 Drake J. Agric. L. 473, Lexis)

At the historic 1994 meeting with the tribes, President Clinton signed a Presidential memorandum which provided executive departments and agencies with principles to guide interaction with and policy concerning Indian tribes. n83 President Clinton sought to ensure that the government recognizes that it operates on a government-to-government relationship with the federally recognized tribes. n84 Agencies were to consult with tribes prior to taking action which would affect them, consider tribal impact regarding current programs and policies, and remove barriers to communication. n85

Toward the end of Clinton's second term he issued an executive order which provided the executive branch with more detailed directions on how to implement the broader policy of government-to-government tribal consultation set forth in the 1994 memorandum. n86 **The order had a stronger binding effect on future administrations**. President Clinton signed Executive Order 13175 on November 6, 2000, and the order went into effect on January 5, 2001. n87 The order was binding upon all executive departments and executive agencies and all independent agencies were encouraged to comply with the order on a voluntary basis. n88 Each agency was required to designate an official which is to head the crea [\*486] tion of a tribal consultation plan, prepare progress reports, and ensure compliance with Executive Order 13175. n89

### Circumvention

**The counterplan pre-commits to a DOJ process that effectively restrains the executive**

**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.

### Links to tix

**Only Congressional moves to reclaim war power authority triggers the war power and politics disad**

William **Howell**, Sydney Stein professor in American politics at the University of Chicago, **9/3/13**, All Syria Policy Is Local, www.foreignpolicy.com/articles/2013/09/03/all\_syria\_policy\_is\_local\_obama\_congress?page=full

From a political standpoint, **seeking congressional approval** for a limited military strike against the Syrian regime, as President Barack Obama on Saturday announced he would do**, made lots of sense**. And let's be clear, this call has everything to do with political considerations, and close to nothing to do with a newfound commitment to constitutional fidelity. The first reason is eminently local. Obama has proved perfectly willing to exercise military force without an express authorization, as he did in Libya -just as he has expanded and drawn down military forces in Afghanistan, withdrawn from Iraq, significantly expanded the use of drone strikes, and waged a largely clandestine war on terrorism with little congressional involvement. **The totality of Obama's record**, which future presidents may selectively cite as precedent, hardly **aligns with a plain reading of the war powers** described in the first two articles of the constitution. Obama isn't new in this regard. Not since World War II has Congress declared a formal war. And since at least the Korean War, which President Harry Truman conveniently called a "police action," commanders-in-chief have waged all sorts of wars -small and large -without Congress's prior approval. **Contemporary debates about** Congress's **constitutional obligations on** matters involving **war have lost a good deal of their luster**. Constitutional law professors continue to rail against the gross imbalances of power that characterize our politics, and **members of whichever party happens to be in opposition can be counted on to decry the abuses of war powers** propagated by the president. But these criticisms -no matter their interpretative validity -rarely gain serious political traction. Too often they appear as arguments of convenience, duly cited in the lead-up to war, but **serving primarily as footnotes rather than banner headlines** in the larger case against military action. Obama's recent decision to seek congressional approval is not going to upend a half-century of practice that has shifted the grounds of military decision-making decisively in the president's favor**,** any more than it is going to imbue the ample war powers outlined in Article I with newfound relevance and meaning. **For that to happen, Congress itself must claim for itself its constitutional powers regarding war.** Obama did not seek Congress's approval because on that Friday stroll on the White House lawn he suddenly remembered his Con Law teaching notes from his University of Chicago days**. He did so for political reasons**. Or more exactly, **he did so to force members of Congress to go on the record today in order to mute** their **criticisms** tomorrow. And let's be clear, Congress -for all its dysfunction and gridlock -still has the capacity to kick up a good dust storm over the human and financial costs of military operations. Constitutional musings from Capitol Hill -of the sort a handful of Democrats and Republicans engaged in this past week -rarely back the president into a political corner. The mere prospect of members of Congress casting a bright light on the human tolls of war, however, will catch any president's attention. Through hearings, public speeches, investigations, and floor debates, members of Congress can fix the media's attention -and with it, the public's -on the costs of war, which can have political repercussions both at home and abroad. Think, then, about the stated reasons for some kind of military action in Syria. No one is under the illusion that a short, targeted strike is going to overturn the Assad regime and promptly restore some semblance of peace in the region. In the short term, the strike might actually exacerbate and prolong the conflict, making the eventual outcome even more uncertain. And even the best-planned, most-considered military action won't go exactly according to plan. Mishaps can occur, innocent lives may be lost, terrorists may be emboldened, and anti-American protests in the region will likely flare even hotter than they currently are. The core argument for a military strike, however, centers on the importance of strengthening international norms and laws on chemical and biological weapons, with the hope of deterring their future deployment. The Assad regime must be punished for having used chemical weapons, the argument goes, lest the next autocrat in power considering a similar course of action think he can do so with impunity. But herein lies the quandary. The most significant reasons for military action are abstract, largely hidden, and temporally distant. The potential downsides, though, are tangible, visible, and immediate. And in a domestic political world driven by visual imagery and the shortest of time horizons, it is reckless to pursue this sort of military action without some kind of political cover. **Were Obama to proceed without congressional authorization, he would invite House Republicans to make all sorts of hay about his misguided, reckless foreign policy**. **But by putting the issue before Congress, these same Republicans** either **must explain why the use of chemical weapons** against one's people **does not warrant** some kind of military **intervention; or they must concede** that some form of exacting punishment is needed. Both options present many of the same risks for members of Congress as they do for the president. But crucially, if they come around to supporting some form of military action -and they just might -members of Congress will have an awfully difficult time criticizing the president for the fallout. **Will the decision** on Saturday **hamstring the president** in the final few years of his term? **I doubt it**. **Having gone to Congress on this crisis, must he do so on every future one? No.** Consistency is hardly the hallmark of modern presidents in any policy domain, and certainly not military affairs. Sometimes presidents seek Congress's approval for military action, other times they request support for a military action that is already up and running, and occasionally they reject the need for any congressional consent at all. And for good or ill, it is virtually impossible to discern any clear principle that justifies their choices. **The particulars of every specific crisis** -its urgency, perceived threat to national interests, connection to related foreign policy developments, and what not -**can be expected to furnish the president with ample justification for pursuing whichever route he would like**. Like jurists who find in the facts of a particular dispute all the reasons they need for ignoring inconvenient prior case law, presidents can characterize contemporary military challenges in ways that render past ones largely irrelevant. Partisans and political commentators will point out the inconsistencies, but their objections are likely to be drowned out in rush to war. Obama's decision does not usher in a new era of presidential power, nor does it permanently remake the way we as a nation go to war. It reflects a temporary political calculation -and in my view, the right one -of a president in a particularly tough spot. Faced with a larger war he doesn't want, an immediate crisis with few good options, and yet a moral responsibility to act, he is justifiably expanding the circle of decision-makers. But don't count on it to remain open for especially long.

#### CP is executive action—obviously avoids Congressional fights

Fine 12

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We also should expect presidents to prioritize and be strategic in the types of executive orders that they create to maneuver around a hostile Congress. There are a variety of reasons that can drive a president’s decision. For example, presidents can use an executive order to move the status quo of a policy issue to a position that is closer to their ideal point. By doing so, presidents are able to pressure Congress to respond, perhaps by passing a new law that represents a compromise between the preferences of the president and Congress. Forcing Congress’s hand to enact legislation might be a preferred option for the president, if he perceives Congress to be unable or unwilling to pass meaningful legislation in the ﬁrst place. While it is possible that such unilateral actions might spur Congress to pass a law to modify or reverse a president’s order, such responses by Congress are rare (Howell 2003, 113-117; Warber 2006, 119). Enacting a major policy executive order allows the president to move the equilibrium toward his preferred outcome without having to spend time lining up votes or forming coalitions with legislators. As a result, and since reversal from Congress is unlikely, presidents have a greater incentive to issue major policy orders to overcome legislative hurdles.

## PQD

#### No groupthink---there are several different checkpoints on the way to a targeting decision and objection at any point stops the entire op – example of the extensive checks on expansive authority

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

#### Groupthink doesn’t apply to this administration-afghanistan

Pillar 13 -- Brookings Foreign Policy Senior Fellow

[Paul, "The Danger of Groupthink," The National Interest, 2-26-13, webcache.googleusercontent.com/search?q=cache:6rnyjYlVKY0J:www.brookings.edu/research/opinions/2013/02/26-danger-groupthink-pillar+&cd=3&hl=en&ct=clnk&gl=us, accessed9-21-13, mss]

#### Groupthink Inevitable – secrecy means the executive retains control

Posner 12 (Eric, Kirkland & Ellis Professor, University of Chicago Law School,

REFLECTIONS ON THE LAW OF SEPTEMBER 11: A TEN-YEAR RETROSPECTIVE: DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER SEPTEMBER 11: CONGRESS, THE COURTS, AND THE OFFICE OF LEGAL COUNSEL, Winter, 2012 Harvard Journal of Law & Public Policy 35 Harv. J.L. & Pub. Pol'y 213)

Recall that Professor Holmes says that the argument that the executive can act more swiftly than Congress and the courts does not apply to the rule-development stage because the crisis is past even if the threat remains. n33 But if we think back to September 11, the crisis did not end on that day, even if the immediate threat of violence did. It was reasonable to believe that other plots had been put into action and that violence could erupt at any moment. As the weeks and months passed, these concerns faded. But it also became clear that al Qaeda had sympathizers in the United States, and that these people might strike at any time, possibly on their own initiative, or volunteer for training that would later make them considerably more dangerous. The anthrax scare brought home the possibility that al Qaeda could use even more deadly weapons than hijacked airplanes. Every day brought another revelation of a hole in border security. Thus, it was a matter of urgency to develop new rules that would address the threat. The government maintained the confidentiality of a constant supply of intelligence, for fear of exposing sources and methods. n34 Meanwhile, the government was already taking secret actions (many of which were later exposed), including tapping cell phone calls, tracking monetary transfers, and infiltrating terrorist organizations. n35 Optimal policy going forward necessarily depended on secrecy. Policy X, which might seem plausible given publicly available information, might turn out to be unnecessary, redundant, or even counterproductive in light of secret information about the activities of al Qaeda or secret Policy Y. Thus, although Congress could no doubt give useful advice, it seems hard to believe that it could have contributed much to the development of counterterrorism tactics, any more than it can contribute to military tactics (where to invade, where to bomb) during a regular war. A set of constitutional protocols normally applies to the making of policy and its embodiment in government action. The executive [\*227] must act with Congress, and it must respect the courts; it cannot act by itself. But these rules apply to normal times, and the medical protocol analogy is of little use here. Medical protocols do not need to be secret because patients have no incentive to game them--unlike terrorists who benefit greatly from knowing the methods that the United States uses to spy on them, capture them, and interrogate them. Furthermore, medical protocols are not based on secret information; they are based on widely available medical research. Thus, when medical researchers develop medical protocols at the rule development stage, they can do so publicly without undermining the purpose of developing the protocols in the first place. By contrast, rules governing counterterrorism operations must be developed mostly in secret, and mostly on the basis of secret information. Hence the importance of keeping rule development as much as possible within the only branch that possesses the power to act against security threats. Those rules, of course, would constrain only lower-level executive agents, not the executive itself. There is an obvious reason for this; if the rules are wrong, they need to be corrected. It would similarly make little sense for doctors to develop emergency room protocols that could never be changed in the future as new technologies and new health problems rendered the old protocols worthless. Professor Holmes argues that the executive becomes subject to groupthink and other decision-making pathologies when it makes policy itself rather than with Congress and other agents. n36 But the same point can be made about executive decision-making during regular wars, when the risk of groupthink (if it is a risk) is tolerated because of the need for secrecy. If Congress and the judiciary cannot constrain the executive during emergencies because of the problem of secrecy, then perhaps this problem can be overcome by putting the source of constraint in the executive branch itself, where norms of secrecy prevail. That brings us to the Office of Legal Counsel.

#### Groupthink theory is wrong

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

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

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## Terror

#### No WMD terror- recruitment/lethality tradeoff

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In addition to being a ruthless jihadist, Ayman al-Zawahiri long ago earned a reputation for being a terrible boss. When he took over al Qaeda in 2011, senior U.S. intelligence officials were already pointing out his penchant for micro-management. (In one instance in the 1990s, he reached out to operatives in Yemen to castigate them for buying a new fax machine when their old one was working just fine.) Reports that last week’s terror alert was triggered when Zawahiri reached out to Nasir al-Wuhayshi, his second-in-command and the leader of al Qaeda in the Arabian Peninsula -- a communication that Washington predictably managed to intercept -- only hardened the impression that he lacks the savvy to run a global terror organization. But few of Zawahiri’s many critics have paused to consider what the task of leading a terror organization actually entails. It is true that Zawahiri’s management style has made his organization vulnerable to foreign intelligence agencies and provoked disgruntlement among the terrorist rank and file, not to mention drawing last week’s drone strikes. But it is equally true that Zawahiri had few other options. Given that terrorists are, by definition, engaged in criminal activity, you would think that they would place a premium on secrecy. But historically, many terrorist groups have been meticulous record keepers. Members of the Red Brigades, an Italian terrorist group active in the 1970s and early 1980s, report having spent more time accounting for their activities than actually training or preparing attacks. From 2005 through at least 2010, senior leaders of al Qaeda in Iraq kept spreadsheets detailing salary payments to hundreds of fighters, among many other forms of written records. And when the former military al Qaeda military commander Mohammed Atef had a dispute with Midhat Mursi al-Sayid Umar, an explosives expert for the Egyptian Islamic Jihad, in the 1990s, one of his complaints was that Umar failed to turn in his receipts for a trip he took with his family. Such bureaucracy makes terrorists vulnerable to their enemies. But terrorists do it anyway. In part, that is because large-scale terror plots and extended terror campaigns require so much coordination that they cannot be carried out without detailed communication among the relevant actors and written records to help leaders track what is going on. Gerry Bradley, a former terrorist with the Provisional Irish Republican Army, for example, describes in his memoir how he required his subordinates in Belfast in 1973 to provide daily reports on their proposed operations so that he could ensure that the activities of subunits did not conflict. Several leaders of the Kenyan Mau Mau insurgency report that, as their movement grew in the early 1950s, they needed to start maintaining written accounting records and fighter registries to monitor their finances and personnel. But the deeper part of the answer is that the managers of terrorist organizations face the same basic challenges as the managers of any large organization. What is true for Walmart is true for al Qaeda: Managers need to keep tabs on what their people are doing and devote resources to motivate their underlings to pursue the organization’s aims. In fact, terrorist managers face a much tougher challenge. Whereas most businesses have the blunt goal of maximizing profits, terrorists’ aims are more precisely calibrated: An attack that is too violent can be just as damaging to the cause as an attack that is not violent enough. Al Qaeda in Iraq learned this lesson in Anbar Province in 2006, when the local population turned against them, partly in response to the group’s violence against civilians who disagreed with it. Terrorist leaders also face a stubborn human resources problem: Their talent pool is inherently unstable. Terrorists are obliged to seek out recruits who are predisposed to violence -- that is to say, young men with a chip on their shoulder. Unsurprisingly, these recruits are not usually disposed to following orders or recognizing authority figures. Terrorist managers can craft meticulous long-term strategies, but those are of little use if the people tasked with carrying them out want to make a name for themselves right now. Terrorist managers are also obliged to place a premium on bureaucratic control, because they lack other channels to discipline the ranks. When Walmart managers want to deal with an unruly employee or a supplier who is defaulting on a contract, they can turn to formal legal procedures. Terrorists have no such option. David Ervine, a deceased Irish Unionist politician and onetime bomb maker for the Ulster Volunteer Force (UVF), neatly described this dilemma to me in 2006. “We had some very heinous and counterproductive activities being carried out that the leadership didn’t punish because they had to maintain the hearts and minds within the organization,” he said, referring to a period in the late 1980s when he and the other leaders had made a strategic calculation that the Unionist cause was best served by focusing on nonviolent political competition. In Ervine’s (admittedly self-interested) telling, the UVF’s senior leaders would have ceased violence much earlier than the eventual 1994 cease-fire, but they could not do so because the rank and file would have turned on them. For terrorist managers, the only way to combat those “counterproductive activities” is to keep a tight rein on the organization. Recruiting only the most zealous will not do the trick, because, as the alleged chief of the Palestinian group Black September wrote in his memoir, “diehard extremists are either imbeciles or traitors.” So someone in Zawahiri’s position has his hands full: To pull off a major attack, [they need]~~he needs~~ to coordinate among multiple terrorists, track what his operatives are doing regardless of their intentions, and motivate them to follow orders against their own maverick instincts. Fortunately for the rest of us, the things terrorists do to achieve these tasks **sow the seeds of their undoing**. Placing calls, sending e-mails, keeping spreadsheets, and having members request reimbursements all create opportunities for intelligence agencies to learn what terrorists are up to and then disrupt them. In that way, Zawahiri’s failures are not just a reflection of his personal weaknesses but a case study in the inherent limits that all terror groups face. That is good news, of course, for potential terror targets: As long as our intelligence and law enforcement agencies remain vigilant, **there is no way terrorist** organization**s** **will ever rise above the level of** the **tolerable nuisance**, which is what they have been for the last decade. But for aspiring terror managers, it is a dispiriting reminder that **there is no escape from the red tape that** ultimately **dooms their cause**.

[Matt note: gender-modified]

#### No US nuclear retaliation

Neely 3/21—Meggaen Neely, The George Washington University Master of Arts (M.A.), Security Policy Studies 2012—2014 (expected) Baylor University Master of Arts (M.A.), Public Policy and Administration 2010—2012, Richard D. Huff Distinguished Masters Student in Political Science (2012) Baylor University Bachelor of Arts (B.A.), Political Science and Government, Research Assistant, Elliott School at George Washington University, Research Intern, Project on Nuclear Issues (PONI) at Center for Strategic and International Studies (CSIS) Communications Intern at Federation of American Scientists Graduate Assistant at Department of Political Science, Baylor University [March 21, 2013, “Doubting Deterrence of Nuclear Terrorism,” http://csis.org/blog/doubting-deterrence-nuclear-terrorism]

Because of the difficulty of deterring transnational actors, many deterrence advocates shift the focus to deterring state sponsors of nuclear terrorism. The argument applies whether or not the state intended to assist nuclear terrorists. If terrorists obtain a nuclear weapon or fissile materials from a state, the theory goes, then the United States will track the weapon’s country of origin using nuclear forensics, and retaliate against that country. If this is U.S. policy, advocates predict that states will be deterred from assisting terrorists with their nuclear ambitions. Yet, let’s think about the series of events that would play out if a terrorist organization detonated a weapon in the United States. Let’s assume forensics confirmed the weapon’s origin, and let’s assume, for argument’s sake, that country was Pakistan. Would the United States then retaliate with a nuclear strike? If a nuclear attack occurs within the next four years (a reasonable length of time for such predictions concerning current international and domestic politics), it seems unlikely. Why? First, there’s the problem of time. Though nuclear forensics is useful, it takes time to analyze the data and determine the country of origin. Any justified response upon a state sponsor would not be swift. Second, even if the United States proved the country of origin, it would then be difficult to determine that Pakistan willingly and intentionally sponsored nuclear terrorism. If Pakistan did, then nuclear retaliation might be justified. However, if Pakistan did not, nuclear retaliation over unsecured nuclear materials would be a disproportionate response and potentially further detrimental. Should the United States launch a nuclear strike at Pakistan, Islamabad could see this as an initial hostility by the United States, and respond adversely. An obvious choice, given current tensions in South Asia, is for Pakistan to retaliate against a U.S. nuclear launch on its territory by initiating conflict with India, which could turn nuclear and increase the exchanges of nuclear weapons. Hence, it seems more likely that, after the international outrage at a terrorist group’s nuclear detonation, the United States would attempt to stop the bleeding without a nuclear strike. Instead, some choices might include deploying forces to track down those that supported the suicide terrorists that detonated the weapon, pressuring Pakistan to exert its sovereignty over fringe regions such as the Federally Administered Tribal Areas, and increasing the number of drone strikes in Waziristan. Given the initial attack, such measures might understandably seem more of a concession than the retaliation called for by deterrence models, even more so by the American public. This is not an argument against those technologies associated with nuclear forensics. The United States and International Atomic Energy Agency (IAEA) should continue their development and distribution. Instead, I question the presumed American response that is promulgated by deterrence advocates. By looking at possibilities for a U.S. response to nuclear terrorism, a situation in which we assume that deterrence has failed, we cast doubt on the likelihood of a U.S. retaliatory nuclear strike and hence cast doubt on the credibility of a U.S. retaliatory nuclear strike as a deterrent. Would the United States launch a nuclear weapon now unless it was sure of another state’s intentional sponsorship of nuclear terrorism? Any reasonable doubt of sponsorship might stay the United States’ nuclear hand. Given the opaqueness of countries’ intentions, reasonable doubt over sponsorship is inevitable to some degree. Other countries are probably aware of U.S. hesitance in response to terrorists’ use of nuclear weapons. If this thought experiment is true, then the communication required for credible retaliatory strikes under deterrence of nuclear terrorism is missing.

# 1NR

#### Magnitude --Extinction

Toon, chair – Department of Atmospheric and Oceanic Sciences – Colorado University, 4/19/’7

(Owen B, climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf)

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

#### Most probable

James A. **Russell,** Senior Lecturer, National Security Affairs, Naval Postgraduate School, **‘9** (Spring) “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” IFRI, Proliferation Papers, #26, http://www.ifri.org/downloads/PP26\_Russell\_2009.pdf

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

#### Iran prolif is a crisis magnifier – draws in great powers to small conflicts

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(Eric, “Edelman, Krepinevich, and Montgomery Reply,” *Foreign Affairs* Vol. 9 Iss. 2, March/April)

Ultimately, if Tehran does cross the nuclear threshold and Israel chooses to live with a nuclear-armed Iran, one of the principal objectives of U.S. policy should be convincing Israel to maintain its policy of nuclear opacity for as long as possible. The benefit of a slightly more credible Israeli deterrent would not outweigh the added difficulties the United States would confront in seeking to limit a nuclear Iran's influence, preserve regional stability, and prevent additional proliferation.

A second important issue Adamsky raises is that Iran's acquisition of nuclear weapons would increase the threat that Israel faced from Iranian proxies such as Hamas and Hezbollah, either because Tehran would provide increased assistance and encouragement to these groups or because they would become more reckless once they had a nuclear-armed patron. A premeditated attack by Iran against Israel is not the only scenario that could lead to a nuclear exchange, or even the most plausible one. Instead, a limited conflict in southern Lebanon or the Gaza Strip might spiral out of control. Iranian proxies could escalate their attacks against Israel, assuming that it would be deterred by its fear of a nuclear Iran. Israel could then defy their expectations and conduct major reprisals to demonstrate its resolve, prompting Iran to make nuclear threats in defense of its clients. The results would be unpredictable and potentially disastrous. Although debates over Iran's nuclear program often turn on the issue of Iranian "rationality," it is important to remember that there are many different paths to conflict, and the dynamics of Iranian-Israeli relations could be prone to miscalculation and escalation.

**Iranian prolif causes nuclear terrorism: facility dispersion risks terrorist theft, and no centralized control risks deliberate transfers to terrorists**

**Sagan in ‘7**

[Scott, Professor, Wishes he was Kenneth Waltz, "A Nuclear Iran: Promoting Stability or Courting Disaster", Journal of International Affairs, Summer, p. asp ]

First, the stability-instability paradox--that is, the possibility that individual countries would be more aggressive with nuclear capability If Iran acquires nuclear weapons, will it behave more aggressively in the Middle East? On the one hand, we have a good insight from Professor Waltz: The United States would be more reluctant to attack Iran if it had nuclear weapons, and indeed I do believe that's why Iran is so interested. On the other hand, however, we have the possibility that various Iranians--especially those in the Islamic Revolutionary Guard Corps--may feel that it is safer for them to probe--to attack Americans in Iraq, to attack military bases in the region, to support terrorist attacks elsewhere. Therefore it is not at all clear what might be the final outcome. More probing attacks? More provocation? Indeed, this is the worry with regard to the Iran crisis today. I don't believe the Bush administration wants to attack. But I do think there are some factions in Iran who wouldn't mind a potential attack from the United States because it would increase support for the regime. It's possible that these factions in Iran will actually increase rather than decrease attacks by Iranian agents in Iraq against American forces to force our hand. The second problem--terrorist theft. The Iranians, in trying to reduce the likelihood of an attack against their nuclear development sites, are dispersing **those** sites **in the countryside.** But such measures will increase the likelihood that there won't be central control **over their nuclear program**, and increase the likelihood that, if they do develop nuclear weapons, insiders and terrorist groups could potentially seize them. Finally, the question of ambiguous control. Here we must ask: Who controls the weapons and materials? They don't yet have weapons in Iran, but they are working to get them. And it is not the professional Iranian military but the Revolutionary Guard **Corps** guarding the development sites **whose own financial units have often been those used to purchase different parts of the program. These are the same individuals running the arms supply operations to terrorist organizations that Iran supports.** To have your nuclear guardians and your terrorist supporter organizations be one and the same is a recipe for disaster.

**[A.] Solicitor General election connects Obama with court decisions**

**Biskupic**, USA TODAY, **8**

(Joan, 11-6-8 “New solicitor general on Obama to-do list, <http://www.usatoday.com/news/washington/judicial/2008-11-06-obamacourt_N.htm>, accessed 3-5-9)

While it may be several months — or longer — before President-elect Barack **Obama** has an opportunity to fill a seat on the Supreme Court, his **administration could still have an immediate impact at the high court. One of Obama's early appointments** after he takes office **is** likely to be **a new U.S. solicitor general**, the government's top lawyer before the court**. Obama also will soon have to decide whether to alter strategy on a swath of cases at all levels of the judiciary**, including on Guantanamo detainees, environmental standards and health and safety regulation. **The solicitor general would play a key role in those decisions.**

**[B.] Sotomayor election means that Obama can’t shift blame**

Terrence **Samuel**, Deputy Editor, “Obama’s Honeymoon Nears Its End” Amperican Prospect 5/29/**2009**

This week, Barack **Obama named his first nominee to the Supreme Court**, then headed west to Las Vegas and Los Angeles to raise money for Democrats in the 2010 midterms. Taken together, these two seemingly disparate acts mark the end of a certain period of innocence in the Obama administration: The "blame Bush" phase of the Obama administration is over, and the prolonged honeymoon that the president has enjoyed with the country and the media will soon come to an end as well. **Obama is no longer just the inheritor of Bush's mess**. **This is now his presidency** in his own right. **The chance to choose a Supreme Court justice is such a sui generis exercise of executive power** -- it so powerfully underscores the vast and unique powers of a president -- **that blame-shifting has become a less effective political strategy, and less becoming as well**. Obama's political maturation will be hastened by the impending ideological fight that is now virtually a guarantee for Supreme Court nominations. Old wounds will be opened, and old animosities will be triggered as the process moves along. Already we see the effect in the polls. While Obama himself remains incredibly popular, only 47 percent of Americans think his choice of Judge Sonia Sotomayor is an excellent or good choice for the Court, according to the latest Gallup poll. The stimulus package scored better than that. The **prospect of a new justice** really **seems to force people to reconsider their** culture warrior **allegiances in the context of the party in power**.