# Pres Powers DA – Negative

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#### 1. Uniqueness—USA Freedom Act reauthorized executive surveillance powers

Saudi Gazette, 6-3-2015, President Obama signs bill curbing NSA powers into law," No Publication, http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20150604246156, Accessed: 6-25-2015, /Bingham-MB

WASHINGTON — President Barack Obama on Tuesday signed into law landmark legislation ending the government’s bulk telephone data dragnet, significantly reversing American policy by reining in the most controversial surveillance program since 9/11. The bill was given final passage earlier Tuesday by the US Senate, after being approved by the House several days earlier. The measure reauthorizes key national security programs that had lapsed early this week. “Glad the Senate finally passed the USA Freedom Act. It protects civil liberties and our national security,” President Barack Obama said on Twitter shortly before he signed it. In a separate statement earlier, Obama chided lawmakers for the “needless delay and inexcusable lapse in important national security authorities,” in the days leading up to the bill’s eventual passage. “My administration will work expeditiously to ensure our national security professionals again have the full set of vital tools they need to continue protecting the country,” the president said. The bill halts the National Security Agency’s ability to scoop up and store metadata — telephone numbers, dates and times of calls — from millions of Americans who have no connection to terrorism. It shifts responsibility for storing the data to telephone companies, allowing authorities to access the information only with a warrant from a secret counterterror court that identifies a specific person or group of people suspected of terror ties.

#### 2. Link—Surveillance is part of presidential powers to fight wars—any interference in surveillance disrupts this power—wide presidential discretion is key

US DOJ, 1-19-2006, LEGAL AUTHORITIES SUPPORTING THE ACTIVITIES OF THE NATIONAL SECURITY AGENCY DESCRIBED BY THE PRESIDENT, Department of Justice Briefing, http://www.justice.gov/sites/default/files/opa/legacy/2006/02/02/whitepaperonnsalegalauthorities.pdf /Bingham-MB

The present circumstances that support recognition of the President’s inherent constitutional authority to conduct the NSA activities are considerably stronger than were the circumstances at issue in the earlier courts of appeals cases that recognized this power. All of the cases described above addressed inherent executive authority under the foreign affairs power to conduct surveillance in a peacetime context. The courts in these cases therefore had no occasion even to consider the fundamental authority of the President, as Commander in Chief, to gather intelligence in the context of an ongoing armed conflict in which the United States already had suffered massive civilian casualties and in which the intelligence gathering efforts at issue were specifically designed to thwart further armed attacks. Indeed, intelligence gathering is particularly important in the current conflict, in which the enemy attacks largely through clandestine activities and which, as Congress recognized, “pose[s] an unusual and extraordinary threat,” AUMF pmbl. Among the President’s most basic constitutional duties is the duty to protect the Nation from armed attack. The Constitution gives him all necessary authority to fulfill that responsibility. The courts thus have long acknowledged the President’s inherent authority to take action to protect Americans abroad, see, e.g., Durand v. Hollins, 8 F. Cas. 111, 112 (C.C.S.D.N.Y. 1860) (No. 4186), and to protect the Nation from attack, see, e.g., The Prize Cases, 67 U.S. at 668. See generally Ex parte Quirin, 317 U.S. 1, 28 (1942) (recognizing that the President has authority under the Constitution “to direct the performance of those functions which may constitutionally be performed by the military arm of the nation in time of war,” including “important incident[s] to the conduct of war,” such as “the adoption of measures by the military command . . . to repel and defeat the enemy”). As the Supreme Court emphasized in the Prize Cases, if the Nation is invaded, the President is “bound to resist force by force”; “[h]e must determine what degree of force the crisis demands” and need not await congressional sanction to do so. The Prize Cases, 67 U.S. at 670; see also Campbell v. Clinton, 203 F.3d 19, 27 (D.C. Cir. 2000) (Silberman, J., concurring) (“[T]he Prize Cases . . . stand for the proposition that the President has independent authority to repel aggressive acts by third parties even without specific congressional authorization, and courts may not review the level of force selected.”); id. at 40 (Tatel, J., concurring) (“[T]he President, as commander in chief, possesses emergency authority to use military force to defend the nation from attack without obtaining prior congressional approval.”). Indeed, “in virtue of his rank as head of the forces, [the President] has certain powers and duties with which Congress cannot interfere.” Training of British Flying Students in the United States, 40 Op. Att’y Gen. 58, 61 (1941) (Attorney General Robert H. Jackson) (internal quotation marks omitted). In exercising his constitutional powers, the President has wide discretion, consistent with the Constitution, over the methods of gathering intelligence about the Nation’s enemies in a time of armed conflict.

#### 3. Internal link—Incursions Spill over to destabilize all presidential war powers.

Heder ’10

(Adam, J.D., magna cum laude , J. Reuben Clark Law School, Brigham Young University, “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is **no constitutional provision** on whether Congress has the legislative power to **limit, end, or otherwise redefine the scope of a war**. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 **the same cannot be said about Congress’s legislative authority** to terminate or limit a war in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully **declined to grant Congress such powers**. And as this Article argues, granting Congress this power would be **inconsistent with the general war powers structure of the Constitution.** Such a reading of the Constitution would **unnecessarily empower Congress** and **tilt the scales heavily in its favor**. More over, it would strip the President of his Commander in Chief authority to direct the movement of troops at a time **when the Executive’s expertise is needed.** 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

#### 4. Impact—undermining pres powers causes nuclear war

Li ‘9

Zheyao, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modem state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

## 2NC/1NR

### 2NC AT “USA Freedom Act”

#### NSA was balanced—ensures counter terror flexibility still

Michael D. Shear, 6-3-2015, In Pushing for Revised Surveillance Program, Obama Strikes His Own Balance," New York Times, http://www.nytimes.com/2015/06/04/us/winning-surveillance-limits-obama-makes-program-own.html, Accessed: 6-8-2015, /Bingham-MB

“He weighs the balance every day,” she said. The compromise on collections of telephone records may end up being too restrictive for the president’s counterterrorism professionals, as some Republicans predict. Or, as others vehemently insisted in congressional debate during the past week, it may leave in place too much surveillance that can intrude on the lives of innocent Americans. Either way, Mr. Obama’s signature on the law late Tuesday night ensures that he will deliver to the next president a method of hunting for terrorist threats despite widespread privacy concerns that emerged after Edward J. Snowden, a former N.S.A. contractor, revealed the existence of the telephone program. “He owned it in 2009,” said Michael V. Hayden, a former N.S.A. director under President George W. Bush, who oversaw the surveillance programs for years. “He just didn’t want anyone to know he owned it.” Jameel Jaffer, the deputy legal director of the American Civil Liberties Union, called the USA Freedom Act “a step forward in some respects,” but “a very small step forward.” He said his organization would continue to demand that the president and Congress scale back other government surveillance programs. “Obama has been presented with this choice: Are you going to defend these programs or are you going to change them?” Mr. Jaffer said. “Thus far, we haven’t seen a lot of evidence that the president is willing to spend political capital changing those programs.” In the case of the telephone program, Mr. Obama’s preferred compromise was originally the brainchild of his N.S.A. officials, who embraced it as a way to satisfy the public’s privacy concerns without losing the agency’s ability to conduct surveillance more broadly. In the lead-up to last week’s congressional showdown, Mr. Obama and his national security team insisted that broad surveillance powers were vital to tracking terrorist threats, while admitting that the new approach to data collection would not harm that effort. White House officials said Mr. Obama was comfortable that history would show that he struck the right balance. “To the extent that we’re talking about the president’s legacy, I would suspect that that would be a logical conclusion from some historians,” said Josh Earnest, the president’s press secretary. Mr. Earnest said the compromise addressed anxiety about privacy but still gave the government access to needed records.

#### NSA is a win for Obama—they were the reforms that he wants

Michael D. Shear, 6-3-2015, In Pushing for Revised Surveillance Program, Obama Strikes His Own Balance," New York Times, http://www.nytimes.com/2015/06/04/us/winning-surveillance-limits-obama-makes-program-own.html, Accessed: 6-8-2015, /Bingham-MB

Now, after successfully badgering Congress into reauthorizing the program, with new safeguards the president says will protect privacy, Mr. Obama has left little question that he owns it. The new surveillance program created by the USA Freedom Act will end more than a decade of bulk collection of telephone records by the National Security Agency. But it will make records already held by telephone companies available for broad searches by government officials with a court order. “The reforms that have now been enacted are exactly the reforms the president called for over a year and a half ago,” said Lisa Monaco, the president’s top counterterrorism adviser. She called the bill the product of a “robust public debate” and said the White House was “gratified that the Senate finally passed it.”

### 2NC AT “No Link”

#### The power to use surveillance is part of broad presidential powers authorized now—restrictions on the means of war hinders presidential authority

Michael Stokes Paulsen February 2006, Associate Dean University of Minnesota, Presidential Powers in Time of War, http://www.law.umn.edu/uploads/wE/aa/wEaa1g7XB6j0QyoOhoFpYw/Presidential\_Powers\_exchange\_Paulsen\_Kitrosser\_Carpenter.pdf

THE KEY PROBLEM with my colleagues’ extraordinarily thoughtful points about the NSA communications interception program is this:They read the Sept. 18, 2001, AUMF as if it were any old statute passed by Congress. If (as I believe), the AUMF is in legal effect a Declaration of War, then arguments that “repeals by implication are disfavored,” or that “the AUMF does not specifically mention surveillance,” or that “Congress did not have this in mind” (or, in its weakest form, that former Senator Tom Daschle was not thinking about this specific question), or that the president might have been able to obtain FISA authorization, are almost entirely irrelevant. If war has been authorized, then the commander in chief power to wage war against enemy forces has been unleashed in its entirety.That power is a fearful and formidable one, but properly so.Where war is declared or authorized, the president possesses the full military and executive power of the nation with respect to waging that war.The president determines matters of military strategy and tactics; the rules of engagement with the enemy; the means and methods to be employed; how resources are to be deployed; and whether, when, and under what circumstances hostilities will be terminated. Where the commander in chief power is brought into play, it is the president’s power alone. No statute of Congress may limit it.As Alexander Hamilton put it in Federalist #74:“Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority.” Here is the crucial point:Whatever the scope of the president’s constitutional power as commander in chief in time of authorized war, no statute of Congress constitutionally may limit it.This is basic Marbury v. Madison: If the Constitution provides one thing, Congress may not pass a statute altering it. Congress has the choice whether or not to trigger the commander in chief power of the president in time of war; but if it chooses to do so, it may not control the exercise of that power with collateral statutory restrictions. Put simply:When war is declared, the commander in chief chooses how to conduct it. Nowhere is this more clear than in the Sept. 18, 2001 AUMF, which sweepingly gives the president power to use “all necessary and appropriate force” against those nations, organizations, or persons he finds to be connected to the events of Sept. 11, 2001. If the interception of communications of persons in contact with the enemy is a legitimate part of the commander in chief’s conduct of war—and I think this almost impossible to deny—then no act of Congress may impair it. If FISA, designed as peacetime authorization for covert surveillance of suspected foreign agents, limits the commander in chief power in time of war, it is to that extent unconstitutional. That’s the endpoint of the game, when push comes to shove. Professor Kitrosser’s arguments about how to read FISA are excellent ones; but in the end if FISA cannot be construed in a manner consistent with the president’s overarching power as commander in chief in time of war, then it is the FISA statute that must yield, not the president’s constitutional power as commander in chief. Professor Carpenter’s argument that Congress’s power to make “Rules for the Government and Regulation of the Land and Naval Forces” trumps the president’s power as commander in chief is, I think, unsound—and dangerous. Congress’s power to prescribe general rules for regulating our armed forces surely cannot be read as a power to dictate rules for how military and defensive efforts are to be conducted by the president.That would effectively read the commander in chief clause out of the Constitution! The same cannot be said the other way round: Congress’s power to regulate the military still has content, as a general proposition; it is simply limited by the president’s power to direct and conduct offensive and defensive operations—to command—in wartime.

#### Curtailing domestic surveillance undermines the sole organ doctrine – which underpins every facet of presidential power

**Wood and Webb 11** – Department of Political Science at Texas A&M University, presented to the faculty at Vanderbilt University (B Dan Wood, Clayton Webb, 10/17/11, “EXPLAINING PRESIDENTIAL SABER RATTLING,” http://www.vanderbilt.edu/csdi/events/Wood\_Presidential\_Saber\_Rattling\_112111.pdf)//twontwon

The courts affirmed early on that as sovereign leaders, presidents are the nation’s chief foreign policy representative. Future Supreme Court Justice John Marshall stated in 1800 when he served in the U.S. House of Representatives ―The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.‖ (10 Annals of Congress 613) Relying on Marshall’s ―sole organ‖ doctrine, Supreme Court Justice George Sutherland wrote in 1937 (United States vs. Curtiss-Wright Export Corp , 299 U.S. 319) ―In this vast external realm [foreign policy], with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation.‖ While the plenary nature of executive authority in foreign relations is not universally accepted (e.g., see the persuasive arguments by Fisher 2006, 2007a, 2007b, 2007c, 2007d, 2007e, 2008a, 2008b), \*\*\*FOOTNOTE BEGINS\*\*\* . 2007d. "Statement by Louis Fisher appearing before the House Committee on the Judiciary, "Constitutional Limitations on Domestic Surveillance"." ed. L. L. o. Congress.\*\*\*FOOTNOTE ENDS\*\*\* the modern chief executive relies extensively on the ―sole organ‖ doctrine to define presidential power broadly, and it is now commonly assumed that presidents are the sole representatives of the nation to the outside world.

### 2NC AT “Link Turn”

#### Congressional oversight on the president’s surveillance war powers renders fighting terrorism ineffective

Yoo 9 (John is a law professor at the University of California, Berkeley. He was an official in the Justice Department from 2001-03 and is a visiting scholar at the American Enterprise Institute. 7-16-09, Wall Street Journal, “Why We Endorsed Warrantless Wiretaps,” http://online.wsj.com/article/SB124770304290648701.html#mod=rss\_opinion\_main)//dtang

It was instantly clear after Sept. 11, 2001, that our security agencies knew little about al Qaeda's inner workings, could not detect its operatives' entry into the country, nor predict where it might strike next. Suppose an al Qaeda cell in New York, Chicago or Los Angeles was planning a second attack using small arms, conventional explosives or even biological, chemical or nuclear weapons. Our intelligence and law enforcement agencies faced a near impossible task locating them. Now suppose the National Security Agency (NSA), which collects signals intelligence, threw up a virtual net to intercept all electronic communications leaving and entering Osama bin Laden's Afghanistan headquarters. What better way of detecting followup attacks? And what president -- of either political party -- wouldn't immediately order the NSA to start, so as to find and stop the attackers? Evidently, none of the inspectors general of the five leading national security agencies would approve. In a report issued last week, they suggested that President George W. Bush might have violated the 1978 Foreign Intelligence Surveillance Act (FISA) by ordering the interception of international communications of terrorists without a judicial warrant. The report also suggests that "other" intelligence measures -- still classified only because they are yet to be reported on the front page of the New York Times -- similarly lacked approval from other branches of government. It is absurd to think that a law like FISA should restrict live military operations against potential attacks on the United States. Congress enacted FISA during the waning days of the Cold War. As the 9/11 Commission found, FISA's wall between domestic law enforcement and foreign intelligence proved dysfunctional and contributed to our government's failure to prevent the 9/11 attacks.Under FISA, to obtain a judicial wiretapping warrant the government is supposed to show probable cause that a specified target is a foreign agent. Unlike, say, Soviet spies working under diplomatic cover, terrorists are hard to identify. Yet they are vastly more dangerous. Monitoring their likely communications channels is the best way to track and stop them. Building evidence to prove past crimes, as in the civilian criminal system, is entirely beside the point. The best way to find an al Qaeda operative is to look at all email, text and phone traffic between Afghanistan and Pakistan and the U.S. This might involve the filtering of innocent traffic, just as roadblocks and airport screenings do. In FISA, President Bush and his advisers faced an obsolete law not written with live war with an international terrorist organization in mind. It was to meet such emergency circumstances that the Founders designed the presidency. As John Locke first observed, foreign threats "are much less capable to be directed by antecedent, standing, positive laws." Legislatures are too slow and their members too numerous to respond effectively to unforeseen situations. Only the executive can act to protect the "security and interest of the public."

#### Congress doesn’t enhance cred – political infighting make us look unsure

Yoo 4 - Emanuel S. Heller Professor of Law at UC-Berkeley, visiting scholar at the American Enterprise Institute, former Fulbright Distinguished Chair in Law at the University of Trento, served as a deputy assistant attorney general in the Office of Legal Council at the U.S. Department of Justice between 2001 and 2003, received his J.D. from Yale and his undergraduate degree from Harvard (John, “War, Responsibility, and the Age of Terrorism,” UC-Berkeley Public Law and Legal Theory Research Paper Series, November 2004, <http://works.bepress.com/cgi/viewcontent.cgi?article=1015&context=johnyoo>) //AD

It is also not obvious that congressional deliberation ensures consensus. Legislative authorization might reflect ex ante consensus before military hostilities, but it also might merely represent a bare majority of Congress or an unwillingness to challenge the President’s institutional and political strengths regardless of the merits of the war. It is also no guarantee of an ex post consensus after combat begins. Thus, the Vietnam War, which Ely and others admit satisfied their constitutional requirements for congressional approval, did not meet with a consensus over the long term but instead provoked some of the most divisive politics in American history. It is also difficult to claim that the congressional authorizations to use force in Iraq, of either the 1991 or 2002 varieties, reflected a deep consensus over the merits of war there. Indeed, the 1991 authorization barely survived the Senate and the 2002 one received significant negative votes and has become an increasingly divisive issue in national political and the 2004 presidential election. Congress’s authorization for the use of force in Iraq in 2003 has not served as a guarantee of political consensus. ¶ Conversely, a process without congressional declarations of war does not necessarily result in less deliberation or consensus. Nor does it seem to inexorably lead to poor or unnecessary war goals. Perhaps the most important example, although many might consider it a “war,” is the conflict between the United States and the Soviet Union from 1946 through 1991. War was fought throughout the world by the superpowers and their proxies during this period. Yet the only war arguably authorized by Congress – and even this is a debated point – was Vietnam. The United States waged war against Soviet proxies in Korea and Vietnam, the Soviet Union fought in Afghanistan, and the two almost came into direct conflict during the Cuban Missile Crisis. Despite the division over Vietnam, there appeared to be a significant bipartisan consensus on the overall strategy (containment) and goal (defeat of the Soviet Union, protection of Europe and Japan), and Congress consistently devoted significant resources to the creation of a standing military to achieve them. Different conflicts during this period that did not benefit from congressional authorization, such as conflicts in Korea, Grenada, Panama, and Kosovo, did not suffer from a severe lack of consensus, at least at the outset. Korea initially received the support of the nation’s political leadership, and it seems that support declined only once battlefield reverses had occurred. Grenada and Panama did not seem to suffer from any serious political challenge, and while Kosovo met with some political resistance, it does not appear to have been significant.

#### Congressional checks don’t boost resolve

Waxman 13 - Professor of Law at Columbia and Adjunct Senior Fellow for Law and Foreign Policy at CFR (Matthew, “The Constitutional Power to Threaten War,” Yale Law Journal, vol. 123, 8-25-13) //AD

The credibility-enhancing effects of legislative constraints on threats are subject to dispute. Some studies question the assumptions underpinning theories of audience costs – specifically the idea that democratic leaders suffer domestic political costs to failing to make good on their threats, and therefore that their threats are especially credible171 – and others question whether the empirical data supports claims that democracies have credibility advantages in making threats.172 Other scholars dispute the likelihood that leaders will really be punished politically for backing down, especially if the threat was not explicit and unambiguous or if they have good policy reasons for doing so.173 Additionally, even if transparency in democratic institutions allows domestic dissent from threats of force to be visible to foreign audiences, it is not clear that adversaries would interpret these mechanisms as political scientists expect in their models of strategic interaction, in light of various common problems of misperception in international relations.174 These disputes are not just between competing theoretical models but also over the links between any of the models and real-world political behavior by states. At this point there remains a dearth of good historical evidence as to how foreign leaders interpret political maneuvers within Congress regarding threatened force.

### 2NC AT “No Spillover”

#### Spills-over to collapse prez powers

Klukowski 11 (Kenneth, Research Fellow, Liberty University School of Law; Fellow and Senior Legal Analyst, American Civil Rights Union; National-Bestselling Author. George Mason University School of Law, J.D. 2008; University of Notre Dame, B.B.A. 1998, “MAKING EXECUTIVE PRIVILEGE WORK: A MULTI-FACTOR TEST IN AN AGE OF CZARS AND CONGRESSIONAL OVERSIGHT” 2011, 59 Clev. St. L. Rev. 31)

VI. CONCLUSION Most controversies between Congress and the White House over information are decided more by politics than by law, and so a settlement is usually reached favoring the party with the public wind to its back. n348 **Questions of law should not be decided in that fashion**. Therefore, the reach and scope of executive privilege should be settled by the courts in such situations, so that the President's power is not impaired whenever the political wind is in the President's face and at his opponents' backs, or the President is inappropriately shielded when political tides flow in his favor. While the best outcome in any interbranch dispute is the political branches reaching a settlement, "such compromise may not always be available, or even desirable." n349 It is not desirable where it sets a precedent **that** degrades **one of the three branches of government. If one branch of government demands something to which it is not constitutionally entitled and that the Constitution has fully vested in a coequal branch, the vested branch should not be required to negotiate on the question**. Negotiation usually involves compromise. This negotiation would often result in one branch needing to cede to the other**,** encouraging additional unconstitutional demands in the future. Though this may perhaps be a quicker route to a resolution, it disrupts the constitutional balance in government. As the Supreme Court has recently explained, "'convenience and efficiency are not the primary objectives--or the hallmarks--of democratic government.'" n350 President Reagan declared that "you aren't President; you are temporarily custodian of an institution, the Presidency. And you don't have any right to do away with any of the prerogatives of that institution, and one of those is executive privilege. And **this is what was being attacked** by the Congress." n351 Thus, any White House has the obligation to fight to protect executive privilege, and the courts should draw the line to preserve that constitutional prerogative. Likewise, there are times when it is the President who is refusing to give Congress its due under the Constitution, where Congress must assert its prerogatives for future generations. Conversely, where confidentiality is not warranted, courts must ensure public disclosure and accountability.

**Even small incursions on presidential authority threaten the unitary executive**

**Calabresi and Yoo 2008** [Stephen G,, Law Professor at Northwestern; Christopher S. , professor of Law, Communication, and Computer and Information Science at the University of Pennsylvania Law School, and founding director of the Center for Technology, Innovation, and Competition, The Unitary Executive: Presidential Power From Washington to Bush, Yale University Press, 2008, p.9 //wyo-sc]

Second, we believe that President George W. Bush and **all future presidents should recognize the existence** **of a strong, internal**, **executive branch precedent**, **established over the entire history of our republic,** **where**by **all** forty-three **presidents have always resisted** serious **incursions on** the principle of **the unitary executive**. For this reason, President **Clinton was right to let** **the independent counsel law expire without his support** in June 1999, **and** President George W. **Bush** **was right to insist on broad removal power over** **the** newly created **Department of Homeland Security.** **Future presidents should veto statutes** presented to them **that infringe upon the unitariness of the executive**, and they should enforce such statutes as are already on the books with the greatest circumspection.

#### Congressional limits on surveillance spill over to justify broader congressional encroachment on national security issues – congressional deference is high now

**Donohue 11** – Associate Prof of Law at Georgetown Law (Laura Donohue, Fall 2011, “SYMPOSIUM: MOVING TARGETS: ISSUES AT THE INTERSECTION OF NATIONAL SECURITY & AMERICAN CRIMINAL LAW: ARTICLE: THE LIMITS OF NATIONAL SECURITY,” 48 Am. Crim. L. Rev. 1573, Lexis)//twontwon

From the inside, such blatant opportunism may appear harmless. In light of limited bandwidth, the way to get attention is to make an issue appear larger than perhaps it really is. But the effects of these provisions are not harmless. They carry significant structural implications. As a constitutional matter, the shift to the national security discourse diminishes the role that Congress performs through its oversight function. The number of committees responsible for "national security" has rapidly proliferated to include [\*1754] nearly every Senate and House committee. 1292 This means that no single committee has a complete picture of national security. Nor is any single committee held responsible, to the electorate, for such oversight. Overlapping responsibilities allow legislators to take credit for keeping the country safe, and apportion blame for any failures. For those committees given authority to oversee discreet executive actions, strong political pressures demand that the legislators not hamstring the executive branch on issues of security. 1293 Even where the executive acts outside the law, congressional oversight is limited. The National Security Agency's illegal wiretapping serves as a clear example. Despite the Bush Administration's disregard for legislative restrictions on the wiretapping of U.S. citizens, 1294 Congress retroactively legalized the Administration's actions on grounds that it involved sensitive issues. 1295 \*\*\*FOOTNOTE BEGINS\*\*\* See Charlie Savage & James Risen, Federal Judge Finds N.S.A. Wiretaps Were Illegal, N.Y. TIMES (Mar. 31, 2010), http://www.nytimes.com/2010/04/01/us/01nsa.html ("The 2005 disclosure of the existence of [Bush's authorization of illegal wiretapping] set off a national debate over the limits of executive power and the balance between national security and civil liberties. The arguments continued over the next three years, as Congress sought to forge a new legal framework for domestic surveillance . . . . Congress overhauled the Foreign Intelligence Surveillance Act to bring federal statutes into closer alignment with what the Bush administration had been secretly doing. The legislation essentially legalized certain aspects of the program."). \*\*\*FOOTNOTE ENDS\*\*\* National security, for that matter, entails a significant amount of secrecy, such that Congress may not even be aware of what is happening. When Congress is aware of executive actions, legislators may be prevented from bringing certain information to light via classification, which is itself an executive decision. Congress's ability to act with regard to authorization, at the outset, is similarly narrow. The burden rests on those opposing national security measures to demonstrate that failing to enact such measures will not undermine the country's safety-a nearly impossible burden of proof. For those measures with a significant impact on civil rights, there may be an effort to include a sunset provision, essentially providing an expiration date. But temporary powers rarely turn out to be so limited; instead, they become a baseline on which further authorities are [\*1755] built. 1296 Similar concerns accompany the legislature's ability to withstand the drive to expansion via appropriations. The judiciary, in turn, is unsuited for playing a stronger role in the area of national security. The political question doctrine, which permeates foreign affairs, becomes all the more ubiquitous with the expansion of national security and the increasingly blurred lines between the different risks faced by the country. Claims to judicial institutional incompetence, often pushed by an executive branch eager to protect its interests, find sympathetic ears in a judiciary loath to make determinations on matters involving the security of the United States. Judges, who lack bureaucratic support, resources, information, and training in the area, are reluctant to second-guess the executive branch. The state secrets doctrine further restricts private citizens' ability to gain access to the executive's actions, as exceptions to the Freedom of Information Act specifically carve out national security matters. 1297 The executive branch's continued expansion of its national security portfolio is concerning in light of the political nature of such structures. Shortly before he died in 1954, Justice Robert Jackson, having served as Attorney General during the great expansion of the FBI's purview into national security in the third epoch, wrote:

### 2NC AT “No Impact”

#### Congressional war authority is ineffective – executive war powers key to combating a litany of transnational threats – combating terror, rogue states, and prolif all require a flexible executive

Yoo 7 (John is a professor of law at the Boalt Hall School of Law at the University of California, Berkeley, and visiting scholar at the American Enterprise Institute. He has also served as general counsel for the Senate Judiciary Committee; as a law clerk to Justice Clarence Thomas and Judge Laurence H. Silberman; and, from 2001 to 2003, as a Deputy Assistant Attorney General in the Office of Legal Counsel of the U.S. Department of Justice. 4/18, “Exercising Wartime Powers,” http://hir.harvard.edu/archives/1369)//dtang

Proponents of congressional war power often argue that the executive branch is unduly prone to war. In this view, if the president and Congress have to agree on warmaking, the nation will enter fewer wars and wars that do occur will arise only after sufficient deliberation. But it is far from clear that outcomes would be better if Congress alone had the power to begin wars. First, congressional deliberation does not necessarily ensure consensus. Congressional authorization may represent only a bare majority of Congress or an unwillingness to challenge the President's institutional and political strengths, regardless of the merits of the war. And even if it does represent consensus, it is no guarantee of consensus after combat begins. The Vietnam War, which was initially approved by Congress, did not meet with a consensus over the long term but instead provoked some of the most divisive politics in US history. It is also difficult to claim that congressional authorizations to use force in Iraq, either in 1991 or 2002, reflected a deep consensus over the merits of the wars there. The 1991 authorization barely survived the Senate, and the 2002 authorization received significant negative votes and has become a deeply divisive issue in national politics. It is also not clear that the absence of congressional approval has led the nation into wars it should not have waged. The experience of the Cold War, which provides the best examples of military hostilities conducted without congressional support, does not clearly come down on the side of a link between institutional deliberation and better conflict selection. Wars were fought throughout the world by the two superpowers and their proxies, such as in Korea, Vietnam, and Afghanistan, during this period. Yet the only war arguably authorized by Congress--and this point is debatable--was the Vietnam War. Aside from bitter controversy over Vietnam, there appeared to be significant bipartisan consensus on the overall strategy of containment, as well as the overarching goal of defeating the Soviet Union. The United States did not win the four-decade Cold War by declarations of war; rather, it prevailed through the steady presidential application of the strategy of containment, supported by congressional funding of the necessary military forces. On the other hand, congressional action has led to undesirable outcomes. Congress led the United States into two "bad" wars, the 1798 quasi-war with France and the War of 1812. Excessive congressional control can also prevent the United States from entering into conflicts that are in the national interest. Most would agree now that congressional isolationism before World War II harmed US interests and that the United States and the world would have been far better off if President Franklin Roosevelt could have brought the United States into the conflict much earlier. Congressional participation does not automatically or even consistently produce desirable results in war decision making. Critics of presidential war powers exaggerate the benefits of declarations or authorizations of war. What also often goes unexamined are the potential costs of congressional participation: delay, inflexibility, and lack of secrecy. In the post-Cold War era, the United States is confronting the growth in proliferation of WMDs, the emergence of rogue nations, and the rise of international terrorism. Each of these threats may require pre-emptive action best undertaken by the President and approved by Congress only afterward. Take the threat posed by the Al Qaeda terrorist organization. Terrorist attacks are more difficult to detect and prevent than conventional ones. Terrorists blend into civilian populations and use the channels of open societies to transport personnel, material, and money. Although terrorists generally have no territory or regular armed forces from which to detect signs of an impending attack, WMDs allow them to inflict devastation that once could have been achievable only by a nation-state. To defend itself from this threat, the United States may have to use force earlier and more often than when nation-states generated the primary threats to US national security. The executive branch needs the flexibility to act quickly, possibly in situations wherein congressional consent cannot be obtained in time to act on the intelligence. By acting earlier, the executive branch might also be able to engage in a more limited, more precisely targeted, use of force. Similarly, the least dangerous way to prevent rogue nations from acquiring WMDs may depend on secret intelligence gathering and covert action rather than open military intervention. Delay for a congressional debate could render useless any time-critical intelligence or windows of opportunity. The Constitution creates a presidency that is uniquely structured to act forcefully and independently to repel serious threats to the nation. Instead of specifying a legalistic process to begin war, the Framers wisely created a fluid political process in which legislators would use their appropriations power to control war. As the United States confronts terrorism, rogue nations, and WMD proliferation, we should look skeptically at claims that radical changes in the way we make war would solve our problems, even those stemming from poor judgment, unforeseen circumstances, and bad luck.

#### President Power is the only way to respond to fast, intelligent threats

William, **Marshal**, Professor of Law at University of North Carolina and a writer for the Boston University Law Review, **2008**, “ELEVEN REASONS WHY PRESIDENTIAL POWER INEVITABLY EXPANDS AND WHY IT MATTERS”

Presidential power also has increased because of the exigencies of decision making in the modern world. At the time of the founding, it would take weeks, if not months, for a foreign government to attack American soil. In the twenty- first century, the weapons of war take only seconds to arrive. The increased speed of warfare necessarily vests power in the institution that is able to respond the fastest – the presidency, not the Congress.79 Consequently, the President has unparalleled ability to direct the nation’s political agenda.80 The power that comes with being the first to act, moreover, does not end when the immediate emergency is over. Decisions made in times of emergency are not easily reversed; this is particularly true in the context of armed conflict. The President’s commitment of troops inevitably creates a “rally round the flag” reaction that reinforces the initial decision.81 As Vietnam and now Iraq have shown, Congress is likely to be very slow in second guessing a President’s decision that places soldiers’ lives in harm’s way. That Congress would use its powers (as opposed to its rhetoric) to directly confront the President by cutting off military appropriations seems fanciful.

#### Executive authority is a conflict dampener---prevents escalation of their impacts

Royal 11 (John-Paul, Institute of World Politics, Class of 2011 Valedictorian, “War Powers and the Age of Terrorism,” <http://www.thepresidency.org/storage/Fellows2011/Royal-_Final_Paper.pdf>)//dtang

The international system itself and national security challenges to the United States in particular, underwent rapid and significant change in the first decade of the twenty-first century. War can no longer be thought about strictly in the terms of the system and tradition created by the Treaty of Westphalia over three and a half centuries ago. Non-state actors now possess a level of destructiveness formerly enjoyed only by nation states. Global terrorism, coupled with the threat of weapons of mass destruction developed organically or obtained from rogue regimes, presents new challenges to U.S. national security and place innovative demands on the Constitution’s system of making war. In the past, as summarized in the 9/11 Commission Report, threats emerged due to hostile actions taken by enemy states and their ability to muster large enough forces to wage war: “Threats emerged slowly, often visibly, as weapons were forged, armies conscripted, and units trained and moved into place. Because large states were more powerful, they also had more to lose. They could be deterred" (National Commission 2004, 362). This mindset assumed that peace was the default state for American national security. Today however, we know that threats can emerge quickly. Terrorist organizations half-way around the world are able to wield weapons of unparalleled destructive power. These attacks are more difficult to detect and deter due to their unconventional and asymmetrical nature. In light of these new asymmetric threats and the resultant changes to the international system, peace can no longer be considered the default state of American national security. Many have argued that the Constitution permits the president to use unilateral action only in response to an imminent direct attack on the United States. In the emerging security environment described above, pre-emptive action taken by the executive branch may be needed more often than when nation-states were the principal threat to American national interests. Here again, the 9/11 Commission Report is instructive as it considers the possibility of pre-emptive force utilized over large geographic areas due to the diffuse nature of terrorist networks: In this sense, 9/11 has taught us that terrorism against American interests “over there” should be regarded just as we regard terrorism against America “over here.” In this sense, the American homeland is the planet (National Commission 2004, 362). Furthermore, the report explicitly describes the global nature of the threat and the global mission that must take place to address it. Its first strategic policy recommendation against terrorism states that the: U.S. government must identify and prioritize actual or potential terrorist sanctuaries. For each, it should have a realistic strategy to keep possible terrorists insecure and on the run, using all elements of national power (National Commission 2004, 367). Thus, fighting continues against terrorists in Afghanistan, Yemen, Iraq, Pakistan, the Philippines, and beyond, as we approach the tenth anniversary of the September 11, 2001 attacks. Proliferation of weapons of mass destruction (WMD), especially nuclear weapons, into the hands of these terrorists is the most dangerous threat to the United States. We know from the 9/11 Commission Report that Al Qaeda has attempted to make and obtain nuclear weapons for at least the past fifteen years. Al Qaeda considers the acquisition of weapons of mass destruction to be a religious obligation while “more than two dozen other terrorist groups are pursing CBRN [chemical, biological, radiological, and nuclear] materials” (National Commission 2004, 397). Considering these statements, rogue regimes that are openly hostile to the United States and have or seek to develop nuclear weapons capability such as North Korea and Iran, or extremely unstable nuclear countries such as Pakistan, pose a special threat to American national security interests. These nations were not necessarily a direct threat to the United States in the past. Now, however, due to proliferation of nuclear weapons and missile technology, they can inflict damage at considerably higher levels and magnitudes than in the past. In addition, these regimes may pursue proliferation of nuclear weapons and missile technology to other nations and to allied terrorist organizations. The United States must pursue condign punishment and appropriate, rapid action against hostile terrorist organizations, rogue nation states, and nuclear weapons proliferation threats in order to protect American interests both at home and abroad. Combating these threats are the “top national security priority for the United States…with the full support of Congress, both major political parties, the media, and the American people” (National Commission 2004, 361). Operations may take the form of pre-emptive and sustained action against those who have expressed hostility or declared war on the United States. Only the executive branch can effectively execute this mission, authorized by the 2001 AUMF. If the national consensus or the nature of the threat changes, Congress possesses the intrinsic power to rescind and limit these powers.

### 2NC AT “4th Generation War Wrong”

#### Fourth gen warfare is coming and will escalate – strong exec key

Singh 10 (S.B., Dy. Commandant, CRPF Academy, “FOURTH GENERATION WARFARE”, Endeavour, Vol 1, Issue 1, p. 12-14, https://redecomposition.files.wordpress.com/2012/11/academy\_journal\_endeavour\_vol\_1.pdf)//dtang

The fourth generation warfare will be highly dispersed in nature. The battlefield would expand to include the enemy’s whole society. The battlefield itself would be difficult to define or delineate. Expansion of battlefield from land to sea to air, will now go into the realms of ideologies, culture and values of the target society. Psychological manipulation will assume primacy. The lines dividing the combatants and civilians will get further blurred. In fact the combatants would not be the traditional soldiers. They may well be civilians with specific areas of expertise which will extend beyond conventional military matters. These would be applied for comprehensive disruption, degradation and destruction of enemy society. Nations are defined not only by their geographic boundaries, but because of their culture, traditions and ideological cohesiveness. The quest to target the vulnerabilities of the adversary will prompt the warriors of the next generation of warfare to destroy the very fundamentals of enemy’s nationality. The target would be its society, unity, national spirit and identity. The ultimate goal would be to create such conditions that the adversary’s society will cease to exist as a coherent entity. All the rules and norms of traditional war fighting will disappear, to the extent that it may be difficult to call it war. Consequently the intelligentsia will be forced to coin new terms to define such acts. Since the basic characteristic of this generation of warfare is its lack of form or boundaries, such definitions and terms will appear confusing, imprecise and inaccurate. Terrorism, militancy, insurgency, asymmetric warfare and a large number of other terms, with overlapping scopes, will come into being. Delegation of executive powers will lead to operations being undertaken by small teams or individuals operating alone, making identification and targeting difficult. Fourth generation warfare will be fought in multiple strata, in different forms and methods, seemingly without a robust command and control architecture. It will also use tactics and techniques from earlier generations of warfare. The indefinable nature of battlefield, highly dispersed, specialized teams/ individuals and defiance of all norms will lead to ostensible chaos. As the stress of earlier warfare has shifted from manpower to fire power to maneuver, it will now further shift to this “apparent chaos”. This will be the strength of the fourth generation warrior, since it will make it difficult to identify its centre of gravity and target it. The “quest for profit” will drive the proponents of fourth generation warfare also. The goals would be money, territory, power or could go beyond to amalgamation of entire societies into own cultural / religious folds or its destruction to eliminate a perceived threat to own existence. International aversion to war, economic concerns and huge losses of lives will make the prospects of waging war more and more impractical to states. Intelligent methods of war fighting like war by proxy and by stateless actors will replace wars waged by nation states. The fourth generation warfare will use technology as a tool to wage an efficient and effective war with a wide reach, while exploiting the technological dependence of the target society to create mayhem. Having analysed the drivers and likely contours of the fourth generation warfare, certain basic questions need to be answered to further clarify fourth generation warfare.

#### Presidential power is key to solve rogue states, and turns every case impact

Mattew C **Waxman,** law professor at Columbia University and author who held several positions during the George W. Bush administration. He is also currently a Fellow at the Hoover Institution on War, Revolution and Peace, **2014,** Yale Law Journal **“**The Power to Threaten War”

The President’s power to threaten force is almost certainly at least as broad as his power to use it. One way to think about it is that the power to threaten force is a lesser-included element of presidential war powers; the power to threaten to use force is simply a secondary question, the answer to which is bounded by the primary issue of the scope of presidential power to actually use it. If one interprets the President’s defensive war powers very broadly, to include dealing with aggression against not only U.S. territories but also its distant interests and allies,49 then it is easy to conclude that the President can also therefore take steps that stop short of actual armed intervention to deter or prevent such aggression. If, however, one interprets the President’s powers narrowly—for example, to include only limited unilateral authority to repel attacks against U.S. territory50—then one might extend objections to excessive presidential power to include the President’s unilateral threats of armed intervention. Since the turn of the twenty-first century, major U.S. security challenges have included non-state terrorist threats, the proliferation of nuclear and other weapons of mass destruction (WMD), and rapidly changing power balances in East Asia, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors—including terrorist organizations and some states seeking WMD arsenals—are undeterrable, so the United States might have to strike them first rather than waiting to be struck.109 On one hand, this was a move away from reliance on threatened force: “The inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.110 Yet the very enunciation of such a policy—that “[t]o forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively”111—was intended to persuade those adversaries and their supporters to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama Administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring adversaries (such as aggressive Iranian moves), intervening in humanitarian crises (as in Libya), and reassuring allies.112 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for deterring Chinese and North Korean aggression as well as reassuring other Asian powers of U.S. protection, to avert a destabilizing arms race.113 In justifying possible military force against Syria in response to its government’s use of chemical weapons, President Obama emphasized the credible threat of U.S. military action as necessary to dissuade states and terrorist organizations from acquiring or using WMD.114

# Pres Powers DA – Affirmative

## 2AC

### 2AC – Pres Powers Weak

#### USA Freedom Act decked presidential powers

Saudi Gazette, 6-3-2015, President Obama signs bill curbing NSA powers into law," No Publication, http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20150604246156, Accessed: 6-25-2015, /Bingham-MB

The changes were rejected, with at least 11 Republicans opposing McConnell to vote against the amendments. McConnell decried the reform bill as “a step backward.” “This is going to diminish our ability to respond to the myriad threats we have today,” he said in a provocative floor speech in which he accused the Obama administration of withdrawing from leadership in the battle against extremism. “It is also a resounding victory for those who continually plot against our homeland,” McConnell said. The vote occurred against a backdrop of Republican infighting and tension about the bill. House leaders had warned that any change to the bill could delay its final passage or even kill it, which would have meant several national security authorizations expiring for good. Many major Internet firms declared victory with the congressional approval. “The USA Freedom Act realizes hard-fought and much-needed wins for Internet users everywhere, including prohibiting the bulk collection of user data,” Yahoo said in a statement. But Republican presidential candidate Marco Rubio, a Florida senator who voted against the act, slammed it as result of “weak presidential leadership.” “The USA Freedom Act weakens US national security by outlawing the very programs our intelligence community and the FBI have used to protect us time and time again,” Rubio said. “Unfortunately, weak presidential leadership combined with a politically motivated misinformation campaign have now left the American people less safe than we’ve been at any point since the 9/11 attacks,” he added. Hawkish Republican Senator John McCain, who also voted against it, added that a diverse array of possible threats meant the “intelligence community must have access to the vital authorities and capabilities they need to stop another terrorist attack before it happens.” — AFP

### 2AC – No Link

#### Surveillance not key to war powers and Congressional checks boost presidential powers – FISA and recent restraints disprove the link

Levy 06 – (Robert A, “Wartime Executive Power and the NSA’s Surveillance Authority II,” Cato Institute, 2-28-06, http://www.cato.org/publications/congressional-testimony/wartime-executive-power-nsas-surveillance-authority-ii) //AD

I respectfully disagree — which is not to say I believe the president is powerless to order warrantless wartime surveillance. For example, intercepting enemy communications on the battlefield is clearly an incident of his war power. But warrantless surveillance of Americans inside the United States, who may have nothing to do with al-Qaeda, does not qualify as incidental wartime authority. The president’s war powers are broad, but not boundless. Indeed, the war powers of Congress, not the president, are those that are constitutionalized with greater specificity.44 The question is not whether the president has unilateral executive authority, but rather the extent of that authority. And the key Supreme Court opinion that provides a framework for resolving that question is Justice Robert Jackson’s concurrence in Youngstown Sheet & Tube v. Sawyer45 — the 1952 case denying President Truman’s authority to seize the steel mills. Truman had argued that a labor strike would irreparably damage national security because steel production was essential to the production of war munitions. But during the debate over the 1947 Taft-Hartley Act,46 Congress had expressly rejected seizure. Justice Jackson offered the following analysis, which was recently adopted by the Second Circuit in holding that the administration could no longer imprison Jose Padilla:47 First, when the president acts pursuant to an express or implied authorization from Congress, “his authority is at its maximum.”48 Second, when the president acts in the absence of either a congressional grant or denial of authority, “there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.”49 But third, where the president takes measures incompatible with the express or implied will of Congress — such as the NSA program, which violates an express provision of the FISA statute — “his power is at its lowest.”50 Even under Youngstown’s second category (congressional silence), the president might have inherent wartime authority to interpret the “reasonableness” standard of the Fourth Amendment in a manner that would sanction certain warrantless surveillance. But the NSA program does not fit in Youngstown’s second category. It belongs in the third category, in which the president has acted in the face of an express statutory prohibition. Naturally, if the statutory prohibition is itself unconstitutional, the administration is not only permitted but obligated to ignore it. That’s the argument administration supporters have proffered to excuse the NSA’s defiance of FISA.51 To bolster their case, they cite the only opinion that the FISA Court of Review has ever issued, In re: Sealed Case.52 There, the appellate panel mentioned several earlier cases53 that concluded the president has “inherent authority to conduct warrantless searches to obtain foreign intelligence information.”54 The Court of Review then added: “We take for granted that the President does have that authority and, assuming that is so, FISA could not encroach on the President’s constitutional power.”55 Three responses: First, I do not contend that the president lacks “inherent authority to conduct warrantless searches to obtain foreign intelligence information.” He has such authority, but Congress, exercising its own concurrent wartime powers, has limited the scope of that authority by excluding warrantless surveillance intentionally targeted at a U.S. person in the United States. Second, the surveillance in the earlier cases cited by Sealed Case took place pre-FISA, so Congress had not yet laid out the rules. Third, the quote from Sealed Case conveniently stops one sentence short. Here is the very next sentence: “The question before us is the reverse, does FISA amplify the President’s power by providing a mechanism that at least approaches a classic warrant and which therefore supports the government’s contention that FISA searches are constitutionally reasonable.”56 In resolving that question, the Court of Review did not conclude that FISA “encroach[ed] on the President’s constitutional power.” Quite the contrary, according to the court, FISA permissibly amplified the president’s power. The restrictive provisions in FISA were simply a clarification of his new and expanded authority. Thus, Sealed Case provides no support for the assertion that FISA unconstitutionally constrains the president’s inherent wartime authority. Moreover, such claims leave important questions unanswered. For example: If warrantless domestic surveillance is incidental to the president’s inherent powers, so too are sneak-and-peek searches, roving wiretaps, library records searches, and national security letters — all of which were vigorously debated in deciding whether to reauthorize the PATRIOT Act. Could the president have proceeded with those activities even if they were not authorized by Congress? If so, what was the purpose of the debate? And if not, what makes the NSA program different? Further, the attorney general asserts that the AUMF and the commander-in-chief power are sufficient to justify the NSA program. He, or his predecessor, made similar claims for military tribunals without congressional authorization,57 secret CIA prisons,58 indefinite detention of U.S. citizens,59 enemy combatant declarations without hearings as required by the Geneva Conventions,60 and interrogation techniques that may have violated our treaty commitments banning torture.61 Is any of those activities outside the president’s commander-in-chief and AUMF powers? If not, what are the bounds, if any, that constrain the president’s unilateral wartime authority?

### 2AC – Link Turn

#### Congressional authorization vindicates Presidential decisions and enables him to act faster

Cronogue 12

(Graham Cronogue, JD from Duke University School of Law, 2012, “A New AUMF: Defining Combatants in the War on Terror,” Duke Journal of Comparative and International Law, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil)

Though the President’s inherent authority to act in times of emergency and war can arguably make congressional authorization of force unnecessary, it is extremely important for the conflict against al-Qaeda and its allies. First, as seen above, the existence of a state of war or national emergency is not entirely clear and might not authorize offensive war anyway. Next, assuming that a state of war did exist, specific congressional authorization would further legitimate and guide the executive branch in the prosecution of this conflict by setting out exactly what Congress authorizes and what it does not. Finally, Congress should specifically set out what the President can and cannot do to limit his discretionary authority and prevent adding to the gloss on executive power. Even during a state of war, a congressional authorization for conflict that clearly sets out the acceptable targets and means would further legitimate the President’s actions and help guide his decision making during this new form of warfare. Under Justice Jackson’s framework from Youngstown, presidential authority is at its height when the Executive is acting pursuant to an implicit or explicit congressional authorization.74 In this zone, the President can act quickly and decisively because s/he knows the full extent of [her or] his power.75 In contrast, the constitutionality of presidential action merely supported by a president’s inherent authority exists in the “zone of twilight.”76 Without a congressional grant of power, the President’s war actions are often of questionable constitutionality because Congress has not specifically delegated any of its own war powers to the executive.77 This problem forces the President to make complex judgments regarding the extent and scope of his inherent authority. The resulting uncertainty creates unwelcome issues of constitutionality that might hinder the President’s ability to prosecute this conflict effectively. In timesensitive and dangerous situations, where the President needs to make splitsecond decisions that could fundamentally impact American lives and safety, s/he should not have to guess at the scope of his [or her] authority. Instead, Congress should provide a clear, unambiguous grant of power, which would mitigate many questions of authorization. Allowing the President to understand the extent of his authority will enable him to act quickly,

### 2AC – No Spillover

#### There’s no spillover

Jack Balkin, The Atlantic, 9/3/13, What Congressional Approval Won't Do: Trim Obama's Power or Make War Legal, www.theatlantic.com/politics/archive/2013/09/what-congressional-approval-wont-do-trim-obamas-power-or-make-war-legal/279298/

Wouldn’t congressional refusal make the United States look weak, as critics including Senator John McCain warn loudly? Hardly. The next dictator who acts rashly will face a different situation and a different calculus. The UN Security Council or NATO may feel differently about the need to act. There may be a new threat to American interests that lets Obama or the next president offer a different justification for acting. It just won’t matter very much what Obama said about red lines in the past. World leaders say provocative things all the time and then ignore them. Their motto is: That was then, and this is now. If Congress turns him down, won’t Obama be undermined at home, as other critics claim? In what sense? It is hard to see how the Republicans could be less cooperative than they already are. And it’s not in the interest of Democrats to fault a president of their own party for acceding to what Congress wants instead of acting unilaterally. Some commentators argue (or hope) that whatever happens, Obama’s request for military authorization will be an important precedent that will begin to restore the constitutional balance between the president and Congress in the area of war powers. Don’t bet on it. By asking for congressional authorization in this case, Obama has not ceded any authority that he ­or any other president ­has previously asserted in war powers. It is naive to think that the next time a president wants to send forces abroad without congressional approval, he or she will be deterred by the fact that Barack Obama once sought congressional permission to bomb Syria. If a president can plausibly assert that any of the previous justifications apply -­including those offered in the Libya intervention -the case of Syria is easily distinguishable. Perhaps more to the point, Congress still cannot go to the courts to stop the president, given existing legal precedents. Congress may respond by refusing to appropriate funds, but that is a remedy that they have always had -and have rarely had the political will to exercise. The most important limit on presidential adventurism is political, not legal. It will turn less on the precedent of Syria than on whether the last adventure turned out well or badly.

### 2AC – No Impact

#### No impact to prez powers

**Healy 11**

Gene Healy is a vice president at the Cato Institute and the author of The Cult of the Presidency, The CATO Institute, June 2011, "Book Review: Hail to the Tyrant", http://www.cato.org/publications/commentary/book-review-hail-tyrant

Legal checks “have been relaxed largely because of the need for centralized, relatively efficient government under the complex conditions of a modern dynamic economy and a highly interrelated international order.” What’s more, the authors insist, America needs the legally unconstrained presidency both at home (given an increasingly complex economy) and abroad (given the shrinking of global distances). These are disputed points, to say the least. If Friedrich Hayek was at all correct about the knowledge problem, then if anything increasing economic complexity argues for less central direction. Nor does the fact that we face “a highly interrelated international order” suggest that we’re more vulnerable than we were in 1789, as a tiny frontier republic surrounded by hostile tribes and great powers. Economic interdependence — and the rise of other modern industrial democracies — means that other players have a stake in protecting the global trading system. Posner and Vermuele coin the term “tyrannophobia,” which stands for unjustified fear of executive abuse. That fear is written into the American genetic code: the authors call the Declaration of Independence “the ur-text of tyrannophobia in the United States.” As they see it, that’s a problem because “the risk that the public will fail to trust a well-motivated president is just as serious as the risk that it will trust an ill-motivated one.” They contend that our inherited skepticism toward power exacerbates biases that lead us to overestimate the dangers of unchecked presidential power. Our primate brains exaggerate highly visible risks that fill us with a sense of dread and loss of control, so we may decline to cede more power to the president even when more power is needed. Fair enough in the abstract — but Posner and Vermuele fail to provide a single compelling example that might lead you to lament our allegedly atavistic “tyrannophobia.” And they seem oblivious to the fact that those same irrational biases drive the perceived need for emergency government at least as much as they do hostility towards it. Highly visible public events like the 9/11 attacks also instill dread and a perceived loss of control, even if all the available evidence shows that such incidents are vanishingly rare. The most recent year for which the U.S. State Department has data, 2009, saw just 25 U.S. noncombatants worldwide die from terrorist strikes. I know of no evidence suggesting that unchecked executive power is what stood between us and a much larger death toll. Posner and Vermuele argue that only the executive unbound can address modernity’s myriad crises. But they spend little time exploring whether unconstrained power generates the very emergencies that the executive branch uses to justify its lack of constraint. Discussing George H.W. Bush’s difficulties convincing Congress and the public that the 1991 Gulf War’s risks were worth it, they comment, “in retrospect it might seem that he was clearly right.” Had that war been avoided, though, there would have been no mass presence of U.S. troops on Saudi soil — “Osama bin Laden’s principal recruiting device,” according to Paul Wolfowitz — and perhaps no 9/11. Posner and Vermuele are slightly more perceptive when it comes to the home front, letting drop as an aside the observation that because of the easy-money policy that helped inflate the housing bubble, “the Fed is at least partly responsible for both the financial crisis of 2008-2009 and for its resolution.” Oh, well — I guess we’re even, then. Sometimes, the authors are so enamored with the elegant economic models they construct that they can’t be bothered to check their work against observable reality. At one point, attempting to show that separation of powers is inefficient, they analogize the Madisonian scheme to “a market in which two firms must act in order to supply a good,” concluding that “the extra transaction costs of cooperation” make “the consumer (taxpayer) no better off and probably worse off than she would be under the unitary system.” But the government-as-firm metaphor is daffy. In the Madisonian vision, inefficiency isn’t a bug, it’s a feature — a check on “the facility and excess of law-making … the diseases to which our governments are most liable,” per Federalist No. 62. If the “firm” in question also generates public “bads” like unnecessary federal programs and destructive foreign wars — and if the “consumer (taxpayer)” has no choice about whether to “consume” them — he might well favor constraints on production. From Franklin Roosevelt onward, we’ve had something close to vertical integration under presidential command. Whatever benefits that system has brought, it’s imposed considerable costs — not least over 100,000 U.S. combat deaths in the resulting presidential wars. That system has also encouraged hubristic occupants of the Oval Office to burnish their legacies by engaging in “humanitarian war” — an “oxymoron,” according to Posner. In a sharply argued 2006 Washington Post op-ed, he noted that the Iraq War had killed tens of thousands of innocents and observed archly, “polls do not reveal the opinions of dead Iraqis.”

### 2AC – 4th Generation Warfare Wrong

#### Theories of fourth gen warfare wrong- historically inaccurate, empty concept, and doesn’t describe the current WOT

Echevarria 05

(Antulio J. II, Director of Research, Director of National Security Affairs, and Acting Chairman of the Regional Strategy and Planning Department at the Strategic Studies Institute, November, “FOURTH-GENERATION WAR AND OTHER MYTHS”, p. 2-5, <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub632.pdf>) /wyo-mm

Fourth Generation War (4GW) emerged in the late 1980s, but has ¶ become popular due to recent twists in the war in Iraq and terrorist ¶ attacks worldwide. Despite reinventing itself several times, the theory ¶ has several fundamental flaws that need to be exposed before they ¶ can cause harm to U.S. operational and strategic thinking. A critique ¶ of 4GW is both fortuitous and important because it also provides us ¶ an opportunity to attack other unfounded assumptions that could ¶ influence U.S. strategy and military doctrine. ¶ In brief, the theory holds that warfare has evolved through four ¶ generations: 1) the use of massed manpower, 2) firepower, 3) maneuver, ¶ and now 4) an evolved form of insurgencythat employs all available ¶ networks—political, economic, social, military—to convince an ¶ opponent’s decisionmakers that their strategic goals are either ¶ unachievable or too costly. ¶ The notion of 4GW first appeared in the late 1980s as a vague ¶ sort of “out of the box” thinking, and it entertained every popular ¶ conjecture about future warfare. However, instead of examining the ¶ way terrorists belonging to Hamas or Hezbollah (or now Al Qaeda) ¶ actually behave, it misleadingly pushed the storm-trooper ideal as ¶ the terrorist of tomorrow. Instead of looking at the probability that ¶ such terrorists would improvise with respect to the weapons they ¶ used—box cutters, aircraft, and improvised explosive devices—it ¶ posited high-tech “wonder” weapons.¶ The theory went through a second incarnation when the notion ¶ of nontrinitarian war came into vogue; but it failed to examine ¶ that notion critically. The theory also is founded on myths about ¶ the so-called Westphalian system and the theory of blitzkrieg. The ¶ theory of 4GW reinvented itself once again after September 11, 2001 ¶ (9/11), when its proponents claimed that Al Qaeda was waging a ¶ 4GW against the United States. Rather than thinking critically about ¶ future warfare, the theory’s proponents became more concerned ¶ with demonstrating that they had predicted the future. While their ¶ recommendations are often rooted in common sense, they are ¶ undermined by being tethered to an empty theory. What we are really seeing in the war on terror, and the campaign ¶ in Iraq and elsewhere, is that the increased “dispersion and ¶ democratization of technology, information, and finance” brought ¶ about by globalization has given terrorist groups greater mobility ¶ and access worldwide. At this point, globalization seems to aid the ¶ nonstate actor more than the state, but states still play a central role ¶ in the support or defeat of terrorist groups or insurgencies.¶ We would do well to abandon the theory of 4GW altogether, since ¶ it sheds very little, if any, light on this phenomenon.

and action necessary to prevail in fourth-generational conflicts against fourth- generational opponents.

## 1AR

### 1AR – Pres Powers Weak

#### NSA was a significant cut back against government powers

Kristina Peterson and Damian Paletta, 6-2-2015, Congress Reins In NSA’s Spying Powers ," WSJ, http://www.wsj.com/articles/senate-passes-house-bill-overhauling-nsa-surveillance-program-1433277227, Accessed: 6-25-2015, /Bingham-MB

WASHINGTON—A long-running congressional battle over privacy and surveillance ended Tuesday when the Senate voted to curb the collection of millions of Americans’ phone records, the first significant retrenchment of government spying powers since the 9/11 attacks. The measure, which was signed Tuesday night by President Barack Obama, will reauthorize and reboot the provisions of the USA Patriot Act that lapsed Sunday at midnight, but it will phase out the National Security Agency’s bulk phone-records program. The bill, passed by the Senate Tuesday in a 67-32 vote, will shift storage of the phone records to telecommunications companies over six months. Supporters said the legislation marked a victory for civil liberties diminished by laws put in place in the wake of the September 2001 terror attacks. “Today the American people are now safe from the federal government’s collection of their personal data,” said Sen. Mike Lee of Utah, the bill’s chief GOP proponent in the Senate. The House approved the bill, known as the USA Freedom Act, in May. The bill will require the NSA and Federal Bureau of Investigation to obtain phone records for most counterterror investigations and other probes on a case-by-case basis from telecommunications companies. This would end the nine-year-old practice underpinned by Section 215 of the Patriot Act, which allowed the NSA to hold the telephone records of millions of Americans, regardless of any person’s background or behavior. The bulk data collection didn’t include the content of the calls themselves.

### 1AR – No Link

#### No risk of plan reducing presidential powers

Richard Henry **Seamen**, 200**7**, “Domestic Surveillence for International terrorists: presidential powers and 4th amendment limits” 477

More recently, two Justices in *Hamdi v. Rumsfeld* recognized a similar, but broader, emergency power to respond to threats to national security. 94 In *Hamdi,* Justice Souter (joined by Justice Ginsburg) dissented from a decision upholding the detention of an asserted enemy combatant who is also a U.S. citizen.95 Justice Souter concluded that an Act of Congress barred the detention.96 He suggested, however, that the executive branch might be able to detain a citizen, even in violation of the statute, "in a moment of genuine emergency, when the Government must act with no time for deliberation." The plurality did not address this issue because it held-contrary to Justice Souter's dissent (but in basic agreement with Justice Thomas' dissent)-that the detention in that case was authorized by federal statute.The *Hamdi* dissent implies that the President's power to take action "incompatible with the expressed or implied will of Congress" (the third situation identified by Justice Jackson's *Youngstown* concurrence) may include the power to take immediate action to respond to a "genuine emergency" threatening national security. Furthermore, the *Hamdi* dissent did not limit its implication of presidential power to situations involving an actual attack. Indeed, even before *Hamdi* many commentators believed that the President's power encompasses taking defensive measures necessary to thwart imminent attacks. The position staked out here does, however, reject the view that "there is no constitutional impediment to Congress restricting the President's ability to conduct electronic surveillance within the United States and targeted at United States persons."'123 That view would apparently preclude the President's violation of statutory surveillance restrictions even if the President reasonably concluded that violation of those restrictions was necessary to respond to a national security emergency.

#### No link between surveillance and pres powers

Richard Henry **Seamen**, 200**7**, “Domestic Surveillence for International terrorists: presidential powers and 4th amendment limits” 452

The President's power to authorize surveillance outside FISA in a genuine national security emergency does not justify the TSP's continuance beyond the weeks immediately after 9/11. Indeed, the program's very status as an ongoing, broad "program" prevents it from falling within the President's "genuine emergency" power. The genuine emergency power is limited in scope and duration when it is exercised in contravention of legislation, such as FISA, that is a generally valid regulation of the President's power to conduct domestic surveillance for national security purposes. For example, the President may well have had broad power to conduct surveillance outside FISA in the days and weeks immediately after the terrorist attacks on September 11, 2001. That power subsided, however, as time and a still-functioning civil government permitted the President to consult Congress on the appropriate scope of surveillance powers. Thus, the President's "genuine emergency" power cannot support a broad surveillance program that violates a generally valid Act of Congress. By the same token, by recently amending FISA so as to avoid a conflict between that statute and certain features of the TSP, Congress's enactment of the Protect America Act of 2007 supports the validity of those same features.' Congressional ratification of the President's conduct both reinforces the President's power to engage in that conduct and supports its reasonableness for Fourth Amendment purposes.

### 1AR – Link Turn

#### Executive flex undermines counterterror and liberty – legal limits are a more effective security strategy

Sayre 14 – citing Tiberiu Dragu: Assistant Professor, Wilf Family Department of Politics, New York University, and Mattias Polborn: Professor, Department of Economics and Department of Political Science, University of Illinois (Mike, “THE RULE OF LAW IN THE FIGHT AGAINST TERRORISM: LESS EXECUTIVE POWER, MORE SECURITY,” American Journal of Political Science, 5-4-15, <http://ajps.org/2015/05/04/the-rule-of-law-in-the-fight-against-terrorism-less-executive-power-more-security/>) //AD

In the aftermath of 9/11 terrorist attacks, it has become increasingly difficult to argue that the executive branch of the United States be bounded by constitutional rules that might hamper its capacity to ensure collective security. Given the potentially horrific costs of failing to stop another large-scale terrorist attack, the citizens themselves viewed a rigid adherence to legal limits as problematic and were willing to grant the executive more powers at the expense of fundamental rights and liberties. But does increasing the executive’s counterterrorism powers make us safer from terrorism? Our article, “The Rule of Law Against Terrorism“, shows that legal limits on executive counterterrorism powers can be beneficial on security grounds alone and therefore strengthening institutions that uphold the rule of law in the fight against terrorism can be an effective way to achieve security from terrorism. Security crises pose fundamental challenges to the constitutional structure of liberal governments. Unexpected security dangers such as catastrophic terrorist attacks serve as a reminder that collective security is a precondition for the proper functioning of a liberal order, raising the following question: What is the role of legal limits on executive power, if any, when citizens demand more security and allowing executive officials legal flexibility of action appears necessary to achieve it? This question becomes most compelling when governments seek to prevent a security crisis rather than simply react to it. Few if any would argue that executive officials should wait until the actual realization of catastrophic terrorist attacks and not take preventive actions to ward off such security threats. To prevent crises of such proportions, the executive must have the means to act proactively. Crisis prevention seemingly requires permanent executive discretionary powers, and thus represents a constant challenge to the ideal of limited government enshrined in the U.S. Constitution and the Federalist Papers. The tension between the institutional structure of liberal government and successful crisis prevention came to the fore in the aftermath of the 9/11 terrorist attacks. To enhance their governments’ capacities to prevent terrorist attacks, the discretionary powers of the executive were promptly augmented in the United States and other liberal societies. In turn, many of the executive’s counterterrorism activities have infringed upon the rights and liberties of aliens and non-citizens, in particular. In the United States, for example, the executive undertook scores of repressive counterterrorism policies, ranging from ethnic profiling to increased restrictions on immigration, to increased surveillance of certain ethnic and religious communities and even torture of aliens suspected of terrorist activities. The rationale for such repressive policies is that executive discretion is essential to respond effectively to terrorist activities, and thus the executive should be afforded legal flexibility to thwart security dangers. Without necessarily denying that the ethnic and religious communities in which potential terrorists have roots are important in fighting terrorism, the presumption is that executive discretion increases security from terrorism because there are political controls on how executive counterterrorism powers are used. If repressive policies would be harmful for terrorism prevention, so the argument goes, the executive will restrain itself from undertaking such suboptimal counterterrorism policies because citizens can punish ineffective usage of executive power at election times. The logic behind the security rationale for executive discretion appears simple and intuitive. If the executive cares about security from terrorism and also about being in office, and if the citizens are more likely to reelect the executive if it is successful in preventing terrorism, then allowing executive officials legal flexibility of action should translate into more security from terrorism. Our research questions this security rationale on its own terms. To this end, we developed a game-theoretic model to show that that even if citizens are less likely to reelect the government when failing to prevent terrorist attacks, that is, even if electoral controls on how executive counterterrorism powers are used are effective, security from terrorism can actually decrease if the executive has legal flexibility to choose any policy it finds optimal. In contrast, security from terrorism always increases if there are explicit legal limits on the executive’s counterterrorism actions. We also show that the executive achieves the objective of terrorism prevention more effectively when there are some limitations on its counterterrorism powers rather than when executive officials have legal flexibility to devise security policy. At the minimum, the analysis suggests that the burden of empirical proof should be on executive officials who must show that discretionary powers achieve the intended security benefits and, perhaps, whether such benefits can be achieved without setting aside fundamental liberal-democratic principles. Moreover, our analysis indicates that even when citizens want a readjustment in the balance between security and liberty, it is not necessarily security-beneficial if the executive itself decides on the scope of government power. Our research underscores a novel rationale for legal limits and checks on executive powers. The traditional Madisonian argument for such institutions is that they stem abuses of governmental power and thus help preserve citizens’ rights and liberties. Security crises challenge this very rationale. Times of duress are associated with unfettered governmental powers; ordinary, regular situations with separation of powers and checks and balances institutions. Without disputing the importance of constitutional limits and institutional checks within the tradition of a liberal distrust of government, the analysis here underscores another, perhaps less intuitive virtue: such institutional arrangements can increase a government’s capacity to prevent crises. Thus they might be a necessary component of structuring the government if the social objective is terrorism prevention. Our paper also contributes to an empirical literature on terrorism and political violence. Scholars have noted that liberal democracies often resort to repressive policies and focus their coercive efforts on political, ethnic or religious communities associated with a particular security threat. Scholars have also empirically shown that repressive tactics at odds with fundamental liberal-democratic principles can negatively affect security from terrorism, empirical findings that raise the following puzzle: why would a rational government intending to achieve security from terrorism nevertheless engage in repressive tactics that undermine it? Our model shows that it can be an equilibrium behavior for the executive to undertake repressive policies that harm security from terrorism, a behavior induced by electoral incentives to provide security from terrorism.

#### Total flex results in net worse decision-making – the aff makes the process more effective

Pearlstein 9 - lecturer in public and international affairs, Woodrow Wilson School of Public & International Affairs (Deborah N, “"Form and Function in the National Security Constitution," July 2009, Connecticut Law Review, 41 Conn. L. Rev. 1549, LN) //AD

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disaster [sic] response." n198 In this sense, a decision maker with absolute flexibility in an emergency-unconstrained by protocols or plans-may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance.¶ Examples of excessive flexibility producing adverse consequences are ample. Following Hurricane Katrina, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors replacing those rules with more than the most general guidance about custodial intelligence collection. available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200¶ Or consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.¶ In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without n205 As one Army General later investigating the abuses noted: "By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The uncertain effect of broad, general guidance, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208¶ Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But such findings should at least call into question the inclination to simply maximize flexibility and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are nuclear and biological terrorism, involving highly technical information about weapons acquisition and deployment, a security policy structure based on nothing more than general popular mandate and political instincts is unlikely to suffice; a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden.

### 1AR – No Internal Link

#### Legislative-Executive power isn’t zero-sum – it’s a rubber band – it can be exercised without changing the structure

Rottinghaus, Assistant Prof of Poli Sci at the University of Houston, 11 [Brandon tottinghaus, “The Presidency and Congress”, from New Directions in the American Presidency, ed. Lori Cox Han] page 96-97

Conclusion: "Rubber Band" Relations Alexander Hamilton's edict for "energy" in the executive can creatively contradict the constitutional authority given to the legislative branch. A visible and powerful president necessarily detracts from a legislature whose job it is (at least on paper) to be the engine of legislative ingenuity. The Constitution sought to buttress ‘parchment barriers' by pitting ambition against ambition; and the principle means of doing that was the election of public officials at different times, by different people and for somewhat different reasons." 107 Although the powers of the president have grown immeasurably beyond what the framers envisioned and have surpassed Congress in terms of the ability to lead in the American system, the function of shared powers continues to shape the political process in America. To consider this relationship a pendulum (an analogy some have used108 to suggest the power balance swings from one branch to another) may overstate the zero-sum game of Washington politics-the truth is that legislative powers are shared, even if certain powers are exercised at certain times by specific institutions that perhaps encroach on the power of another branch. A pendulum analogy implies that the power shifts between the branches (potentially at regular, predictable intervals). This arrangement is false since, even during times when one branch appears to have more power than another, the truth is that the branches still rely on one another for shared policy-making power. In reality, the executive-legislative relationship is more like a rubber band, where it retains a fundamental shape but can be stretched to change as legislative and executive tools change and political events occur. So, for instance, in utilizing unilateral powers, presidents can stretch that part of the rubber band, even while members of Congress assert themselves on matters of foreign policy or the appointments process. Indeed, perpetuating the rubber band analogy, jointly understanding presidency- centered and Congress-centered variables is also shown to better account for variations in policy making.109 For instance, recent evidence suggests a resurgent Congress in the creation of foreign policy, a fact that seems at odds with the "two presidencies" thesis 110 or other literature that claims that Congress always defers to the president in foreign policy matters. 111 This supports the literature that Congress may not be involved in the formal aspects of foreign policy making but does play a role in the informal aspects.112 The evidence presented here also reveals that Congress has more say on when and how the president uses his unilateral powers and whom the president recommends for nomination and confirmation than was previously assumed.

#### Political power is not zero sum—no trade off

Read, 3-1-12

[James, College of Saint Benedict/Saint John's University, jread@csbsju.edu, Is Power Zero-Sum or Variable-Sum? Old Arguments and New Beginnings, Political Science Faculty Publications.Paper 4, http://digitalcommons.csbsju.edu/cgi/viewcontent.cgi?article=1004&context=polsci\_pubs] /Wyo-MB

The specific question with which this essay is concerned is whether power – and ¶ especially political power – should be regarded as inherently zero-sum, one‟s agent‟s gain ¶ entailing by definition an equivalent loss for another or others; or variable-sum, whereby it is ¶ possible to have mutual gains of power not offset by equivalent losses somewhere else (positivesum), and mutual losses of power not offset by equivalent gains somewhere else (negative-sum). ¶ This essay is part of a larger book-length project that will systematically examine zero-sum and ¶ variable-sum understandings of power; and argue that a variable-sum understanding of power is ¶ at least as fruitful in describing actual power relations – including relations characterized by ¶ significant conflict – as the zero-sum view (see Read 2009a; 2010).

#### Even if check undermine power temporarily they increase political power as a whole—means no trade off

Read, 3-1-12

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Mark Haugaard‟s recent article “Democracy, Political Power, and Authority” (Haugaard ¶ 2010) is notable here because Haugaard begins to fill in what was missing in Giddens: i.e., to ¶ describe specific kind of structures that are more collectively enabling than others. Haugaard‟s ¶ theme in the essay is the particular type of “power-over” characteristic of rule-governed ¶ democratic elections. He argues that what differentiates democratic from predatory states is “the ¶ containment of conflict within consensual parameters. In a democratic system, power over is ¶ accepted as legitimate precisely because it does not entail predation or domination. Democratic ¶ power constitutes a blend of consensual constrained conflict.” In a rule-governed democratic ¶ contest, rivals agree on the rules, and the loser of a particular contest consents to the defeat –24¶ rather than violently challenging the results – because the rules themselves preserve all actors‟ ¶ capacity for future action. In a non-democratic power contest, if A defeats B, B may very well ¶ “remain subaltern for good” whereas under democratic rules, “B may lose this time but win next ¶ time”; thus both A and B have “an interest in reproduction of the democratic rules of the game.”¶ It is in this sense, Haugaard argues, that in a functioning democratic system “the total power of ¶ the system has been increased – political power is positive-sum for the system as whole”¶ (Haugaard 2010, pp. 1052-1056). It should be noted here that Haugaard‟s argument t for collective ¶ empowerment under democracy presupposes the real possibility that losers in one round can ¶ hope for success in another, not just the formal right to vote and nominate candidates for office. ¶ Where democratic systems produce permanent winners and permanent losers (see Read 2009b),¶ the case is altered and the capacity of a democratic system to expand power for all participants ¶ becomes doubtful.

### 1AR – No Impact

#### Flexibility link is wrong – no impact

Streichler 8 – Stuart Streichler, Adjunct Faculty at Seattle University School of Law. Ph.D. at Johns Hopkins University; J.D. at the University of Michigan Law School; B.S. at Bowling Green State University, "Mad about Yoo, or Why Worry about the Next Unconstitutional War", The Journal of Law 26 Politics, Winter, 24 J. L. 26 Politics 93, Lexis) //AD

When Yoo discusses the need for flexibility in the process for warmaking, he creates a false dilemma. He suggests that the president has discretionary power to start wars or that the president must secure prior authorization from Congress through a “fixed, legalistic process.”230 For Yoo, the latter would inevitably hamper the government’s ability to respond to terrorist threats.231 Yet even if Congress has the power to decide whether to go to war, the president retains substantial powers to respond quickly to defend the country. No lawmaker would insist on Congress deliberating while terrorists set off weapons of mass destruction in the United States. Americans who lived with the risk of nuclear attack during the Cold War accepted the president’s authority to respond to the Soviet Union without waiting for the results of legislative debate. Additionally, Congress has demonstrated that it can move quickly to authorize the use of military force. Three days after September 11, the Senate voted 98-0 to authorize the president to use force in response to the attacks,232 and the House approved the measure a few hours later (420- 1).233 Another four days passed before the president signed it.234 The last time Congress declared war in response to an attack on the United States, it did not take lawmakers long to do so. The Senate (82-0) and the House (388-1) issued a declaration of war thirty-three minutes after President Franklin D. Roosevelt’s “Day of Infamy” speech.235 Furthermore, whatever their capacity for dynamic response, presidents do not always react to security threats with speed and energ position with flexibility, there is more to constructing an adaptive foreign policy than letting the president initiate military hostilities. Executive decisions on war that appear, in the short term, to reflect a flexible approach may limit policy options over the long run, constraining foreign policymakers and military planners. Yoo expresses no doubt that the president’s capacity to make decisions in foreign affairs and defense—to “consider policy choices” and to “evaluate threats”—is “far superior” to Congress’s.236 That overstates the reach such an unqualified conclusion. Seemingly for every example where executive decision-making works well, another can be cited exposing its de y affect the president’s decision on whether to take the nation to ficiencies. President John F. Kennedy’s management of the Cuban missile crisis, though not without its critics, is often cited as a classic model of decision-making in crisis. The same president’s handling of the Bay of Pigs invasion has been roundly criticized.237 As Yoo presents his argument on executive decision-making, it does not matter who occupies the office of the president. In fact, that can make a good deal of difference. With the presidency structured around one individual, the decision-making process is shaped by the chief executive’s native abilities, judgment, and experience.238 A whole range of personal qualities ma war: how the president assesses risk (especially with the uncertain conditions that prevail in foreign affairs); whether he or she engages in wishful thinking; whether he or she is practical, flexible, and openminded.239 While every president consults with advisers, small group dynamics add another layer of difficulties in the executive decision-making process. Even talented White House staffers and independent-minded cabinet secretaries succumb to groupthink, as it has been called—the overt and subtle pressures driving group cohesiveness that can distort the decisionmaking process.240 This effect can be pronounced in foreign policy, with stressful crises that often involve morally difficult choices.241 Members of the president’s team, not fully aware they are doing so, may overrate their own power or moral position, cut off the flow of information, downplay contrary views of outside experts, limit consideration of long-term consequences, underestimate the risks of a particular policy, or fail to develop contingency plans.242 Once the group coalesces around a particular view, it becomes increasingly difficult for individual members to press the group to reassess rejected alternatives.243 The unique circumstances of working for the president can make matters worse. Members of the administration generally share the president’s outlook, ideology, and policy pref wed because executive officials give advice based on what they think the president wants to hear. Even if the president’s subordinates differ with the chief executive on particular questions, they can only go so far to challenge the president.244 In short, there are more questions surrounding presidential decisionmaking on war than Yoo is willing to admit. Congress, with the president still involved, may be able to offset the structural disadvantages of a decision-making process taking place behind closed doors in the White House. While the executive branch tends to concentrate command authority in one person, power is dispersed on Capitol Hill. Not all members of Congress are equal, but no person has influence comparable to the president’s power within the executive branch. In comparison with the select handful of advisers who have the most influence with the president, the number of elected legislators and their diverse ideologies, constituencies, and persp ntrary to the president’s decision-making process, insulated by executive privilege, the legislative process involves on-the-record votes and speeches by elected representatives and thus provides a forum for public deliberation.245 To be sure, Congress is not an idealized debating society. Lawmakers have parochial concerns. They often bargain in private. Their public debates can be grounded in emotional appeals as much as reason.246 Yet in eagerness to rate the president far above Congress in deciding to go to war, Yoo overlooks the value in having a decision-making process conducted in relatively open view and the possibilities for lawmakers to engage in serious deliberations on vital questions of national security.

#### Less powerful executive won’t hurt US foreign policy

Paul, Professor at University of Connecticut School of Law, 98

[Joel Paul, July 1998. “The Geopolitical Constitution: Executive Expediency and Executive Agreements,” California Law Review, 86 Calif. L. Rev. 671, Lexis.]

A less powerful executive would not weaken U.S. foreign policy. Public scrutiny of the deliberative process and an independent judiciary have been a source of political stability and vitality in our system of government. The advantages of the President acting with the support of a strong consensus are evident. A congressional authorization to use force overseas sends a serious message to a foreign adversary that the nation is united. Congressional debate can educate the public about the nature of a foreign situation and consolidate public support for foreign assistance. Compelling members of Congress to take a public position in favor of a policy makes it less likely that they will abandon the policy when the going gets tough. For a generation the executive has told us how to imagine the world beyond our borders. Our collective fear displaced reason as we deferred to the President's greater wisdom. As a consequence, the people no longer hold Congress accountable for the failures and excesses of U.S. [\*773] foreign policy. We cannot afford to ignore global forces that are reshaping our economy and our politics. Foreign and domestic issues have converged. Accordingly, we must reassert some measure of democracy in the formulation of foreign policy. Holding our government accountable for foreign policy requires the vigilance of the courts no less than Congress.

### 1AR – 4th Generation Warfare Wrong

#### No impact to 4th gen warfare

Col. Dr. Frans Osinga, 2007; Royal Netherlands Air Force; “On Boyd, Bin Laden, and Fourth Generation Warfare as String Theory”, From John Olson, ed., On New Wars (Oslo, 2007, forthcoming). Reprinted with permission, 26 June 2007

Conceptually flawed Fourth, and related to the previous observation, conceptually the threat is addressed in a flawed manner. 4GW is guilty of trying to create too much coherence among disparate events, incidents, localized developments and factions. Most criminal, terrorist and insurgent groups actually are very local in their greed, grievances and activities and only use the ‘global insurgency’ as a veneer to gain local traction, wider attraction and legitimacy. Their strategic mobility and aspirations, and the expectation that such groups may all cohere against western states, may well be exaggerated. In addition, 4GW seems to lean heavily on case studies such as Vietnam, Iraq and the IDF-Palestian conflict and extrapolate from that to western states that are in fact not nearly so proximate to areas of instability and are also in contrast quite resilient. There is an obvious danger in that. What applies in Iraq – hardly a modern established stable state – may not apply in the US or Europe, nor is it immediately apparent what the equivalent actors – the terroristcriminal symbiosis of John Robb - are to the various Sunni and Shiite rogues perpetrating the daily atrocities in the streets of Baghdad or the to gangs in Columbia and Nigeria.

#### 4th gen war is theoretically flawed

Echevarria 05

(Antulio J. II, Director of Research, Director of National Security Affairs, and Acting Chairman of the Regional Strategy and Planning Department at the Strategic Studies Institute, November, “FOURTH-GENERATION WAR AND OTHER MYTHS”, p. 2-5, <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub632.pdf>) /wyo-mm

This monograph argues that we need to drop the theory of 4GW ¶ altogether; it is fundamentally and hopelessly flawed, and creates ¶ more confusion than it eliminates. To be sure, the concept rightly ¶ takes issue with the networkcentric vision of future warfare for being ¶ too focused on technology and for overlooking the countermeasures ¶ an intelligent, adaptive enemy might employ.¶ 2¶ However, the ¶ model of 4GW has serious problems of its own: it is based on poor ¶ history and only obscures what other historians, theorists, and ¶ analysts already have worked long and hard to clarify. Some 4GW ¶ proponents, such as Colonel Thomas Hammes, author of The Sling ¶ and the Stone, see the theory as little more than a vehicle, a tool, to ¶ generate a vital dialogue aimed at correcting deficiencies in U.S. ¶ military doctrine, training, and organization.3¶ For his part, Hammes ¶ is to be commended for his willingness to roll up his sleeves and do ¶ the hard work necessary to promote positive change. However, the ¶ tool that he employs undermines his credibility. In fact, the theory of ¶ 4GW only undermines the credibility of anyone who employs it in ¶ the hope of inspiring positive change. Change is taking place despite, ¶ not because of, this theory. Put differently, if the old adage is true ¶ that correctly identifying the problem is half the solution, then the ¶ theorists of 4GW have made the problem twice as hard as it should ¶ be.