## 1NC

### First Off—Exec Reform CP

##### The US executive branch should establish pre and post approval for drone strikes.

##### 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.

## Second Off—Prez Powers

#### There’s no middle ground-congressional action on targeted killing hampers the president’s constitutional authority to respond to security threats

Posner 2012

[Eric Posner, a professor at the University of Chicago Law School, October 17th, 2012, The Drones Are Coming to Libya, <http://www.slate.com/articles/news_and_politics/view_from_chicago/2012/10/drones_attacks_in_libya_an_unprecedented_expansion_of_presidential_power.2.html>, uwyo//amp]

And even if the president wants to fling drones at non-al-Qaida targets, he can. Although President Obama initially distanced himself from President Bush’s claim that Article 2 of the Constitution gives the president the authority to use force unilaterally to protect American interests, he used this justification for the 2011 Libya intervention, which was not authorized by Congress, and he would likely use it to justify an indefinite expansion of drone warfare against any security threat, including Iran, for example. Congress will not try to stop him. New threats emerge constantly, leaving no time for a congressional debate before each strike is authorized. Thus, Congress must either hand the president blanket authority to use drones as necessary—the implicit status quo today—or block him, which would outrage Americans who fear terrorism. The choice for our pusillanimous legislature, which so far has acted mainly to prevent President Obama from cutting back on some Bush-era tactics, is obvious.

#### Presidential power is zero-sum- the branches compete

Barilleaux and Kelley 2010 [Ryan J. , Professor of Political Science at Miami, OH; and Christopher S. , Lecturer (Political Science) at Miami, OH, The Unitary Executive and the Modern Presidency, Texas A&M Press, p. P 196-197, 2010// wyo-sc]

In their book *The Broken Branch,* Mann and Ornstein paint a different view. They discuss a wider range of public policy areas than just uses of force. Their argument is that although party is important as a conditioning factor for times when Congress might try to restrain an aggressive or noncompliant executive, there has also been a broader degrading of institutional power that has allowed, in a zero-sum context, the president to expand executive power at the expense of Congress. Mann and Ornstein thus posit that congressional willingness to subordinate its collective power to that of the president has occurred across domestic politics and foreign affairs. They argue that a variety of factors are at fault for this trend, including the loss of institutional identity, the willingness to abdicate responsibility to the president, the demise of "regular order," and most importantly that Congress has lost its one key advantage as a legislative body—the decay of the deliberative process. Thus, they do recognize that party politics has played an important role in the degrading of congressional power, but they see a larger dynamic at work, one that reaches beyond partisanship. While we agree with Howell and Pevehouse that Congress retains important mechanisms for constraining the president, we tend to agree with the Mann and Ornstein view that there has been a significant and sustained decline in Congress's willingness to use these mechanisms to challenge presidential power. This tendency has been more prevalent in foreign affairs but has occurred noticeably across the spectrum of public policy issues. Building from both of those perspectives, and others, we argue that it is helpful to understand the pattern of congressional complicity in the rise of presidential power by viewing Congress's aiding and abetting as the logical outcomes of a collective action problem.31 By constitutional design, the legislative branch is in competition with the president for institutional power, yet Congress is less than ideally suited for such a political conflict. Congress's comparative disadvantage begins with its 535 "interests" that are very rarely aligned, and if so, only momentarily. Because individual reelection overshadows all other goals, members of Congress naturally seek to take as much credit and avoid as much blame from their constituencies as possible.32 The dilemma this creates for members is how to use or delegate its collective powers in order to maximize credit and minimize blame in the making of public policy. Congress can choose to delegate power internally to committees and party leaders or externally to the executive branch. One can conceptualize the strategic situation of members of Congress in terms of a prisoner's dilemma.33 If members cooperate (that is, in Mann and Ornstein's parlance, if members identify with the institution), they could maintain and advance Congress's institutional power. But they would have to bypass some potential individual payoffs that could come from defection, such as "running against Congress" as an electoral strategy. A stronger institution should make all members of Congress better off, but it also makes them responsible for policymaking. If members defect from the institution, they thus seek to maximize constituency interests either by simply allowing power to fall by the wayside or by simply delegating it to the president. As more and more members choose to defect over time, the "public good" of a strong Congress is not provided for or maintained—and Congress's institutional authority erodes and presidential power fills in the gap. Why, in other words, is congressional activism so often "less than meets the eye," as Barbara Hinckley maintained in her book by that title? Or why has the ''culture of deference" that Stephen Weissman identified developed as it has?34 We argue that the collective action problem that exists in Congress leads to the development of these trends away from meaningful congressional stewardship of foreign policy and spending.

#### Strong executive key to solve climate change-lack of congressional action prevents solvency in the squo and executive negotiating power key to check environmental and economic collapse

Wold 2012

[Chris Wold, Professor of Law & Director, International Environmental Law Project

(IELP), 2012, Lewis & Clark Law School, 2012, CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL. 45·2012, uwyo//amp]

In 2007, then-Senator Barack Obama wrote, “As the world’s largest producer of greenhouse gases, America has the responsibility to lead.”1 As President, he has led. At the domestic level, working primarily through the Environmental Protection Agency, President Obama has increased fuel economy standards,2 imposed new limits ongreenhouse gas emissions from “major emitting facilities,”3 and imposed limits on emissions relating to the development of oil and gas,4 among many other things.5 As he has said, he must use his executive power because “We Can’t Wait” for Congress to act on climate change.6 Nonetheless, he must do more. President Obama has pledged to the international community that the United States will reduce its greenhouse gases by 17% of 2005 levels by 2020 and by 83% by 2050.7The President has also set a goal of ensuring that “[b]y 2035 we will generate 80 percent of our electricity from a diverse set of clean energy sources—including renewable energy sources like wind, solar, biomass, and hydropower; nuclear power; efficient natural gas; and clean coal.”8 None of his actions come close to meeting these goals. Moreover, he must do more to help the international community reach its goal of keeping average global temperatures from increasing 2°C above pre-industrial levels.9 Many scientists argue that the 2°C goal can be met, and the worst impacts of climate change avoided, if we keep carbon dioxide concentrations below 350 parts per million (ppm).10 As of July 2012, atmospheric concentrations of carbon dioxide exceeded 394 ppm.11 The United States is by far the largest historic contributor to these high levels of atmospheric carbon dioxide, having contributed 28.52% of carbon dioxide from energy.12 As such, the United States must do much more to ensure that the world’s largest historic emitter of greenhouse gases fulfills its moral and perhaps legal obligation to reduce greenhouse gases before we reach climate change tipping points beyond which climate change will be irreversible for millennia to come.And indeed, President Obama can do much more. As described below, the president can use his foreign affairs power to take a more positive role on the international stage, whether that stage is the climate change negotiations, the negotiations concerning other international treaties, or within the World Trade Organization. He can also do more with his executive power, not only by increasing existing standards but also by applying them to existing sources of greenhouse gases, not just new sources. Further, President Obama has so far failed to take advantage of strategies to mitigate emissions of short-term climate forcers such as black carbon that could provide significant climate benefits. Lastly, the approaches adopted so far have not pushed regulated entities or others to develop the transformative technologies that will be needed to deliver sufficient climate change benefits to avert the environmental and economic crisis that lies ahead if we fail to take more aggressive action.

**Studies show warming is human caused and will cause extinction**

**Ahmed 2010**

(Nafeez Ahmed, Executive Director of the Institute for Policy Research and Development, professor of International Relations and globalization at Brunel University and the University of Sussex, Spring/Summer 2010, “Globalizing Insecurity: The Convergence of Interdependent Ecological, Energy, and Economic Crises,” Spotlight on Security, Volume 5, Issue 2, online)

Perhaps **the most notorious indicator is anthropogenic global warming**. **The landmark** 2007 Fourth **Assessment** Report of the UN Intergovernmental Panel **on Climate Change** (IPCC) – which **warned that at then-current rates of increase of fossil fuel emissions, the earth’s global average temperature would likely rise by 6°C by the end of the 21st century** **creating a** largely **uninhabitable planet** – was a wake-up call to the international community.[v] **Despite the pretensions of ‘climate sceptics,’ the peer-reviewed scientific literature has continued to produce evidence that the IPCC’s original scenarios were wrong – not because they were too alarmist**, but on the contrary, **because they were far too conservative**. According to a paper in the Proceedings of the National Academy of Sciences, **current CO2 emissions are worse than all six scenarios contemplated by the IPCC. This implies that the IPCC’s worst-case six-degree scenario severely underestimates the most probable climate trajectory** under current rates of emissions.[vi] It is often presumed that a 2°C rise in global average temperatures under an atmospheric concentration of greenhouse gasses at 400 parts per million (ppm) constitutes a safe upper limit – **beyond which further global warming could trigger rapid and abrupt climate changes that, in turn, could tip the whole earth climate system into a process of irreversible, runaway warming.[**vii] Unfortunately, we are already well past this limit, with the level of greenhouse gasses as of mid-2005 constituting 445 ppm.[viii] Worse still, cutting-edge scientific data suggests that the safe upper limit is in fact far lower**. James Hansen**, director of the NASA Goddard Institute for Space Studies, **argues that the absolute upper limit for CO2 emissions is 350 ppm: “If the present overshoot of this target CO2 is not brief, there is a possibility of seeding irreversible catastrophic effects.**”[ix] A wealth of **scientific studies** has **attempted to explor**e the role of **positive-feedback mechanisms between different climate sub-systems**, the operation of which could intensify the warming process. **Emissions beyond 350 ppm over decades are likely to lead to the total loss of Arctic sea-ice** in the summer **triggering magnified absorption** of sun radiation, **accelerating warming**; the melting of Arctic permafrost triggering **massive methane injections** into the atmosphere, accelerating warming; the **loss of half the Amazon rainforest** triggering the momentous release of billions of tonnes of stored carbon, accelerating warming; and **increased microbial activity in the earth’s soi**l leading to further huge releases of stored carbon, accelerating warming; to name just a few. **Each of these feedback sub-systems alone is sufficient by itself to lead to irreversible, catastrophic effects that could tip the whole earth climate system over the edge**.[x] Recent studies now estimate that the **continuation of business-as-usual would lead to global warming of three to four degrees Celsius before 2060 with multiple irreversible, catastrophic impacts; and six, even as high as eight, degrees by the end of the century – a situation endangering the survival of all life on earth.[**xi]

## Third Off—K

#### THE AFF FETISHIZES THE LAW AND ITS ABILITY TO RESOLVE PRESIDENTIAL POWERS, THEIR CALL RESULTS IN A RETURN TO LAW THAT DESTROYS THE POSSIBILITY FOR RADICAL POLITICS

NEOCLEOUS 2006

(Mark Neocleous, Politics & History @ Brunel University, “the Problem with Normality”, Alternatives, no. 31 //wyo-tjc)

To criticize the use of emergency powers in terms of a suspension of the law, then, is to make the mistake of counterpoising normality and emergency, law and violence. In separating “normal” from “emergency,” with the latter deemed “exceptional,” this approach parrots the conventional wisdom that posits normalcy and emergency as two discrete and separable phenomena. This essentially liberal paradigm assumes that there is such a thing as “normal” order governed by rules, and that the emergency constitutes an “exception” to this normality. “Normal” here equates with the separation of powers, entrenched civil liberties, an ongoing debate about public policy and law, and the rule of law, while “emergencies” are thought to require strong executive rule, little time for discussion, and are premised on the supposedly necessary suspension of the law and thus the discretion to suspend key liberties and rights. But this rests on two deeply ideological assumptions: first, the assumption that emergency rule is aberrational; and, second, an equation of the emergency/nonemergency dichotomy with a distinction between constitutional and nonconstitutional action. Thus liberalism seeks to separate emergency rule from the normal constitutional order, thereby preserving the Constitution in its pristine form while providing the executive with the power to act in an emergency.47 But the historical evidence suggests that emergency powers are far from exceptional; rather, they are an ongoing aspect of normal political rule. Emergency, in this sense, is what emerges from the rule of law when violence needs to be exercised and the limits of the rule of law overcome. The genealogy of “emergency” is instructive here. “Emergency” has its roots in the idea of “emerge.” The Oxford English Dictionary suggests that “emerge” connotes “the rising of a submerged body out of the water” and “the process of coming forth, issuing from concealment, obscurity, or confinement.” Both these meanings of “emerge” were once part of the meaning of “emergency,” but the first is now rare and the second obsolete. Instead, the modern meaning of “emergency” has come to the fore, namely a sudden or unexpected occurrence demanding urgent action and, politically speaking, the term used to describe a condition close to war in which the normal constitution might be suspended. But what this tells us is that in “emergency” lies the idea of something coming out of concealment or issuing from confinement by certain events. This is why “emergency” is a better category than exception: Where “emergency” has this sense of “emergent,” exception instead implies a sense of ex capere, that is, of being taken outside. Far from being outside the rule of law, emergency powers emerge from within it. They are thus as important as the rule of law to the political management of the modern state. There is, however, an even wider argument to be made. The idea that the permanent emergency involves a suspension of the law encourages the idea that resistance must involve a return to legality, a return to the normal mode of governing through the rule of law. But this involves a serious misjudgment in which it is simply assumed that legal procedures, both international and domestic, are designed to protect human rights from state violence. Law itself comes to appear largely unproblematic. What this amounts to is what I have elsewhere called a form of legal fetishism, in which law becomes a universal answer to the problems posed by power. Law is treated as an independent or autonomous reality, explained according to its own dynamics. This produces the illusion that law has a life of its own, abstracting the rule of law from its origins in class domination and oppression and obscuring the ideological mystification of these processes in the liberal trumpeting of the rule of law.48 To demand the return to the “rule of law” is to seriously misread the history of the relation between the rule of law and emergency powers and, consequently, to get sucked into a less-than-radical politics in dealing with state violence. Part of what I am suggesting is that emergency measures, as state violence, are part of the everyday exercise of powers, working alongside and from within rather than against the rule of law, as part of a unified political strategy in the fabrication of social order.

#### DRONES REDUCE VICTIMS OF STRIKES TO BE NON-SUBJECTS OR RISK FACTOR ALLOWING THEM CATEGORIZED AS DISPOSABLE AND EXTERMINATED IN THE ZONE OF ANOMIE

Pugliese 13

[Joseph Pugliese, Associate Professor of Cultural Studies at Macquarie University, “State Violence and the Execution of Law”, pg-, \\wyo-bb]

The violent biopolitical asymmetry that structures the conduct of imperial¶ drone war is graphically materialized in the killing of Daraz Khan and two of his¶ friends in southern Afghanistan. Daraz Khan and his friends were collecting scrap¶ metal on a hillside when they were killed by a drone missile, after they were¶ mistakenly taken to be planting mines in the area. The anomic violence of drone¶ killings is perfectly encapsulated in this Pentagon response: ‘We’re convinced that¶ it was an appropriate target . . . [although] we do not yet know exactly who it was .’ 92¶ The US state’s practice of killing anonymous targets (the names of the victims¶ were only later revealed by their families) under the rubric of ‘signature strikes’¶ assumes its biopolitical dimensions once situated in its doctrine of ‘preventative’¶ war. In effect, as Robert Castel outlines in his Foucauldian elaboration of the¶ state’s increasing use of practices of ‘preventative’ intervention: ‘There is, in fact,¶ no longer a relation of immediacy with a subject because there is no longer a subject .¶ What the new preventative policies primarily address is no longer individuals but¶ factors liable to produce risk.’ 93 The US state’s use of drones in the ‘ungoverned’¶ spaces of the South evidences this insight: Daraz Khan and his friends were not¶ ‘subjects’ – their identities, as the US military admits, were unknown – rather, they¶ were viewed as a mere constellation of ‘risk factors’ that needed to be killed in an¶ act of ‘anticipatory self- defense.’ In this case, the ‘calculus of probabilities’ was¶ evidently high enough to determine the death of innocent civilians in order to¶ secure a ‘preventative’ strike.¶ The calculus of probabilities that enables the effective liquidation of the subject¶ must be seen as a structural effect of a statist regime of visuality that instrumentalizes¶ life in terms of an algebraic formula ( patterns of life) that, together with the¶ objectifying effects of screen technologies, works to render the material abstract¶ (the human subject as non- subject), the individual generic (the fi gure in the landscape¶ as mere index of risk factors) and the named anonymous (the individuating¶ singularity of a proper name rendered superfl uous in the face of a computational¶ risk calculus predicated on anonymous ‘patterns of life’). This statist regime of¶ visuality, in effectively abstracting its human targets and reducing them to a calculable¶ formula of ‘risk factors,’ is instrumental in enabling the administrative indifference¶ to the obliteration of life that this type of seeing enables and sanctions.¶ In his analysis of the necropolitical dimensions of empire, Achille Mbembe¶ poses two critical questions that cut to the heart of these imperial asymmetries of¶ power: ‘What difference is there between killing with a missile helicopter or a tank¶ and killing with one’s body? Does the distinction between the arms used to inflict¶ death prevent the establishment of a system of general exchange between the¶ manner of killing and the manner of dying?’ 94 In his essay, Mbembe does not¶ discuss the use of drones in war, however, his latter question can be effectively¶ transposed to the imperial use of this technology: precisely what the necropolitical¶ use of drones precludes is ‘a general system of exchange’ between the prosthetic¶ tele- techno ensemble of the US imperial state and its anonymous and unsuspecting¶ victims who have neither a right of reply nor recourse to judicial procedure.¶ The necropolitical dimensions of drones are graphically underscored by the¶ thanatological terminology that is used by the military to describe the vampiric¶ death and resurrection of the drones in their everyday operations: ‘When not¶ being used, the Predators are disassembled and stored at Indian Springs in crates¶ that are called “coffins.” In turn, these are packed in what airmen refer to, naturally,¶ as the “morgue.” At the time of deployment, the coffins are pulled from the¶ morgue and airlifted to the forward operating base for reassembly.’ 95 Once they¶ are resurrected from their coffins and deployed from their morgue depositories,¶ drones become the bearers of anomic violence and airborne death. The type of¶ automated execution that US drone warfare enables is tantamount to a type of¶ international terrorism. Reflecting on the legality of these automated executions¶ with specific reference to the US killing of so- called ‘enemy combatants,’ Armin¶ Krishnan argues that ‘Killing them abroad without giving them the opportunity to be arrested and receiving a fair trial would fall under the definition of international¶ terrorism [as defined by U.N. Resolution 1556 (2004)].’ 96 The US’s drone attacks must be seen as instantiating Agamben’s concept of the ‘inexecution’ of¶ law. ‘Every fiction of a nexus between violence and law disappears here: there is¶ nothing but a zone of anomie, in which violence without any juridical form acts.’ 97¶ Agamben’s ‘zone of anomie’ perfectly captures the zone of violence that designates the anonymous ‘patterns of life’ that can be killed by drones with impunity.¶ Enframed by cameras and monitors, the victims of drone strikes become themselves¶ mere ‘drones’ to the drones; scurrying insects that are dismembered and¶ incinerated by the airborne fire that is unleashed by the weaponized drones. In¶ tropological terms, there is a complex process of prosopopoeia operative in the¶ figuration of drone technologies. On the one hand, as cyborg, the drone is brought¶ to ‘life’ through the ruse of an animating logic that invests it with animal qualities of predatory agency. For example, following its successful strike on a target, the¶ Predator drone is described in the literature in this manner: ‘The eyes of its Lynx¶ side aperture have seen , and the talons of the AGM-114 Hellfire missile on the¶ starboard talon have struck .’ 98 On the other hand, there is operative a tropic¶ transposition of the technology’s entomological nomenclature to the actual victims¶ of the technology; the consequent process of animalization renders its human targets disposable. This view of the drone victims is evidenced by one drone¶ commentator who likens the drone attacks to ‘going into a beehive, one bee at a¶ time,’ with the resultant problem that ‘the hive will always produce more bees.’ 99¶ Drone crews talk about how they need ‘to kill bugs.’ 100 The CIA, in fact, terms a¶ successful drone hit as ‘bugsplat.’ 101 The term ‘bugsplat’ caricatures its victims by¶ inserting them within the field of cartoon pop culture where, as disposable figures¶ executed via what drone operators call ‘Kill TV,’ their deaths are scripted as mere¶ comic mishap. ‘Bugsplat’ articulates the effective genealogical connections¶ between video games and drone war games, as it is the actual name of a children’s¶ interactive video game, now transposed to the killing operations of war. ‘Bugsplat’¶ reduces the human victims of drones to nothing more than liquefied entomological waste generated via a technology driven by a more highly evolved species –¶ qua the human as opposed to the insect. Operative here is that foundational¶ biopolitical caesura that effectively separates select humans from animals and¶ that, simultaneously, enables the coding of certain other humans as animals that¶ can be killed, as non- human animals are, with impunity.¶

#### SOCIETY HAS BEEN REPEATEDLY CONFOUNDED AT THE FAILURE OF LAW TO CONTAIN VIOLENCE—WE SEE LAW AS A ‘LESSER EVIL’ THAT IS NECESSARY TO HUMANIZE WAR. QUITE TO THE CONTRARY, THE LAWS OF WAR LEGITIMIZE AND PROTECT STATIST FORMS OF VIOLENCE AND CRUSH DISSENT

BERMAN (Prof of Law at Brooklyn Law School) 2004

[Nathaniel, “Privleging Combat?”, Columbia Journal of Transnational Law, p. ln //wyo-tjc]

**Through examining the legal doctrines crucial to defining the combatants' privilege**, in my view the key concept of jus in bello, **this Article seeks to undo the circumlocutions that often block frank discussion of the relationship of law to war. Contrary to conventional wisdom**, I argue that **it is misleading to see law's relationship to war as primarily one of the limitation of organized violence, and even more misleading to see the laws of war as historically progressing toward an ever-greater** **limitation of violence. n6 Instead**, I put forward three central propositions. First, **rather than standing in opposition to war, law has long been directly involved in the construction of war - the construction of war as a separate sphere of human activity in [\*5] which the "normal" rules of social life, codified, for example, in the domestic criminal law regulating violence, do not operate. n7 Rather than opposing violence, the legal construction of war n8 serves to channel violence into certain forms of activity engaged in by certain kinds of people, while excluding other forms** engaged in by other people. n9

#### The Alternative is to write against the state.

#### Exposing the law as violence is necessary to create space for rethinking that makes social relations outside of statist violence possible

Neocleous 2003

[Mark, Teaches politics @ Brunel, Imagining the state, Philadelphia: Open University Press, 6-7/uwyo-ajl]

The last point should indicate to the reader that this is a polemical book about a polemical topic. As such, I should be clear about my intentions. If a hidden agenda seems nasty, then an exposed one looks downright impudent.13 Writers these days increasingly like to stand aside from the affray. This is nowhere more obvious than in books in which affray is a central issue-namely books on issues such as the state, power and capital. On the one hand, this is no doubt due to the fate of the academy in contemporary capitalism-academic research assessment exercises which seem to have knocked the political stuffing out of seemingly political writers (best not write anything too political about this political topic, in case it damages one's promotion prospects). On the other hand, it is also clearly connected to the demise of any coherence the Left once had. Writers on the Left appear to be happier to retreat into ever more exegetical work on text after text, with little sense as to the purpose of reading political writers in the first place. Or, worse, they have bought into the stunningly naive socio-political claim that we have moved into a world in which there is politics without enemies.4 (And if there are no enemies, then there is no ground for any fundamental disagreement and thus no real need to say anything interesting at all.) Too many intellectuals on the Left have thus developed an instrumental inability to think beyond the instructions and parameters provided for them by the state and one of its key ideological apparatuses - the university. So let me say that this book is written from outside the statist political imaginary (or at least as much as one can be outside it), and also against it. To write against the statist imaginary is thus intended as an act of resistance - though admittedly not the bravest act of resistance one might imagine, since the state aims to dominate the thought of even those who oppose it (indeed, one might say especially those who oppose it). Pierre Bourdieu has argued that `to endeavour to think the state is to risk either taking over, or being taken over by, the thought of the state','~ and as I argue in Chapter 2, as part of its administration of civil society the state aims to structure the way we view the world by generating the categories through which citizens come to imagine collective identity and thus their own political subjectivity. One of the implications of this is that the statist political imaginary has assisted the state in setting limits on the theoretical imagination, acting as a block on the possibility of conceiving of a society beyond the state.This is a book that tries to think the state without either taking over or being taken over by the thought of the state. It therefore rests on a different political imaginary, one which I mention here and return to only briefly at the very end of the book, which arises out of the tradition of the oppressed which teaches us that the `state of exception' in which we live is not the exception but the rule. As Walter Benjamin recognized, to write against the state of exception in this way is to aim to bring about a real state of emergency which imagines the end of the state, and thus an end to the possibility of fascism.

## Solvency

#### Prez will circumvent-

#### [1.] invokes state secrets to avoid oversight

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. 24//wyo-sc]

Monitoring the executive requires expertise in the area being monitored. In many cases, Congress lacks the information necessary to monitor discretionary policy choices by the executive. Although the committee system has the effect, among others, of generating legislative information and expertise,18 and although Congress has a large internal staff, there are domains in which no amount of legislative expertise suffices for effective oversight. Prime among these are areas of foreign policy and national security. Here the relative lack of legislative expertise is only part of the problem; what makes it worse is that the legislature lacks the raw information that experts need to make assessments. The problem would disappear if legislators could cheaply acquire information from the president, but they cannot. One obstacle is a suite of legal doctrines protecting executive secrecy and creating deliberative privileges— doctrines that may or may not be justified from some higher-order systemic point of view as means for producing optimal deliberation within the executive branch. Although such privileges are waivable, the executive often fears to set a bad institutional precedent. Another obstacle is the standard executive claim that Congress leaks like a sieve, so that sharing secret information with legislators will result in public disclosure. The problem becomes most acute when, as in the recent controversy over surveillance by the National Security Agency, the executive claims that the very scope or rationale of a program cannot be discussed with Congress, because to do so would vitiate the very secrecy that makes the program possible and beneficial. In any particular case the claim might be right or wrong; legislators have no real way to judge, and they know that the claim might be made either by a wellmotivated executive or by an ill-motivated executive, albeit for very different reasons.

#### [2.] constraints make Presidents more assertive

Barilleaux and Kelley 2010 [Ryan J. , Professor of Political Science at Miami, OH; and Christopher S. , Lecturer (Political Science) at Miami, OH, The Unitary Executive and the Modern Presidency, Texas A&M Press, p. 225-226, 2010// wyo-sc]

Congress, following the logic of Daniel Patrick Moynihan's "Iron Law of Emulation" (which holds that what one branch of government does will be emulated by another), responded to the enlargement of the presidency and its powers by undertaking a number of actions in the 1970s to enable itself to be a more active and assertive player in the making of national policy.11 It gave itself a large professional staff, reformed its budget process, developed tools for more oversight of the executive, passed legislation to gain more information about the conduct of foreign policy and influence over it (the Case-Zablocki Act, the War Powers Resolution, and other laws), and at times acted aggressively to challenge presidential policy (in the mid-1970s and again in the late 1990s and after the 2006 midterm elections). In less than forty years, Congress has moved toward impeaching one president (Nixon, whom it ultimately drove from office), legislated an end to the Vietnam War, prohibited American intervention in the civil war in Angola (1975), impeached another president (Clinton), shut down the government in a duel with the White House over the federal budget (1995), investigated the Iran-Contra affair and other incidents, passed a bill to require a timetable for withdrawing U.S. forces from Iraq (2007), tried several times to bring the president to heel on the use of force, and balked when the Bush administration tried to have its first financial industry bailout plan passed summarily in 2008. These and other incidents have made the legislature a full player in the separated system of American government, but they have also stimulated presidents to seek greater autonomy from legislative constraints. The unilateral presidency is the result of this stimulation. Barack Obama follows in this line of presidents seeking to accomplish something in office and feeling the urgency of their task. In his victory speech on election night in 2008, he told the assembled crowd that "this is our time—to put our people back to work and open doors of opportunity for our kids; to restore prosperity and promote the cause of peace; to reclaim the American Dream and reaffirm that fundamental truth—that out of many, we are one; that while we breathe, we hope, and where we are met with cynicism, and doubt, and those who tell us that we can't, we will respond with that timeless creed that sums up the spirit of a people: Yes We Can."12 There is no reason to think that he or any subsequent president will be passive in the conduct of office. Congressional responses to executive unilateralism will be too late *and too strong* andwill *in turn* stimulate a new round of executive assertiveness*.* In the 1960s and 1970s Congress bridled at the growth of presidential power but acquiesced to it until legislators finally decided that they had seen enough. Beginning in the mid-1970s, Congress reacted with a spate of president-curbing legislation (the War Powers Resolution, the CaseZablocki Act, the Budget and Impoundment Act), the near-impeachment of Richard Nixon, a legislated end to the Vietnam War, an investigation of the CIA, and other actions to restrict presidential autonomy. The consequence, to some extent described in this volume, was the rise of executive unilateralism as a way to circumvent Congress.

#### [3.] Empirics on presidents ignoring WPR prove the trend

Isaacs 2011

[John Isaacs, 2011, executive director of Council for a Livable World, War Powers Resolution consistently ignored, <http://thehill.com/blogs/congress-blog/foreign-policy/172803-war-powers-resolution-consistently-ignored>, uwyo//amp]

President Harry F. Truman ignored Congress when in 1950 he sent troops to Korea to stave off a North Korean advance into the South. Almost 1.8 million Americans fought in Korea, with some 33,600 American deaths. But there never was a congressional authorization, and Congress continued to appropriate funds to prosecute the war. The War Powers Resolution also appeared to be a check against Nixon’s power, a President recently overwhelmingly re-elected who was becoming more and more enmeshed in the Watergate scandal. Indeed, I played only a bit role, helping to convince some liberals such as Representatives Bella Abzug (D-NY) and Robert Drinan (D-Mass.) that Congress was not ceding additional power to the President by giving him or her 60 or 90 days to conduct war without approval of Congress. Fast forward to today. Every President since 1973, including Barack Obama, has decided to ignore the law as an unconstitutional assertion of power.

#### [4.] Cancels testimony, Justice Department ignores oversight requests

Victor ‘03

[Kirk Victor, writer for government executive.com, 2003, Congress in eclipse as power shifts to executive branch, <http://www.govexec.com/management/2003/04/congress-in-eclipse-as-power-shifts-to-executive-branch/13800/>, uwyo//amp]

Senate Finance Committee Chairman Charles Grassley, R-Iowa, agreed in an interview that "getting information from the Justice Department under Ashcroft is like pulling teeth." But Grassley sees it as an institutional problem, and said it had also been difficult to get responses when Janet Reno led the department. Grassley said he has had no problem in asserting his oversight powers with the executive branch. As for his colleagues who worry about presidential usurpation of Congress's powers, Grassley added, "It doesn't matter to me what the president thinks, unless I want to take it into consideration. He didn't elect me-the people of Iowa elected me. I am a trustee of the people, not a messenger boy for the president." But Leahy had a far more negative, withering take on the Bush administration's actions to avoid oversight. He and some other Senate Judiciary Committee members have sent the Justice Department 28 requests for oversight information, dating back to July 2001. The department has not responded to any of them. Ashcroft "basically ignores most of the requests, but at least I give him credit for being bipartisan-he ignores Republican requests, too," Leahy said in the interview. "And this is the man who [when he was a senator] thought he should hold up judicial nominations and everything else when the attorney general didn't give us what we wanted." Several members of the Senate Foreign Relations Committee also reacted angrily when the administration canceled, at the last minute, testimony by the top official in charge of reconstruction and humanitarian assistance in Iraq, who was to appear at a March 11 hearing. They also were surprised to learn from that day's newspapers that the administration was seeking bids from U.S. corporations on reconstruction contracts for Iraq.

### Assymetric War

#### Decapitation works—it takes out key pieces of terrorist operations, keeps leaders on the run, and creates infighting that causes organizations to collapse.

Wilner 10, (Alex S. Wilner, Center for Security Studies, ETH Zurich, Swiss Federal Institute of Technology, Targeted Killings in Afghanistan: Measuring Coercion and Deterrence in Counterterrorism and Counterinsurgency, Studies in Conflict & Terrorism, Vol. 33 No. 4, 09 Mar 2010, http://dx.doi.org/10.1080/10576100903582543)

For smaller terrorist groups and cells, where leadership, knowledge, and power are centralized, eliminations can have the dramatic effect of completely destroying a specific threat. Groups with particularly charismatic leaders are especially prone to decapitating strikes.39 Both assumptions rest on the notion that terrorist organizations depend on the work of a few key individuals. Isaac Ben-Israel and colleagues note, for instance, that the number of “key activists in the Hamas,”—those that are actively “engaged in preparing an act of terror”—number in the low hundreds. A state only needs “to neutralize 20– 30 percent of them,” they suggest, “for the organization’s ‘production’ of acts of terror to drop significantly.”40 The argument suggests that terrorism is a process that requires a “production line” of activity—from scouting targets to preparing bombers—if coordinated acts of violence are to take place.41 All along this process, individuals play important roles, fulfilling particular jobs and functions. As such, violent, non-state groups are perhaps best thought of as coercive systems, dependent on the interaction of a variety of semi-autonomous parts and processes.42 Paul Davis and Brian Jenkins reiterate: “the terrorist problem occurs in a rich context with many interacting entities and processes.”43 While eliminating particular individuals with functional roles will not wholly eradicate the threat of terrorism, the selective removal of central players does restrict the terrorism process and degrades an organization’s overall capability to plan, coordinate, and carryout acts of violence.¶ The very threat of coercion forces leaders to worry about their safety, hinders their freedom of movement, and requires that they spend time and resources in avoiding their own death rather than planning the death of others. In a 2004 letter to bin Laden, AQI’s al-Zarqawi stresses this persistent dilemma. “What is preventing us from making a general call to arms,” he protests, “is the fact that the country of Iraq has no mountains in which to seek refuge, or forest in which to hide. Our presence is apparent and our movement is out in the open. Eyes are everywhere.”44 Leaders in hiding face the related problem of motivating and leading their followers; championing a cause from the frontline is far more effective than doing so from the safety of a bunker or villa in a neighboring region. Likewise, by eliminating skilled facilitators, organizations become de-professionalized. Finding individuals that are able and willing to replace eliminated bomb makers and tactical planners, for instance, takes time, notwithstanding the fact that not just any substitute will do. Few individuals have the skill sets needed to design and build effective bombs that do not prematurely detonate or the leadership characteristics required to successfully manage a military organization. While reports suggest that many of today’s top terrorist leaders are highly educated individuals, holding graduate, legal, and medical degrees, this does not necessarily translate into solid military and strategic know-how. Furthermore, attracting and recruiting the right people to a life of violent hardship that invariable comes with joining a terrorist organization can be difficult. Even in the case of suicide bombings, it is not enough to simply equip and send out a great many operatives on suicide missions—the individuals need to have the intellect and training to know where to go, who to target, how and when to detonate their bombs, and what to do in case of mishap.45 They must also be trained not to renege on their decision to die and to know, too, never to get caught. In fact, there is very real danger in sending out poorly trained or intellectually unstable suicide operatives. “Dud bombers”—those that fail in their attempt to detonate their explosives—get caught and can crack under interrogation, causing irreparable damage to their group, cell, or operator.¶ Failing to replace fallen leaders expeditiously can also lead to defections, infighting, and purges. Likewise, if there is doubt regarding the perpetrators of a targeted elimination or uncertainty over how intelligence on a target was collected, speculation over traitors and informants might further deteriorate camaraderie.46 Infighting should not be taken lightly. A number of organizations have met their end after purges were carried out among and between members.47 A recent example of an internal feud instigated, in part, by a targeted killing, comes from the Afghan–Pakistan theater. In 2007, a gulf emerged between various Islamist factions active in Pakistan’s tribal zone of South Waziristan; foreign fighters associated with Al Qaeda’s Islamic Movement of Uzbekistan fought local Pakistani Taliban. Reports suggest that up to several hundred local and foreign militants were killed.48 Syed Saleem Shahzad of Asia Times recounts that ideological differences between local and foreign fighters was primarily to blame. “Many of the foreign volunteers,” he writes, “are Takfirists, who regard ‘bad Muslims’ as the real enemy.” The result was that trained fighters of Arab, Chechen, and Uzbek origin persuaded Pakistani militants to carry out attacks against “apostate” Pakistan rather than Coalition forces in Afghanistan. Indigenous Pakistani Islamists did not always accept takfiri practices, however. Shahzad suggests that many local organizations “reacted uncomfortably to the growth of this near-heresy within al Qaeda,” which in relentlessly targeting Muslims, “brought chaos to the populations it claim[ed] to defend.”49 This elicited an unfavorable reaction from a number of Afghan and Pakistani Taliban, whose primary objective was to target NATO personnel and Westerners. While on the surface the spat seems to have had little to do with a specific case of targeted killing, closer examination of the case does reveal that it had everything to do with the absence of strong leadership.

#### Qualities of terrorist groups makes them uniquely susceptible to decapitation strategies – violent, clandestine, and value oriented leadership difficult to replace

Price 2012 (Bryan C. former assistant professor in the Department of Social Sciences at the U.S. Military Academy and Director of the Combating Terrorism Center at West Point, “Leadership Decapitation and the End of Terrorist ”, June 27 2012, http://www.fairobserver.com/article/leadership-decapitation-and-end-terrorist-groups)

Leadership decapitation has largely failed to produce desired policy results against organizations other than terrorist groups, such as state regimes and drug cartels. For example, killing or capturing kingpins has had little effect on the flow of drugs into the United States, and worse, it has often led to more drugs, more cartels, and more violence. Terrorist groups are different. Because they are violent, clandestine, and values-based organizations, terrorist groups are especially susceptible to leadership decapitation.¶ Violent: Violent groups are inherently more cohesive than nonviolent groups, a feature that makes leadership succession more difficult. They are also often led by charismatic leaders who are hard to replace. Leaders of violent organizations cannot simply serve as managers; they must motivate and inspire their subordinates to overcome the psychological obstacles associated with confronting and waging violence. In these cohesive organizations, leadership succession is always a significant event, and it can become a debilitating one if the successor is less capable and less charismatic than his predecessor.¶ Clandestine: The clandestine nature of terrorist groups increases dependency on their leaders, complicates leadership succession, and negatively affects organizational learning and decision-making. To maintain operational security and avoid detection from outsiders, terrorist leaders have a disincentive to institutionalize their operations, which complicates leadership succession. Additionally, terrorist groups are often composed of culturally and ideologically like-minded members. Although this feature is useful for developing cohesion and trust among members, it makes the group highly susceptible to groupthink and inhibits organizational learning and decision making. Leadership decapitation, therefore, injects further uncertainty and instability into group dynamics that are already stressed and dysfunctional.¶ Values-Based: Values-based organizations such as religious cults, social clubs, and terrorist groups have more difficulty replacing their leaders than their profit-based counterparts, including drug cartels. The monetary incentives of holding power in profit-based organizations are often sufficient to attract a steady stream of successors, even when the task of leading involves tremendous risk. In contrast, the incentives for leading values-based organizations are more complex and abstract. Leaders in values-based organizations must possess a unique skill, namely, the ability to provide transformational leadership as opposed to transactional leadership. Articulating the vision, mission, and strategy of values-based organizations is particularly challenging, especially when these elements are created from scratch and are hard to conceptualize. This feature makes group founders very powerful, but it hamstrings less-capable successors who are not as effective in articulating their objectives as their predecessors.¶ Synergistic Effects: Although each of the characteristics described above amplifies the importance of leaders and complicates leadership succession, each in isolation is unlikely to cripple an organization following leadership decapitation. When organizations such as terrorist groups feature all three characteristics, however, leadership decapitation accelerates their demise.

#### Targeted killing works—group dispersal, leadership refuge, power vacuums, insights paranoia, and forces changed tactics

Morehouse 11, (Matthew A. Morehouse, University of Nebraska – Lincoln, Department of Political Science—Thesis, Hellfire and Grey Drones: An Empirical Examination of the Effectiveness of Targeted Killings, May 1, 2011, http://digitalcommons.unl.edu/poliscitheses/8/)

Taking the qualitative data in its totality, it appears that the United States’ targeted killing program is effective at hindering the effectiveness of terrorist groups. Firstly, the threat of targeted killings has caused the terrorist groups in Pakistan to disperse their members across several provinces. Secondly, the threat of targeted killings has caused terrorist leaders to take refuge in the larger cities of Pakistan, where they believe themselves safe from the risk of US drone attacks. This is particularly telling, considering that moving into a major city could place said terrorist leaders at greater risk of arrest from Pakistani authorities. Thirdly, targeted killings have lead to the creation of power vacuums, which in turn have lead to intra-terrorist conflicts over leadership. Fourthly, targeted killings have caused members of terrorist groups to become paranoid, thinking that even their most trusted comrades may be informants. Finally [Fifth], targeted killings have caused terrorist groups to change their organizational structures and tactics in order to better withstand the occurrence of targeted killings.

#### New great powers are rising and will soon be on par with the us—prefer our evidence because it cites the two most important indicators of a power shift

Layne 12

[Chris, Professor of IR and Political Science at Texas A&M, “This Time It’s Real: The End of Unipolarity and the Pax Americana”, p. online //wyo-tjc]

American decline is part of a broader trend in international politics: the shift of economic power away from the Euro-Atlantic core to rising great and regional powers (what economists sometimes refer to as the ‘‘emerging market’’ nations). Among the former are China, India, and Russia. The latter category includes Indonesia, Turkey, South Korea, Brazil, and South Africa. In a May 2011 report, the World Bank predicted that six countries—China, India, Brazil, Russia, Indonesia, and South Korea—will account for one-half of the world’s economic growth between 2011 and 2025 (Politi 2011; Rich 2011). In some respects, of course, this emergence of new great powers is less about rise than restoration. As Figure 1 indicates, in 1700 China and India were the world’s two largest economies. From their perspective—especially Beijing’s—they are merely regaining what they view as their natural, or rightful, place in the hierarchy of great powers. The ascent of new great powers is the strongest evidence of unipolarity’s end. The two most important indicators of whether new great powers are rising are relative growth rates and shares of world GDP (Gilpin 1981; Kennedy 1987). The evidence that the international system is rapidly becoming multipolar—and that, consequently, America’s relative power is declining—is now impossible to deny, and China is Exhibit A for the shift in the world’s center of economic and geopolitical gravity. China illustrates how, since the Cold War’s end, potential great powers have been positioning themselves to challenge the United States.

#### Multipolarity will arrive in two decades as other powers catch up to the US—transition to offshore balancing now is key to avoid unending cycles of warfare\*\*

Layne 9

[Christopher, Professor of Political Science at Texas A&M, Review of International Studies, “America’s Middle East grand strategy after Iraq: the moment for offshore balancing has arrived”, 2009, p. asp]

Some primacists believe that the US is immune to being counter-balanced because, as the only great power in a ‘unipolar’ system, it is so much more powerful than its nearest possible competitors.4 Yet, recent studies by the CIA offer compelling evidence that by 2020 the era of America’s unipolar ascendancy will be drawing to a close as new poles of power in the international system approach the US share of world power.5 And, of course, growing apprehensions about the military, as well as economic, implications of China’s rapid ascent are – at the very least – an implicit acknowledgment that the days of unchallenged US dominance in world affairs are numbered. Offshore balancers believe the US must adjust to incipient multipolarity because they understand that – unless the US is prepared to fight an unending series of preventive wars – new great powers inevitably will emerge in the next decade or two.

#### We outweigh- only a risk of a global nuclear war in a world of US primacy

Layne in 6

[Christopher, Professor of Political Science at Texas A&M, The Peace of Illusions: American Grand Strategy from 1940 to Present, Cornell University Press (Ithica), p. 176 //wyo-tjc]

If we assume, just for the sake of argument, that the magnet effect was a factor leading to U.S. involvement in Eurasian wars before 1945, nuclear weapons have changed the geopolitical equation since then. There are many imponderables about nuclear strategy. Nuclear weapons today probably would deter war between nuclear-armed great powers in Eurasia. On the other hand, because of the stability-instability paradox (the standoff at the strategic nuclear level makes it more thinkable for nuclear-armed great powers to fight limited, conventional wars against one another), nuclear deterrence might allow great powers to begin wars in the hope that they would be fought with conventional weapons only. However, in a conventional conflict between nuclear-armed great powers, the risk of escalation would be omnipresent. Precisely because of these unknowns, American grand strategy should maximize U.S. autonomy, because the last thing the United States should want is to be caught in the cross fire of a nuclear war fought by Eurasian great powers. If the United States adopts an offshore balancing grand strategy, it simply is not the case that the United States would he sucked into a war between Eurasian great powers. A nuclear conflict in Eurasia cannot leap the Atlantic or Pacific oceans and engulf the United States unless the United States is embroiled from the outset because of its forward military presence in Eurasia. In a nuclear world, it would be irrational to risk being involved in such a conflict for economic reasons (and, probably, for any reason).

### Modelling

#### US Constitution is losing global popularity

Liptak ‘12

[Adam Liptak, Supreme Court Coorespondent; New York Times, We the People’ Loses Appeal With People Around the World, New York Times, 2/6/12, <http://www.nytimes.com/2012/02/07/us/we-the-people-loses-appeal-with-people-around-the-world.html?pagewanted=all>, //wyo TL]

Sure, it is the nation’s founding document and sacred text. And it is the oldest written national constitution still in force anywhere in the world. But its influence is waning.¶ In 1987, on the Constitution’s bicentennial, [Time magazine calculated](http://www.time.com/time/magazine/article/0%2C9171%2C964901%2C00.html) that “of the 170 countries that exist today, more than 160 have written charters modeled directly or indirectly on the U.S. version.”¶ A quarter-century later, the picture looks very different. “The U.S. Constitution appears to be losing its appeal as a model for constitutional drafters elsewhere,” according to [a new study](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1923556) by [David S. Law](http://law.wustl.edu/faculty_profiles/profiles.aspx?id=6629) of Washington University in St. Louis and [Mila Versteeg](http://www.law.virginia.edu/lawweb/faculty.nsf/FHPbI/2301734) of the University of Virginia.¶ The study, to be published in June in The New York University Law Review, bristles with data. Its authors coded and analyzed the provisions of 729 constitutions adopted by 188 countries from 1946 to 2006, and they considered 237 variables regarding various rights and ways to enforce them.¶ “Among the world’s democracies,” Professors Law and Versteeg concluded, “constitutional similarity to the United States has clearly gone into free fall. Over the 1960s and 1970s, democratic constitutions as a whole became more similar to the U.S. Constitution, only to reverse course in the 1980s and 1990s.”¶ “The turn of the twenty-first century, however, saw the beginning of a steep plunge that continues through the most recent years for which we have data, to the point that the constitutions of the world’s democracies are, on average, less similar to the U.S. Constitution now than they were at the end of [World War II](http://topics.nytimes.com/top/reference/timestopics/subjects/w/world_war_ii_/index.html?inline=nyt-classifier).”¶ There are lots of possible reasons. The United States Constitution is terse and old, and it guarantees relatively few rights. The commitment of some members of the Supreme Court to interpreting the Constitution according to its original meaning in the 18th century may send the signal that it is of little current use to, say, a new African nation. And the Constitution’s waning influence may be part of a general decline in American power and prestige.¶ In an interview, Professor Law identified a central reason for the trend: the availability of newer, sexier and more powerful operating systems in the constitutional marketplace. “Nobody wants to copy Windows 3.1,” he said.¶ In a [television interview](http://www.youtube.com/watch?v=vzog2QWiVaA) during a visit to Egypt last week, Justice Ruth Bader Ginsburg of the Supreme Court seemed to agree. “I would not look to the United States Constitution if I were drafting a constitution in the year 2012,” she said. She recommended, instead, the[South African Constitution](http://www.info.gov.za/documents/constitution/), the [Canadian Charter of Rights and Freedoms](http://laws.justice.gc.ca/eng/charter/) or the[European Convention on Human Rights](http://www.hri.org/docs/ECHR50.html).¶ The rights guaranteed by the American Constitution are parsimonious by international standards, and they are frozen in amber. As [Sanford Levinson](http://www.utexas.edu/law/faculty/svl55/) wrote in 2006 in [“Our Undemocratic Constitution,”](http://www.utexas.edu/law/faculty/slevinson/undemocratic/) “the U.S. Constitution is the most difficult to amend of any constitution currently existing in the world today.” (Yugoslavia used to hold that title, but Yugoslavia did not work out.)¶ Other nations routinely trade in their constitutions wholesale, replacing them on average every 19 years. By odd coincidence, Thomas Jefferson, in [a 1789 letter to James Madison](http://teachingamericanhistory.org/library/index.asp?document=2220), once said that every constitution “naturally expires at the end of 19 years” because “the earth belongs always to the living generation.” These days, the overlap between the rights guaranteed by the Constitution and those most popular around the world is spotty.¶ Americans recognize rights not widely protected, including ones to a speedy and public trial, and are outliers in prohibiting government establishment of religion. But the Constitution is out of step with the rest of the world in failing to protect, at least in so many words, a right to travel, the presumption of innocence and entitlement to food, education and health care.¶ It has its idiosyncrasies. Only 2 percent of the world’s constitutions protect, as the Second Amendment does, a right to bear arms. (Its brothers in arms are Guatemala and Mexico.)¶ The Constitution’s waning global stature is consistent with [the diminished influence of the Supreme Court](http://www.nytimes.com/2008/09/18/us/18legal.html?ref=americanexception), which “is losing the central role it once had among courts in modern democracies,” Aharon Barak, then the president of the Supreme Court of Israel, [wrote in The Harvard Law Review in 2002](https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=116+Harv.+L.+Rev.+16&srctype=smi&srcid=3B15&key=0bacc7c7026c426ae19a031de806c331).¶ Many foreign judges say they have become less likely to cite decisions of the United States Supreme Court, in part because of what they consider its parochialism.¶ “America is in danger, I think, of becoming something of a legal backwater,” Justice Michael Kirby of the High Court of Australia said in [a 2001 interview](https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=4+Green+Bag+2d+287&srctype=smi&srcid=3B15&key=27e2ae15f94c08a6f86b86181db67a34). He said that he looked instead to India, South Africa and New Zealand.¶ Mr. Barak, for his part, identified a new constitutional superpower: “Canadian law,” he wrote, “serves as a source of inspiration for many countries around the world.” The new study also suggests that the Canadian Charter of Rights and Freedoms, adopted in 1982, may now be more influential than its American counterpart.¶ The Canadian Charter is both more expansive and less absolute. It guarantees equal rights for women and disabled people, allows affirmative action and requires that those arrested be informed of their rights. On the other hand, it balances those rights against “such reasonable limits” as “can be demonstrably justified in a free and democratic society.”¶ There are, of course, limits to empirical research based on coding and counting, and there is more to a constitution than its words, as Justice Antonin Scalia [told the Senate Judiciary Committee in October](http://www.judiciary.senate.gov/hearings/hearing.cfm?id=8bbe59e76fc0b6747b22c32c9e014187). “Every banana republic in the world has a bill of rights,” he said.¶ “The bill of rights of the former evil empire, the Union of Soviet Socialist Republics, was much better than ours,” he said, adding: “We guarantee freedom of speech and of the press. Big deal. They guaranteed freedom of speech, of the press, of street demonstrations and protests, and anyone who is caught trying to suppress criticism of the government will be called to account. Whoa, that is wonderful stuff!”¶ “Of course,” Justice Scalia continued, “it’s just words on paper, what our framers would have called a ‘parchment guarantee.’ ”

#### Poor International Behavior by troops removes the perception of American Rule of Law

Younge ’12

[Gary Younge, columnist The Guardian, “Comment: Abroad, Obama coasts on a wave of disappointment: Significant hope was invested in the chance to repair America's global reputation - but there's been precious little return”, The Guardian [London (UK)], 4/23/2012

One can only account for so many isolated incidents before it becomes necessary to start dealing with a pattern. The fact is that when Americans travel abroad to serve their country they have a record of not observing even the most basic human standards. The problem here is not with Americans per se but with military might, global economic pretensions and the skirmishes and occupations that inevitably accompany them. The French, Belgians and British were no more humane or less hypocritical in the administration of their colonies, including in Kenya where Obama's grandfather was tortured by the British.¶ Nor is the issue that American foreign policy is designed to serve US interests - that is the nature of every country's foreign policy. But that it's policy lies in such sharp contradiction to its rhetoric, and its practice so clearly undermines its national interests.¶ Take Afghanistan. Five days after revelations about the secret service in Colombia surfaced, the Los Angeles Times published photographs of US marines posing with the mangled corpses of Afghan insurgents. One featured the unofficial platoon patch, "Zombie hunter", over the remains of someone who had blown themselves up accidentally.¶ This "most certainly does not represent the character and the professionalism of the great majority of our troops in Afghanistan", insisted Captain John Kirby, a spokesman for the Pentagon, which pressured the LA Times not to release the photos. This incident, which occurred two years ago, should not be confused with the professionalism of the marines videoed urinating on Afghan corpses or the sergeant who ran amok in two Afghan villages leaving 17 civilians dead.¶ Nor are these contradictions new. In June 1964, President Lyndon Johnson told the Greek ambassador to Washington: "Fuck your parliament and your constitution . . . We pay a lot of good American dollars to the Greeks, Mr Ambassador. If your prime minister gives me talk about democracy, parliament and constitution, he, his parliament and his constitution may not last long . . ." Within three years Greece was under a brutal military junta backed by the US, from which it did not emerge for a decade.¶ What is different now is that significant hope abroad was invested in Obama to both repair America's international reputation and reorient its policies - and there has been precious little return.¶ "The diplomatic historian traces foreign affairs as if domestic affairs were offstage disturbances," writes Walter Karp in his book The Politics of War. "The historian of domestic politics treats the explosions of war as if they were offstage disturbances. Were that true, we would have to believe that presidents who faced a mounting sea of troubles at home have nonetheless conducted their foreign policy without the slightest regard for those troubles - that individual presidents were divided into watertight compartments, one labelled 'domestic' and the other 'foreign'."¶ Abroad as at home, Obama is coasting to the end of his first term on a wave of disappointment. A recent Gallup poll shows US global standing still holding up far better than it ever did under Bush. But it is softening considerably, particularly in Africa and the Americas, as the promise of those early years gives way to his record. On the doorstep, where the presidential race is tightening, as on the international stage, where goodwill is waning, the response is the same: better than the rest is a long way from good enough.

## 2NC

## Adv. 1 Heg

#### Targeted killing works—group dispersal, leadership refuge, power vacuums, insights paranoia, and forces changed tactics

Morehouse 11, (Matthew A. Morehouse, University of Nebraska – Lincoln, Department of Political Science—Thesis, Hellfire and Grey Drones: An Empirical Examination of the Effectiveness of Targeted Killings, May 1, 2011, http://digitalcommons.unl.edu/poliscitheses/8/)

Taking the qualitative data in its totality, it appears that the United States’ targeted killing program is effective at hindering the effectiveness of terrorist groups. Firstly, the threat of targeted killings has caused the terrorist groups in Pakistan to disperse their members across several provinces. Secondly, the threat of targeted killings has caused terrorist leaders to take refuge in the larger cities of Pakistan, where they believe themselves safe from the risk of US drone attacks. This is particularly telling, considering that moving into a major city could place said terrorist leaders at greater risk of arrest from Pakistani authorities. Thirdly, targeted killings have lead to the creation of power vacuums, which in turn have lead to intra-terrorist conflicts over leadership. Fourthly, targeted killings have caused members of terrorist groups to become paranoid, thinking that even their most trusted comrades may be informants. Finally [Fifth], targeted killings have caused terrorist groups to change their organizational structures and tactics in order to better withstand the occurrence of targeted killings.

#### HVT key – best studies prove

Johnston and Sarbahi ‘13

[Patrick Johnson Former Fellow Harvard’s Kennedy School; Anoop K. Sarbahi Postdoctoral Scholar Stanford, “The Impact of U.S. Drone Strikes on Terrorism in Pakistan and Afghanistan”, 7/1/13, [http://patrickjohnston.info/materials/drones.pdf,//wyo](http://patrickjohnston.info/materials/drones.pdf%2C//wyo) TL]

Given that killing terrorist leaders or HVIs in terrorist organizations is the purpose¶ of drone strikes, we evaluate whether patterns of militant attacks differ following strikes in¶ which a militant leader was killed. Table 3 provides tests of Hypotheses 3 and 4 against¶ the four metrics of militant violence examined here using the same 2FESL ¶ specifications as in table 2. The results are largely consistent with Hypothesis 3—that¶ killing militant leaders is associated with decreased violence. There is little support for¶ Hypothesis 4, that killing HVIs has counterproductive effects on violence. Controlling for¶ the number of drone strikes per agency-week, the first column of table 3 shows that¶ drone strikes that kill a HVI are associated with reductions in the number of militant¶ incidents that occur. This result is statistically significant at the one-percent level. There¶ is, however, weaker evidence that HVI removals reduce militant lethality and IED¶ attacks.45¶ Overall, the evidence is somewhat consistent with the argument that individuals¶ matter for a terrorist organization’s ability to produce violence at sustained rates.¶ Along with other evidence from macro-level studies of leadership decapitation, the¶ present results suggest that critics who argue against the efficacy of removing key¶ figures may be overemphasizing the extent to which such individuals can be readily ¶ replaced.¶ 46

#### Targeted killing works – reduced competence and increased daily disruption

Admiral Dennis Blair, Former Director of National Intelligence, “U.S. Drone Strike Policies: Speakers: Admiral Dennis Blair, Former Director of National Intelligence, and Micah Zenko, Douglas Dillon Fellow,” Conversation at CFR, January 22, 2013.

OPERATOR: Our next question comes from David Wood with Huffington Post.¶ QUESTIONER: Good morning, gentlemen. Is there evidence that as you're targeting horizontally networked terrorist groups, that targeted killing really works? Does it really blunt their operational capability when you remove one of their leaders?¶ BLAIR: Yes.¶ ZENKO: I'll give you the academic answer, is there's a huge debate in the academic journals, like Security Studies, International Security, about how effective targeting terrorist leaders are -- people like Patrick Johnston at Rand, and Jenna Jordan at the University of Chicago. And I invite you to look at some of the evidence that they present whether or not targeting leadership leads to a reduction of threat or the collapse of terrorist groups. The evidence, as is often the case is academic studies, is quite mixed, but it's clear that there is many instances where targeting has a significant impact in ending the existence of some terrorist groups.¶ QUESTIONER: Could I ask Admiral Blair to elucidate on his one-word answer, which I thought was pretty interesting?¶ BLAIR: There are two -- I'd say there are two aspects to it. One is the competence of those who take the place of those who are killed. And so there are senior leaders who have either charismatic and inspirational qualities or who have specific operational skills which will be lost if they are replaced by someone else with either less charisma or less experience.¶ On the other hand, sometimes in organizations freeing up promotion is a -- is a good thing. And you get people who come in who are -- who are, in fact, more skilled, more charismatic and more energetic than those they replaced.¶ The second thing is that having to conduct your operations under attack makes them not impossible -- especially air attack -- but a lot more difficult than if you're not. And I would choose two extreme examples, look at the way the 9/11 attacks were planned and conducted: Long meetings in Kandahar; conferences around the world in places like Bangkok, Hamburg, Germany; long reconnaissance journeys to check things out in the -- in the target countries.¶ And these were all possible because al-Qaida was not under attack, in part by -- in part by drone attack and also -- and also other intelligence and security activities. Now, in large part because of the use of drones, there are not sanctuary areas where the essential functions of intelligence planning, logistics coordination and training can all be -- can all be conducted, and the drones requires these organizations to go underground, to take a long time.¶ So my evaluation is that on those two factors -- the quality of the leaders who are moving up to replace those killed and the difficulty of actually conducting attacks against the United States that al-Qaida has been -- has been substantially weakened by the overall measures, but -- of which the drone attacks on leadership have been a part.

#### New great powers are rising and will soon be on par with the us—prefer our evidence because it cites the two most important indicators of a power shift

Layne 12

[Chris, Professor of IR and Political Science at Texas A&M, “This Time It’s Real: The End of Unipolarity and the Pax Americana”, p. online //wyo-tjc]

American decline is part of a broader trend in international politics: the shift of economic power away from the Euro-Atlantic core to rising great and regional powers (what economists sometimes refer to as the ‘‘emerging market’’ nations). Among the former are China, India, and Russia. The latter category includes Indonesia, Turkey, South Korea, Brazil, and South Africa. In a May 2011 report, the World Bank predicted that six countries—China, India, Brazil, Russia, Indonesia, and South Korea—will account for one-half of the world’s economic growth between 2011 and 2025 (Politi 2011; Rich 2011). In some respects, of course, this emergence of new great powers is less about rise than restoration. As Figure 1 indicates, in 1700 China and India were the world’s two largest economies. From their perspective—especially Beijing’s—they are merely regaining what they view as their natural, or rightful, place in the hierarchy of great powers. The ascent of new great powers is the strongest evidence of unipolarity’s end. The two most important indicators of whether new great powers are rising are relative growth rates and shares of world GDP (Gilpin 1981; Kennedy 1987). The evidence that the international system is rapidly becoming multipolar—and that, consequently, America’s relative power is declining—is now impossible to deny, and China is Exhibit A for the shift in the world’s center of economic and geopolitical gravity. China illustrates how, since the Cold War’s end, potential great powers have been positioning themselves to challenge the United States.

#### Multipolarity will arrive in two decades as other powers catch up to the US—transition to offshore balancing now is key to avoid unending cycles of warfare\*\*

Layne 9

[Christopher, Professor of Political Science at Texas A&M, Review of International Studies, “America’s Middle East grand strategy after Iraq: the moment for offshore balancing has arrived”, 2009, p. asp]

Some primacists believe that the US is immune to being counter-balanced because, as the only great power in a ‘unipolar’ system, it is so much more powerful than its nearest possible competitors.4 Yet, recent studies by the CIA offer compelling evidence that by 2020 the era of America’s unipolar ascendancy will be drawing to a close as new poles of power in the international system approach the US share of world power.5 And, of course, growing apprehensions about the military, as well as economic, implications of China’s rapid ascent are – at the very least – an implicit acknowledgment that the days of unchallenged US dominance in world affairs are numbered. Offshore balancers believe the US must adjust to incipient multipolarity because they understand that – unless the US is prepared to fight an unending series of preventive wars – new great powers inevitably will emerge in the next decade or two.

#### B) HEGEMONY CAUSES EXTENDED DETERRENCE BREAK DOWNS AND NUCLEAR WAR

Layne in 6

[Christopher, Professor of Political Science at Texas A&M, The Peace of Illusions: American Grand Strategy from 1940 to Present, Cornell University Press (Ithica), p. 169 //wyo-tjc]

Proponents of U.S. hegemony like to say that America’s military commitments in Eurasia are an insurance policy against the purportedly damaging consequences of a Eurasian great power war by preventing it from happening in the first place or limiting its harmful effects if it does happen. This is a dubious analogy, because insurance policies neither prevent, nor limit, damage to policyholders. Rather, they compensate the policyholder for damage incurred. Even on its own terms, however, the insurance policy argument is not persuasive. Both Californians and Floridians know that some types of insurance are either unaffordable or unobtainable at any price. The chances of the “Big One”—a catastrophic earthquake on the San Andreas Fault—jolting Los Angeles or San Francisco, or a Force 5 hurricane making a direct hit on Miami, are small. But if either were to happen the consequences could be catastrophic, which is why insurance companies don’t want to offer earthquake and hurricane insurance. Prospective great power wars in Eurasia represent a similar dynamic: the risk of such a war breaking out may be low, but if it does it could be prohibitively expensive for the United States to be involved. Rather than being instruments of regional pacification, today America’s alliances are transmission belts for war that ensure that the U.S. would be embroiled in Eurasian wars. In deciding whether to go war in Eurasia, the United States should not allow its hands to be tied in advance. For example, a non—great power war on the Korean Peninsula—even if nuclear weapons were not involved—would he very costly. The dangers of being entangled in a great power war in Eurasia, of course, are even greater, and could expose the American homeland to nuclear attack. An offshore balancing grand strategy would extricate the United States from the danger of being entrapped in Eurasian conflicts by its alliance commitments.

#### C) CURRENT POWER CAN ONLY BE SUSTAINED AT THE VERY MOST FOR ANOTHER TWO DECADES AND GUARANTEES THE MAJOR POWER WAR THEY TRY TO AVOID—MUCH SAFER TO DECLINE NOW

Layne in ‘6

[Christopher, Professor of Political Science, Likely a Genius, “The Unipolar Illusion Revisited”, International Security, Vol. 31, No. 2, p. asp //wyo-tjc]

The United States enjoys no privileged exemption from the fate of past hegemons. American primacists conflate balancing (a grand strategy pursued by individual states) with the attainment of balance in the international system (a more or less equal distribution of power among the great powers). That others' balancing efforts have not yet produced a balance of power does not mean they are not trying to offset U.S. hegemony, although these balancing efforts will require time to bear fruit. Thus, contrary to my 1993 prediction, the United States probably will not be challenged by great power rivals as early as 2010. Yet, it also is doubtful that U.S. hegemony will endure until 2030, as Wohlforth predicted in 1999. The key question facing American strategists, therefore, is: Should the United States cling to unipolarity for, at best, another two decades? Or should it abandon its hegemonic grand strategy for a less ambitious one of offshore balancing? There are two versions of offshore balancing from which the United States can choose: multilateral or unilateral. 125 As a multilateral offshore balancer, the United States would act both to "reassure its allies that it will use force with wisdom and restraint" and to "reduce the fear created by its superior power by giving other states a voice in the circumstances in which it will use force." 126 Multilateral offshore balancing is problematic for four reasons. First, it is internally inconsistent, because its twin goals of preserving U.S. primacy while persuading others that they need not fear U.S. power do not mesh. 127 Second, the idea that the United States should exercise its power in concert with others runs counter to the fundamental realities of international politics. 128 Third, even if the United States could reassure its allies that it will use [End Page 39]its power wisely, its ability to reassure potential adversaries such as China and Russia remains doubtful. Finally, multilateral offshore balancing can fairly be viewed as a backdoor strategy for preserving U.S. hegemony, rather than as a policy of restraint. 129 At bottom, multilateral offshore balancing does not address the United States' "hegemony problem," which is not caused by U.S. unilateralism. The real problem is that too often the United States acts unwisely (or, as in the case of Iraq, foolishly)—something it just as easily can do multilaterally as unilaterally. Although some analysts blame the George W. Bush administration for the United States' hegemony problem, the facts suggest otherwise. Concerns about unchecked U.S. power in a unipolar world first were voiced almost simultaneously with the Soviet Union's collapse. And it was during the Clinton administration that U.S. officials first acknowledged in so many words that America had a hegemony problem. The United States has a hegemony problem because it wields hegemonic power. To reduce the fear of U.S. power, the United States must accept some reduction in its relative hard power by adopting a multipolar—and essentially unilateral—offshore balancing strategy that accommodates the rise of new great powers. 130 It also must rein in the scope of its extravagant ambitions to shape the international system in accordance with its Wilsonian ideology. The United States does not need to be an extraregional hegemon to be secure. Its quest for hegemony is driven instead by an ideational, deterritorialized conception of security divorced from the traditional metrics of great power grand strategy: the distribution of power in the international system and geography. 131 Thus, to reduce others' concerns about its power, the United States must practice self-restraint (which is different from choosing to be constrained by others by adopting a multilateral approach to grand strategy). An America [End Page 40]that has the wisdom and prudence to contain itself is less likely to be feared than one that begs the rest of the world to stop it before it expands hegemonically again. If the United States fails to adopt an offshore balancing strategy based on multipolarity and military and ideological self-restraint, it probably will, at some point, have to fight to uphold its primacy, which is a potentially dangerous strategy. Maintaining U.S. hegemony is a game that no longer is worth the candle, especially given that U.S. primacy may already be in the early stages of erosion. Paradoxically, attempting to sustain U.S. primacy may well hasten its end by stimulating more intensive efforts to balance against the United States, thus causing the United States to become imperially overstretched and involving it in unnecessary wars that will reduce its power. Rather than risking these outcomes, the United States should begin to retrench strategically and capitalize on the advantages accruing to insular great powers in multipolar systems. Unilateral offshore balancing, indeed, is America's next grand strategy.

### Adv. 2

#### China puts sovereignty above international law- they defy international criticism of human rights violations

Bradford and Posner 2011 [Anu Bradford, professor of law at Columbia; Eric A. Posner, Professor of law at UChicago Law school and editor of The Journal of Legal Studies, “Universal Exceptionalism in International Law,” Harvard International Law Journal, Volume: 52 Issue: 1, Winter 2011, Lexis Nexis, wyo-sc]

China's vision of international law rests on the principle of sovereignty. Under the Chinese view, sovereign states have an inalienable right to exercise jurisdiction over their territories and their people without interference from other states. [n108](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n108) The internal affairs of a state are left for the state's own people to govern; international affairs are decided by consultation among states acting on the basis of equality and mutual benefit. [n109](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n109) While the integrated [\*26] global economy inevitably compromises states' economic sovereignty, their military, political, and cultural sovereignty remain inviolable. [n110](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n110) Consequently, China rejects all perceived attempts, including criticism of its human rights policies, to undermine its sovereignty. [n111](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n111)¶ China bases its vision of international law on the "Five Principles of Peaceful Coexistence," which were first established in an agreement between China and India in 1954. These principles are mutual respect for the territorial integrity and sovereignty of other states; mutual non-aggression; mutual non-interference in the internal affairs of other states; equality and mutual benefit; and peaceful coexistence. [n112](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n112) Since then, these principles have become a guiding doctrine of international relations for the Chinese government.[n113](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n113) Of these principles, the most elemental in China's view is the principle of sovereignty. [n114](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n114) In commemorating the 50th anniversary of the Five Principles in 2004, Chinese Premier Wen Jiabao referred to sovereignty as "the birthmark of any independent state, the crystallization of its national interests and the best safeguard of all it holds dear."[n115](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n115)¶ As a part of its efforts to promote a world order based on the principle of sovereignty, China accords strong authority to the U.N. Charter and the Security Council. [n116](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n116) Qian Qichen, former foreign minister of China, gave special emphasis to the United Nations' role in maintaining a pluralist world, describing the United Nations as the "most universal, representative, and authoritative international organization in the world." [n117](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n117) Moreover, Qichen called on states to uphold the United Nations' authority and to acknowledge its dominant role in conducting international affairs. [n118](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n118)¶ China has applied this view of international law to maintain its position that human rights concerns do not trump the principle of sovereignty. China regularly defies criticism of its human rights record by the United Nations, foreign countries and NGOs. [n119](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n119) It resists the Western concept of [\*27] human rights as incompatible with its non-Western and non-democratic society. [n120](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.91343.33678028583&target=results_DocumentContent&returnToKey=20_T18017012137&parent=docview&rand=1377364942827&reloadEntirePage=true" \l "n120) Under this view, advancement of norms relating to human rights and democratic governance presumes a hierarchy of civilizations, and leads to an imposition of one's culture and values on others.

#### US Constitution is losing global popularity

Liptak ‘12

[Adam Liptak, Supreme Court Coorespondent; New York Times, We the People’ Loses Appeal With People Around the World, New York Times, 2/6/12, <http://www.nytimes.com/2012/02/07/us/we-the-people-loses-appeal-with-people-around-the-world.html?pagewanted=all>, //wyo TL]

Sure, it is the nation’s founding document and sacred text. And it is the oldest written national constitution still in force anywhere in the world. But its influence is waning.¶ In 1987, on the Constitution’s bicentennial, [Time magazine calculated](http://www.time.com/time/magazine/article/0%2C9171%2C964901%2C00.html) that “of the 170 countries that exist today, more than 160 have written charters modeled directly or indirectly on the U.S. version.”¶ A quarter-century later, the picture looks very different. “The U.S. Constitution appears to be losing its appeal as a model for constitutional drafters elsewhere,” according to [a new study](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1923556) by [David S. Law](http://law.wustl.edu/faculty_profiles/profiles.aspx?id=6629) of Washington University in St. Louis and [Mila Versteeg](http://www.law.virginia.edu/lawweb/faculty.nsf/FHPbI/2301734) of the University of Virginia.¶ The study, to be published in June in The New York University Law Review, bristles with data. Its authors coded and analyzed the provisions of 729 constitutions adopted by 188 countries from 1946 to 2006, and they considered 237 variables regarding various rights and ways to enforce them.¶ “Among the world’s democracies,” Professors Law and Versteeg concluded, “constitutional similarity to the United States has clearly gone into free fall. Over the 1960s and 1970s, democratic constitutions as a whole became more similar to the U.S. Constitution, only to reverse course in the 1980s and 1990s.”¶ “The turn of the twenty-first century, however, saw the beginning of a steep plunge that continues through the most recent years for which we have data, to the point that the constitutions of the world’s democracies are, on average, less similar to the U.S. Constitution now than they were at the end of [World War II](http://topics.nytimes.com/top/reference/timestopics/subjects/w/world_war_ii_/index.html?inline=nyt-classifier).”¶ There are lots of possible reasons. The United States Constitution is terse and old, and it guarantees relatively few rights. The commitment of some members of the Supreme Court to interpreting the Constitution according to its original meaning in the 18th century may send the signal that it is of little current use to, say, a new African nation. And the Constitution’s waning influence may be part of a general decline in American power and prestige.¶ In an interview, Professor Law identified a central reason for the trend: the availability of newer, sexier and more powerful operating systems in the constitutional marketplace. “Nobody wants to copy Windows 3.1,” he said.¶ In a [television interview](http://www.youtube.com/watch?v=vzog2QWiVaA) during a visit to Egypt last week, Justice Ruth Bader Ginsburg of the Supreme Court seemed to agree. “I would not look to the United States Constitution if I were drafting a constitution in the year 2012,” she said. She recommended, instead, the[South African Constitution](http://www.info.gov.za/documents/constitution/), the [Canadian Charter of Rights and Freedoms](http://laws.justice.gc.ca/eng/charter/) or the[European Convention on Human Rights](http://www.hri.org/docs/ECHR50.html).¶ The rights guaranteed by the American Constitution are parsimonious by international standards, and they are frozen in amber. As [Sanford Levinson](http://www.utexas.edu/law/faculty/svl55/) wrote in 2006 in [“Our Undemocratic Constitution,”](http://www.utexas.edu/law/faculty/slevinson/undemocratic/) “the U.S. Constitution is the most difficult to amend of any constitution currently existing in the world today.” (Yugoslavia used to hold that title, but Yugoslavia did not work out.)¶ Other nations routinely trade in their constitutions wholesale, replacing them on average every 19 years. By odd coincidence, Thomas Jefferson, in [a 1789 letter to James Madison](http://teachingamericanhistory.org/library/index.asp?document=2220), once said that every constitution “naturally expires at the end of 19 years” because “the earth belongs always to the living generation.” These days, the overlap between the rights guaranteed by the Constitution and those most popular around the world is spotty.¶ Americans recognize rights not widely protected, including ones to a speedy and public trial, and are outliers in prohibiting government establishment of religion. But the Constitution is out of step with the rest of the world in failing to protect, at least in so many words, a right to travel, the presumption of innocence and entitlement to food, education and health care.¶ It has its idiosyncrasies. Only 2 percent of the world’s constitutions protect, as the Second Amendment does, a right to bear arms. (Its brothers in arms are Guatemala and Mexico.)¶ The Constitution’s waning global stature is consistent with [the diminished influence of the Supreme Court](http://www.nytimes.com/2008/09/18/us/18legal.html?ref=americanexception), which “is losing the central role it once had among courts in modern democracies,” Aharon Barak, then the president of the Supreme Court of Israel, [wrote in The Harvard Law Review in 2002](https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=116+Harv.+L.+Rev.+16&srctype=smi&srcid=3B15&key=0bacc7c7026c426ae19a031de806c331).¶ Many foreign judges say they have become less likely to cite decisions of the United States Supreme Court, in part because of what they consider its parochialism.¶ “America is in danger, I think, of becoming something of a legal backwater,” Justice Michael Kirby of the High Court of Australia said in [a 2001 interview](https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=4+Green+Bag+2d+287&srctype=smi&srcid=3B15&key=27e2ae15f94c08a6f86b86181db67a34). He said that he looked instead to India, South Africa and New Zealand.¶ Mr. Barak, for his part, identified a new constitutional superpower: “Canadian law,” he wrote, “serves as a source of inspiration for many countries around the world.” The new study also suggests that the Canadian Charter of Rights and Freedoms, adopted in 1982, may now be more influential than its American counterpart.¶ The Canadian Charter is both more expansive and less absolute. It guarantees equal rights for women and disabled people, allows affirmative action and requires that those arrested be informed of their rights. On the other hand, it balances those rights against “such reasonable limits” as “can be demonstrably justified in a free and democratic society.”¶ There are, of course, limits to empirical research based on coding and counting, and there is more to a constitution than its words, as Justice Antonin Scalia [told the Senate Judiciary Committee in October](http://www.judiciary.senate.gov/hearings/hearing.cfm?id=8bbe59e76fc0b6747b22c32c9e014187). “Every banana republic in the world has a bill of rights,” he said.¶ “The bill of rights of the former evil empire, the Union of Soviet Socialist Republics, was much better than ours,” he said, adding: “We guarantee freedom of speech and of the press. Big deal. They guaranteed freedom of speech, of the press, of street demonstrations and protests, and anyone who is caught trying to suppress criticism of the government will be called to account. Whoa, that is wonderful stuff!”¶ “Of course,” Justice Scalia continued, “it’s just words on paper, what our framers would have called a ‘parchment guarantee.’ ”

## Solvency

#### Prez will circumvent-

#### [1.] invokes state secrets to avoid oversight

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. 24//wyo-sc]

Monitoring the executive requires expertise in the area being monitored. In many cases, Congress lacks the information necessary to monitor discretionary policy choices by the executive. Although the committee system has the effect, among others, of generating legislative information and expertise,18 and although Congress has a large internal staff, there are domains in which no amount of legislative expertise suffices for effective oversight. Prime among these are areas of foreign policy and national security. Here the relative lack of legislative expertise is only part of the problem; what makes it worse is that the legislature lacks the raw information that experts need to make assessments. The problem would disappear if legislators could cheaply acquire information from the president, but they cannot. One obstacle is a suite of legal doctrines protecting executive secrecy and creating deliberative privileges— doctrines that may or may not be justified from some higher-order systemic point of view as means for producing optimal deliberation within the executive branch. Although such privileges are waivable, the executive often fears to set a bad institutional precedent. Another obstacle is the standard executive claim that Congress leaks like a sieve, so that sharing secret information with legislators will result in public disclosure. The problem becomes most acute when, as in the recent controversy over surveillance by the National Security Agency, the executive claims that the very scope or rationale of a program cannot be discussed with Congress, because to do so would vitiate the very secrecy that makes the program possible and beneficial. In any particular case the claim might be right or wrong; legislators have no real way to judge, and they know that the claim might be made either by a wellmotivated executive or by an ill-motivated executive, albeit for very different reasons.

#### [2.] constraints make Presidents more assertive

Barilleaux and Kelley 2010 [Ryan J. , Professor of Political Science at Miami, OH; and Christopher S. , Lecturer (Political Science) at Miami, OH, The Unitary Executive and the Modern Presidency, Texas A&M Press, p. 225-226, 2010// wyo-sc]

Congress, following the logic of Daniel Patrick Moynihan's "Iron Law of Emulation" (which holds that what one branch of government does will be emulated by another), responded to the enlargement of the presidency and its powers by undertaking a number of actions in the 1970s to enable itself to be a more active and assertive player in the making of national policy.11 It gave itself a large professional staff, reformed its budget process, developed tools for more oversight of the executive, passed legislation to gain more information about the conduct of foreign policy and influence over it (the Case-Zablocki Act, the War Powers Resolution, and other laws), and at times acted aggressively to challenge presidential policy (in the mid-1970s and again in the late 1990s and after the 2006 midterm elections). In less than forty years, Congress has moved toward impeaching one president (Nixon, whom it ultimately drove from office), legislated an end to the Vietnam War, prohibited American intervention in the civil war in Angola (1975), impeached another president (Clinton), shut down the government in a duel with the White House over the federal budget (1995), investigated the Iran-Contra affair and other incidents, passed a bill to require a timetable for withdrawing U.S. forces from Iraq (2007), tried several times to bring the president to heel on the use of force, and balked when the Bush administration tried to have its first financial industry bailout plan passed summarily in 2008. These and other incidents have made the legislature a full player in the separated system of American government, but they have also stimulated presidents to seek greater autonomy from legislative constraints. The unilateral presidency is the result of this stimulation. Barack Obama follows in this line of presidents seeking to accomplish something in office and feeling the urgency of their task. In his victory speech on election night in 2008, he told the assembled crowd that "this is our time—to put our people back to work and open doors of opportunity for our kids; to restore prosperity and promote the cause of peace; to reclaim the American Dream and reaffirm that fundamental truth—that out of many, we are one; that while we breathe, we hope, and where we are met with cynicism, and doubt, and those who tell us that we can't, we will respond with that timeless creed that sums up the spirit of a people: Yes We Can."12 There is no reason to think that he or any subsequent president will be passive in the conduct of office. Congressional responses to executive unilateralism will be too late *and too strong* andwill *in turn* stimulate a new round of executive assertiveness*.* In the 1960s and 1970s Congress bridled at the growth of presidential power but acquiesced to it until legislators finally decided that they had seen enough. Beginning in the mid-1970s, Congress reacted with a spate of president-curbing legislation (the War Powers Resolution, the CaseZablocki Act, the Budget and Impoundment Act), the near-impeachment of Richard Nixon, a legislated end to the Vietnam War, an investigation of the CIA, and other actions to restrict presidential autonomy. The consequence, to some extent described in this volume, was the rise of executive unilateralism as a way to circumvent Congress.

#### [3.] Empirics on presidents ignoring WPR prove the trend

Isaacs 2011

[John Isaacs, 2011, executive director of Council for a Livable World, War Powers Resolution consistently ignored, <http://thehill.com/blogs/congress-blog/foreign-policy/172803-war-powers-resolution-consistently-ignored>, uwyo//amp]

President Harry F. Truman ignored Congress when in 1950 he sent troops to Korea to stave off a North Korean advance into the South. Almost 1.8 million Americans fought in Korea, with some 33,600 American deaths. But there never was a congressional authorization, and Congress continued to appropriate funds to prosecute the war. The War Powers Resolution also appeared to be a check against Nixon’s power, a President recently overwhelmingly re-elected who was becoming more and more enmeshed in the Watergate scandal. Indeed, I played only a bit role, helping to convince some liberals such as Representatives Bella Abzug (D-NY) and Robert Drinan (D-Mass.) that Congress was not ceding additional power to the President by giving him or her 60 or 90 days to conduct war without approval of Congress. Fast forward to today. Every President since 1973, including Barack Obama, has decided to ignore the law as an unconstitutional assertion of power.

#### [4.] Cancels testimony, Justice Department ignores oversight requests

Victor ‘03

[Kirk Victor, writer for government executive.com, 2003, Congress in eclipse as power shifts to executive branch, <http://www.govexec.com/management/2003/04/congress-in-eclipse-as-power-shifts-to-executive-branch/13800/>, uwyo//amp]

Senate Finance Committee Chairman Charles Grassley, R-Iowa, agreed in an interview that "getting information from the Justice Department under Ashcroft is like pulling teeth." But Grassley sees it as an institutional problem, and said it had also been difficult to get responses when Janet Reno led the department. Grassley said he has had no problem in asserting his oversight powers with the executive branch. As for his colleagues who worry about presidential usurpation of Congress's powers, Grassley added, "It doesn't matter to me what the president thinks, unless I want to take it into consideration. He didn't elect me-the people of Iowa elected me. I am a trustee of the people, not a messenger boy for the president." But Leahy had a far more negative, withering take on the Bush administration's actions to avoid oversight. He and some other Senate Judiciary Committee members have sent the Justice Department 28 requests for oversight information, dating back to July 2001. The department has not responded to any of them. Ashcroft "basically ignores most of the requests, but at least I give him credit for being bipartisan-he ignores Republican requests, too," Leahy said in the interview. "And this is the man who [when he was a senator] thought he should hold up judicial nominations and everything else when the attorney general didn't give us what we wanted." Several members of the Senate Foreign Relations Committee also reacted angrily when the administration canceled, at the last minute, testimony by the top official in charge of reconstruction and humanitarian assistance in Iraq, who was to appear at a March 11 hearing. They also were surprised to learn from that day's newspapers that the administration was seeking bids from U.S. corporations on reconstruction contracts for Iraq.

## 1NR

## Neg Fiat Good

*Long Shell*

1. Debate has changed. As topics got bigger, affs defended plans instead of the whole resolution, reciprocally, It’s now only the negatives job to disprove the plan.
2. Its Recipricol, the neg should get fiat too
3. Opportunity cost- Counterplan functions like a disad to the plan.
4. More real world, trains us to find the best policy option
5. It’s predictable and widely accepted in debate.
6. Turn- Increases aff ground they can read disads to the CP
7. You cant make the negative defend the racist, sexist status quo if a case might just be true.
8. Aff gets to choose the topic of debate, has unlimited prep time, higher win percentage and first and last speech, the neg needs counterplans
9. Lit checks fiat abuse
10. Not a voter- Its an argument to reject the CP

## Agent CP’s Good

*The Offense…*

1. Key to negative ground, half of all CP’s run are agent CP’s
2. Tests the affirmative plan- 90% of policy is implementation, we prove their policy is 90% bad

Elmore, Prof. Public Affairs at University of Washington, PolySci Quarterly 79-80, p. 605, 1980

The emergence of implementation as a subject for policy analysis coincides closely with the discovery by policy analysts that decisions are not self-executing. Analysis of policy choices matter very little if the mechanism for implementing those choices is poorly understood in answering the question, "What percentage of the work of achieving a desired governmental action is done when the preferred analytic alternative has been identified?" Allison estimated that in the normal case, it was about 10 percent, leaving the remaining 90 percent in the realm of implementation.

1. Gives the affirmative ground- They can run any DA’s they have to our agent
2. Makes the aff defend their plan, why would they specify Congress if we can’t have a debate on it.
3. Not a voter- Its an argument to reject the CP

## Object Fiat Good

*This isn’t object fiat. The resolution asks us to restrict presidential powers, which is the object, the executive branch is an alternate actor*

AND

Object fiat isn’t so bad

1. Its still negative ground- we have all advocacy outside the resolution
2. No bright line- The aff can’t say what too much fiat is
3. Forces affirmative critical thinking- best for education learn to think under pressure
	1. education outweighs fairness because the rules were created to maximize education, if we find a way that increases education the rules can be changed
4. Not a voter- Its an argument to reject the alternative

#### Presidential power increasing now

#### -Lack of functional legislative branch

Epps 2013

[Garrett Epps, a former reporter for The Washington Post, is a novelist and legal scholar. He teaches courses in constitutional law and creative writing for law students at the University of Baltimore, Can We Talk Calmly About Obama's 'Executive Orders'?, <http://www.theatlantic.com/politics/archive/2013/01/can-we-talk-calmly-about-obamas-executive-orders/267319/>, uwyo//amp]

There's every reason to think that there will be more of these serious executive-power issues in Obama's second term. It's possible that, for the next two years at least, Obama will have to try to govern without a functioning legislative branch. It's a challenge, to say the least, and one that few presidents have faced. History suggests that the result will be increased executive power, simply because some things -- including paying the debts of the United States -- must be done no matter what. Already, for example, two highly respected academics, Michael Dorf of Cornell and Neil Buchanan of George Washington University, have suggested that the "least unconstitutional" response to a debt-ceiling standoff would be for Obama to raise taxes on his own authority. I am certainly not ready to go there, but Dorf and Buchanan are serious scholars. Their article illustrates that desperate constitutional times sometimes elicit extra-constitutional measures.

#### -executive orders

Kumar 2013

[Anita Kumar, journalist, March 19, 2013, Obama turning to executive power to get what he wants

: [http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Uexodo1tOyQ#storylink=cpy](http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Uexodo1tOyQ), uwyo//amp]

WASHINGTON — President Barack Obama came into office four years ago skeptical of pushing the power of the White House to the limit, especially if it appeared to be circumventing Congress. Now, as he launches his second term, Obama has grown more comfortable wielding power to try to move his own agenda forward, particularly when a deeply fractured, often-hostile Congress gets in his way. He’s done it with a package of tools, some of which date to George Washington and some invented in the modern era of an increasingly powerful presidency. And he’s done it with a frequency that belies his original campaign criticisms of predecessor George W. Bush, invites criticisms that he’s bypassing the checks and balances of Congress and the courts, and whets the appetite of liberal activists who want him to do even more to advance their goals. While his decision to send drones to kill U.S. citizens suspected of terrorism has garnered a torrent of criticism, his use of executive orders and other powers at home is deeper and wider. He delayed the deportation of young illegal immigrants when Congress wouldn’t agree. He ordered the Centers for Disease Control and Prevention to research gun violence, which Congress halted nearly 15 years ago. He told the Justice Department to stop defending the Defense of Marriage Act, deciding that the 1996 law defining marriage as between a man and a woman was unconstitutional. He’s vowed to act on his own if Congress didn’t pass policies to prepare for climate change. Arguably more than any other president in modern history, he’s using executive actions, primarily orders, to bypass or pressure a Congress where the opposition Republicans can block any proposal.

### Link Debate

#### -Libya

Meckler ‘12

[Laura Meckler, writer for WSJ, March 30th, 2012, Obama Shifts View of Executive Power, <http://online.wsj.com/article/SB10001424052702303812904577292273665694712.html>, uwyo//amp]

When he ran for president, Barack Obama promised to roll back President George W. Bush's use of executive power, a defining point of the Bush presidency. The pledge was part of a broader pitch about Mr. Obama's governing style, which he said would focus on solving problems in a pragmatic, cooperative way. The allure of executive power, it turns out, is hard to resist. Most every chief executive has found ways to escape the shackles of the legislature and expand the power of the presidency. Three years into his first term, Mr. Obama has developed his own expansive view of going it alone, asserting new executive powers and challenging members of Congress in both parties. "He's using executive orders as a political tool—'I can't work with this Congress so I'm going to do it myself,'" said Sen. Lindsey Graham (R., S.C.), who has worked with the White House on selective issues. "That's not the way he campaigned." He generally supports Mr. Obama's executive actions in national security but not on domestic affairs. Traditionally, clashes about executive power have centered on national security and foreign policy. In Mr. Obama's case, he pursued military action in Libya without congressional authorization, saying the action was limited. And he significantly expanded a drone campaign aimed at al Qaeda figures, where suspects—including U.S. citizens—have been targeted and killed based on the judgment of the executive branch alone.

####  [1.] Ever-evolving nature of threats necessitates broad understanding of presidential war powers in relation to targeted killing- any congressional action fetters the president’s foreign policy powers-that’s Posner 12

#### War powers must be solely invested in the executive- any departure undermines the strength and unanimity of the executive’s actions

Fisher 09

[Louis Fisher, specialist in Constitutional Law, Law Library, Library of Congress. Ph.D., , 2009, 12 U. Pa. J. Const. L. 569 (2009-2010), The Unitary Executive and Inherent Executive Power, Hein Online, uwyo//amp]

The Framers had plenty of strong executive models from which to choose. They could look to John Locke, who emphasized the need for independent executive action. He understood that the legislature could not always be in sitting, nor could it provide laws to cover every contingency: "It is not necessary-no, nor so much as convenient that the legislative should be always in being; but absolutely necessary that the executive power should, because there is not always need of new laws to be made, but always need of execution of the laws that are made."' Although Locke divided government into legislative andexecutive institutions to provide for checks and balances, he placed what he called the federative power (foreign policy) solely with the executive. His federative power included "the power of war and peace, leagues and alliances, and all the transactions with all persons and communities without the commonwealth."2 The federative pow er was "always almost united" with the executive. Separating the ex ecutive and federative powers, he warned, would invite "disorder and ruin." William Blackstone, in his Commentaries, agreed that in external af fairs the King was the sole authority. The British Constitution placed those powers in the hand of the executive "for the sake of unanimity, strength, and dispatch."5 In the "exertion of lawful prerogative, the king is and ought to be absolute; that is, so far absolute, that there is no legal authority that can either delay or resist him."6 In the exer cise of those prerogatives the King "is irresistible and absolute."' With regard to foreign policy, the King "is the delegate or representative of his people."" Individuals of a state, even in a collective capacity, could not possibly "transact the affairs of that state with another community equally numerous as themselves. Unanimity must be wanting to their measures, and strengths to the execution of their counsels."9

#### Violates separation of powers

Turner 2012

[Professor Turner holds both professional and academic doctorates from the University of Virginia School of Law, where in 1981 he co-founded the Center for National Security Law with Professor John Norton Moore—who taught the nation’s first course on national security law in 1969. Turner served as chairman of the ABA Standing Committee on Law and National Security from 1989–1992., The War Powers Resolution at 40: Still an Unconstitutional, Unnecessary, and Unwise Fraud That Contributed CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL. 45·2012, Directly to the 9/11 Attacks, [http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.pdf](http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1%262.pdf), uwyo//amp]

To understand the separation of constitutional powers regarding “war” and the use of military force, we need first of all to appreciate the importance of Article II, Section 1, which grants to “a President of the United States” the nation’s “executive Power.”7 Today, Americans read that clause and assume it conveys merely the power to “execute” the laws and policies established by Congress. But that was not the understanding of the men who wrote the Constitution during the summer of 1787. They understood “executive power” as the term was used by Locke,8 Montesquieu,9 and Blackstone10—whose writings were often referred to as the “political bibles”11 of the Framers. Each of these writers viewed what Locke described as the business of “war, peace, leagues and alliances”12 to be the province of the king, prince, or magistrate—the “executive” officer of the government. How do we know the Founding Fathers embraced this view? Because they repeatedly told us so in clear terms. Writing in June 1789, Representative James Madison explained: “[T]he Executive power being in general terms vested in the President, all powers of an Executive nature, not particularly taken away must belong to that department. . . .”13 The following year, Madison’s friend and mentor Thomas Jefferson wrote in a memorandum to President Washington: The Constitution . . . has declared that “the Executive power shall be vested in the President,” submitting only special articles of it to a negative by the Senate. . . . The transaction of business with foreign nations is Executive altogether; it belongs, then to the head of that department, except as to such portions of it as are specially submitted to the Senate. Exceptions are to be construed strictly.14 Those “[e]xceptions” included the Senate’s negatives on treaties and diplomatic appointments, as well as the power of Congress to “declare War.”15 President Washington discussed Jefferson’s memorandum with Chief Justice John Jay and Representative Madison, recording in his diary three days later that both agreed with Jefferson that, beyond these enumerated exceptions, the Senate had “no Constitutional right to interfere” in the business of diplomacy, “all the rest being Executive and vested in the President by the Constitution.”16