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## 1

Obama has political leverage and momentum to prevent default

David Gergen, CNN, Former presidential advisor who served during the administrations of Richard Nixon, Gerald Ford, Ronald Reagan, and Bill Clinton, 10/1/13, Shutdown could be shock therapy, www.cnn.com/2013/09/30/opinion/gergen-shutdown/index.html?hpt=op\_t1

But a shutdown could have a silver lining. It could be such an electric shock to the political system that it forces the politicians in Washington to settle their squabbles before the default deadline.

What we know from past shutdowns is that not only citizens -- especially older ones dependent on Social Security and Medicare -- start raising hell, but so do buisness and financial leaders who see damage rippling across their economic interests. Politicians are increasingly seen as villains. Pressure tends to grow so unbearable that eventually Washington finds a solution.

Most of the pressure this time will be directed toward Republicans who have misplayed their hand. A new poll by CNN/ORC shows that 46% of Americans blame the shutdown on Republicans, seeing them as spoiled children. Thirty six percent blame President Obama, and 13% point fingers at both.

Seasoned GOP leaders across the country know that if the shutdown does serious damage, chances of Republicans picking up Senate seats in 2014 and the White House in 2016 could evaporate. Those leaders will push intensely for a way out.

But Republicans are not the only ones who will come under pressure to find a settlement. So will Democrats, starting with President Obama. We expect our presidents to be leaders of all the people, not a single party or ideology. We want them to rise above the squabbling and keep us on track. The harsh rhetoric that the president has been directing at Republicans suggests that he is less interested in settlement than unconditional surrender.

Moreover, as Republicans make their counterarguments, it is becoming increasingly apparent that they have some valid questions. Is Obamacare truly ready for prime time? Shouldn't the two parties work together on the tax code? When is Washington going to get serious about overhauling the entitlement programs so they will survive for coming generations?

Yes, conservative hard-liners have chosen the wrong place to fight; arguments over Obamacare are no excuse to shut down the government. Yes, hard-liners like Sen. Ted Cruz, R-Texas, are creating deeper partisan divides. But Democrats can ill afford to continue rejecting any talks or negotiations.

Now that the shutdown has happened, Obama has a fresh opportunity -- indeed a fresh responsibility -- to seize the mantle of leadership and get us out of this mess. Instead of just blaming the Republicans, he should call in the leaders of both parties and in Lyndon Johnson fashion, keep 'em talking till they get a deal.

With the shutdown underway, the president has new leverage to say, "Look, we are here to negotiate a settlement so that we can reopen the government. We are not here to negotiate over a possible default; I have said all along that I won't do that. But those of you who have been listening closely know that I have also been saying that I am open to conversations about settling our policy differences so that we can keep the government running.

"Tax reform, entitlement reform and even some tweaking of the Affordable Care Act are on the table now. I have only two conditions: I will not accept a gutting of Obamacare -- we settled that at the ballot box in 2012 -- and any settlement here must include a pledge not to let the country go into default. So, let's get started."

Would it work? Who knows for sure? But one thing is clear: If enough Americans rise up now and pressure politicians in Washington to call off this circus, we could not only end this foolishness over a shutdown, but we could also avoid a truly dangerous default. And we could hold our heads up again.

The plan causes an inter-branch fight that derails Obama’s agenda

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

Raising or Lowering Political Costs by Affecting Presidential Political Capital

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

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

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

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

Default collapses the global economy

Adam Davidson, NYTimes, 9/10/13, Our Debt to Society, http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&\_r=0

This is the definition of a deficit, and it illustrates why the government needs to borrow money almost every day to pay its bills. Of course, all that daily borrowing adds up, and we are rapidly approaching what is called the X-Date — the day, somewhere in the next six weeks, when the government, by law, cannot borrow another penny. Congress has imposed a strict limit on how much debt the federal government can accumulate, but for nearly 90 years, it has raised the ceiling well before it was reached. But since a large number of Tea Party-aligned Republicans entered the House of Representatives, in 2011, raising that debt ceiling has become a matter of fierce debate. This summer, House Republicans have promised, in Speaker John Boehner’s words, “a whale of a fight” before they raise the debt ceiling — if they even raise it at all.

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history.

Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.

Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.

Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.

While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.

The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

Extinction

Kemp 10

Geoffrey Kemp, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

## 2

CP Text:

The President of the United States federal government should issue and enforce an executive order that he will seek Congressional authorization prior to initiating warfare, unless to repel attacks on the United States. The order should also establish a bipartisan independent executive branch commission to evaluate and reform how the executive branch decides to go to war.

The Office of Legal Counsel should write and disclose its legal opinion that the President requires Congressional authorization prior to initiating warfare, unless to repel attacks on the United States. The Executive Branch, including the President and the Attorney General, should defer to this opinion.

Presumption goes towards less change - the CP just has the executive restrain which is less than the plan

Self-restraint is durable and sends a credible signal

Eric Posner, The University of Chicago Law School Professor, and Adrian Vermeule, Harvard Law School Professor of Law, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

The Madisonian system of oversight has not totally failed. Sometimes legislators overcome the temptation to free ride; sometimes they invest in protecting the separation of powers or legislative prerogatives. Sometimes judges review exercises of executive discretion, even during emergencies. But often enough, legislators and judges have no real alternative to letting executive officials exercise discretion unchecked. The Madisonian system is a partial failure; compensating mechanisms must be adopted to fill the area of slack, the institutional gap between executive discretion and the oversight capacities of other institutions. Again, the magnitude of this gap is unclear, but plausibly it is quite large; we will assume that it is.

It is often assumed that this partial failure of the Madisonian system unshackles and therefore benefits ill-motivated executives. This is grievously incomplete. The failure of the Madisonian system harms the well-motivated executive as much as it benefits the ill-motivated one. Where Madisonian oversight fails, the well-motivated executive is a victim of his own power. Voters, legislators, and judges will be wary of granting further discretion to an executive whose motivations are uncertain and possibly nefarious. The partial failure of Madisonian oversight thus threatens a form of inefficiency, a kind of contracting failure that makes potentially everyone, including the voters, worse off.

Our central question, then, is what the well-motivated executive can do to solve or at least ameliorate the problem. The solution is for the executive to complement his (well-motivated) first-order policy goals with second-order mechanisms for demonstrating credibility to other actors. We thus do not address the different question of what voters, legislators, judges, and other actors should do about an executive who is ill motivated and known to be so. That project involves shoring up or replacing the Madisonian system to block executive dictatorship. Our project is the converse of this, and involves finding new mechanisms to help the well-motivated executive credibly distinguish himself as such.

IV. Executive Signaling: Law and Mechanisms

We suggest that the executive's credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. **Commitments themselves** have **value as signals** of benign motivations.

This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by "government" or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by "the people" to bind "themselves" against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations. n72 Whether or not this picture is coherent, n73 it is not the question we examine here, although some of the relevant considerations are similar. n74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. [\*895]

Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types.

We begin with some relevant law, then examine a set of possible mechanisms -emphasizing both the conditions under which they might succeed and the conditions under which they might not -and conclude by examining the costs of credibility.

A. A Preliminary Note on Law and Self-Binding

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding. n75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo. n76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies.

More schematically, we may speak of formal and informal means of self-binding:

1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.

2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding. n77 However, there may be large political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so, too, the executive's issuance of a self-binding order can trigger reputational costs. In such cases, repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.

OLC creates a binding constitutional decision

Dellinger, Assistant Attorney General ’93-’96, et al, 2004

(Walter E. & Dawn Johnsen, Acting Assistant Attorney General 1997-98; Deputy AAG 1993-97 & Randolph Moss, Assistant Attorney General 2000-01, Acting 1998-2000; Deputy AAG 1996-98 & Christopher Schroeder, Acting Assistant Attorney General 1997; Deputy AAG 1994-96 & Joseph R. Guerra, Deputy Assistant Attorney General 1999-2001 & [\*1611] Beth Nolan, Deputy Assistant Attorney General 1996-99; Attorney Advisor 1981-85 & Todd Peterson, Deputy Assistant Attorney General 1997-99; Attorney Advisor 1982-85 & Cornelia T.L. Pillard, Deputy Assistant Attorney General 1998-2000 & H. Jefferson Powell, Deputy Assistant Attorney General and Consultant 1993-2000 & Teresa Wynn Roseborough, Deputy Assistant Attorney General 1994-1996 & Richard Shiffrin, Deputy Assistant Attorney General 1993-97 & William Michael Treanor, Deputy Assistant Attorney General 1998-2001 & David Barron, Attorney Advisor 1996-99 & Stuart Benjamin, Attorney Advisor 1992-1995 & Lisa Brown, Attorney Advisor 1996-97 & Pamela Harris, Attorney Advisor 1993-96 & Neil Kinkopf, Attorney Advisor 1993-97 & Martin Lederman, Attorney Advisor 1994-2002 & Michael Small, Attorney Advisor 1993-96, Appendix to “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

The Office of Legal Counsel (OLC) is the Department of Justice component to which the Attorney General has delegated the function of providing legal advice to **guide the actions of the President and the agencies of the executive branch**. **OLC's legal determinations are** considered **binding on the executive branch**, subject to the supervision of the Attorney General and the ultimate authority of the President. From the outset of our constitutional system, Presidents have recognized that compliance with their constitutional obligation to act lawfully requires a reliable source of legal advice. In 1793, Secretary of State Thomas Jefferson, writing on behalf of President Washington, requested the Supreme Court's advice regarding the United States' treaty obligations with regard to the war between Great Britain and France. The Supreme Court declined the request, in important measure on the grounds that **the Constitution vests responsibility for** such **legal determinations within the executive branch itself**: "The three departments of government ... being in certain respects checks upon each other, and our being judges of a court in the last resort, are considerations which afford strong arguments against the propriety of our extrajudicially deciding the questions alluded to, especially as the power given by the Constitution to the President, of calling on the heads of departments for opinions seems to have been purposely as well as expressly united to the executive departments." Letter from John Jay to George Washington, August 8, 1793, quoted in 4 The Founders' Constitution 258 (Philip B. Kurland & Ralph Lerner, eds. 1987).

From the Washington Administration through the present, Attorneys General, and in recent decades the Office of Legal Counsel, have served as the source of legal determinations regarding the executive's legal obligations and authorities. The resulting body of law, much of which is published in volumes entitled Opinions of the Attorney General and Opinions of the Office of Legal Counsel, offers powerful testimony to the importance of the rule-of-law values that President Washington sought to secure and to the Department of Justice's profound tradition of respect for the rule of law. Administrations of both political parties [\*1604] have maintained this tradition, which reflects a dedication to the rule of law that is as significant and as important to the country as that shown by our courts. As a practical matter, the responsibility for preserving this tradition cannot rest with OLC alone. It is incumbent upon the Attorney General and the President to ensure that OLC's advice is sought on important and close legal questions and that the advice given reflects the best executive branch traditions. The principles set forth in this document are based in large part on the longstanding practices of the Attorney General and the Office of Legal Counsel, across time and administrations.

## 3

Text:

The United States Federal Government will require Congressional authorization prior to initiating offensive use of non-cyber military force.

The status quo is always an option – proving the CP worse does not justify the plan. Logical decision-making is the most portable skill

counterplan is competitive

Kesan, professor of technology law at University of Illinois, and Hayes, research fellow at University of Illinois, Spring 2012

(Jay P. and Carol M., “MITIGATIVE COUNTERSTRIKING: SELF-DEFENSE AND DETERRENCE IN CYBERSPACE,” 25 Harv. J. Law & Tec 415, Lexis)

Cyberwarfare is likely to be especially attractive to military leaders because it conserves human and nonhuman resources, though the low costs may also remove disincentives against offensive operations. n149 However, there is no unified information operations doctrine for the whole military, n150 and creating such policies will require leaders to consider a number of highly technical issues that few leaders currently understand. n151 Thus, educating civilian and military leaders is an essential element to effectively addressing potential future international cyber crises.

Because cyberwar is an example of an information operation, it can be viewed as a subcategory of activities involved in physical war. Accordingly, discussions of cyberwar implicate fundamental issues of war, such as how war is initiated and the rules that govern it, including [\*440] the respective warmaking powers of the President and Congress. The Constitution explicitly vests in Congress the authority to declare war, but the President has some authority to take actions relating to war. n152 It is relatively uncontroversial to assert that the President has warmaking powers when acting in the nation's self-defense. However, when ordering military action without congressional authorization for reasons other than self-defense, the President must comply with the War Powers Resolution. n153 Congress passed the War Powers Resolution after the Vietnam War, requiring the President to notify Congress of the use of the military in hostile situations and placing a time limit on such actions unless Congress expressly approves of continued deployment. n154 In addition to his authority as the Commander-in-Chief, the President also has statutory authority to take control of telecommunications networks in times of war. n155 The potential overlap between this authority and cyberwar activities could prove very significant in the future, though a discussion of these implications is beyond the scope of this Article.

With as much conflict as currently exists between the executive and legislative branches with regard to warmaking powers, cyberwar will introduce even more strife. n156 The NRC Report indicates that Congress is likely not privy to regular or systematic information about cyberattacks in the United States. n157 Dycus asserts that congressional silence on cyberwar matters could potentially be viewed as giving full discretion to the President. n158 Dycus also proposes seventeen recommendations for creating a new policy on cyberwar, including an express prohibition on automating active defense. n159

In addition to warmaking authority issues, there are also concerns about how the rules governing war should apply to cyberwar. Some might argue that cyberwar activities are substantially different from traditional war, and thus the requirements governing traditional war do not apply in the cyber context, but this is not necessarily the case. Michael Wynne, former U.S. Secretary of the Air Force, asserts "all [\*441] aspects of air war will have some equivalent role in cyber war." n160 The NRC Report argues that we should apply the same rules and policies for both forms of conflict, stating "the only differences are operational." n161 In line with these arguments, the NDAA includes a provision directing the military to apply the laws of war to cyberwar. n162

Plan restricts cyber operation effectiveness

Lorber ’13

Eric, J.D. Candidate, University of Pennsylvania Law School, Ph.D Candidate, Duke University Department of Political Science, “Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?,” 15 U. Pa. J. Const. L. 961

Yet a surprising amount of uncertainty exists as to which - if any - domestic laws constrain the use of OCOs and how they fit into the congressional-executive balance. As policymakers, scholars, and journalists have lamented, a coherent policy framework governing the use of OCOs does not exist and many questions remain unanswered. n8 Would an attack [\*963] using cyber weapons trigger the requirements of the War Powers Resolution? n9 Would OCOs be subject to reporting requirements under the Intelligence Authorization Act? n10 Conversely, do cyber operations grant the executive branch another tool with which it can prosecute attacks but avoid reporting and responding to congressional inquiries? These questions are largely unanswered both because the rise of OCOs is a relatively recent phenomenon and because much of the information about U.S. technical capability in this field is highly classified. n11 Yet addressing these questions is increasingly important for two reasons. First, as states such as China, Israel, Russia, and the United States use these weapons now and likely will do so more in future conflicts, determining the domestic legal strictures governing their use would provide policymakers and military planners a better sense of how to operate in cyberspace. n12 Second, the possible employment of these tools adds yet another wrinkle to the battle between the executive and legislative branches over war-making authority. n13 In particular, if neither the War Powers Resolution nor the Intelligence Authorization Act governs OCOs, the executive may be allowed to employ U.S. military power in a manner largely unchecked by congressional authority. n14 As a result, the employment of these tools [\*964] implicates - and perhaps problematically shifts - the balance between the executive's commander-in-chief power n15 and Congress's war-making authority. n16 This Comment provides an initial answer to the question of whether current U.S. law can effectively govern the Executive's use of OCOs. n17 It explores the interaction between this new tool and the current statutory limits on presidential war-making authority, with a particular focus on whether the two current federal laws meant to restrict executive power in this field - the War Powers Resolution n18 and the Intelligence Authorization Act n19 - apply to a wide range of potential offensive cyber operations undertaken by the executive branch. Beyond suggesting that neither the War Powers Resolution nor the Intelligence Authorization Act can effectively regulate most types of offensive cyber operations, this Comment suggests that while marginally problematic for a proper balance of war-making power between the executive and legislative branches, this lack of oversight does not fundamentally shift the current alignment. It does argue, however, that - given this lack of regulatory oversight - **the President now has another powerful war-making tool to use at his discretion**. Finally, the Comment suggests that this lack of limitation may be positive in some ways, as laying down clear legal markers before having a developed understanding of these capabilities may problematically limit their effective use.

The aff makes us lose in the incoming cyberwar – it will be a nightmare

Stewart Baker, Visiting Fellow at the Hoover Institution, 12 [“Law and Cyberwar - The Lessons of History,” Patriots Debate: Contemporary Issues in National Security Law, Chapter 9: Cyberwar, http://www.americanbar.org/groups/public\_services/law\_national\_security/patriot\_debates2/the\_book\_online/ch9/ch9\_ess1.html]

Lawyers don’t win wars.¶ But can they lose a war? We’re likely to find out, and soon. Lawyers across the government have raised so many show-stopping legal questions about cyberwar that they’ve left our military unable to fight, or even plan for, a war in cyberspace.¶ No one seriously denies that cyberwar is coming. Russia may have pioneered cyber attacks in its conflicts with Georgia and Estonia, but cyber weapons went mainstream when the developers of Stuxnet sabotaged Iran’s Natanz enrichment plant, proving that computer network attacks can be more effective than 500-pound bombs. In war, weapons that work get used again.¶ Unfortunately, it turns out that cyber weapons may work best against civilians. The necessities of modern life—pipelines, power grids, refineries, sewer and water lines—all run on the same industrial control systems that Stuxnet subverted so successfully. These systems may be even easier to sabotage than the notoriously porous computer networks that support our financial and telecommunications infrastructure.¶ No one has good defenses against such attacks. The hackers will get through**.¶** Even very sophisticated network defenders—RSA, HBGary, even the Department of Defense (DOD) classified systems—have failed to keep attackers out. Once they’re in, attackers have stolen the networks’ most precious secrets. But they could just as easily bring the network down, possibly causing severe physical damage, as in the case of Stuxnet.¶ So as things now stand, a serious cyber attack could leave civilians without power, without gasoline, without banks or telecommunications or water—perhaps for weeks or months. If the crisis drags on, deaths will multiply, first in hospitals and nursing homes, then in cities and on the road as civil order breaks down. It will be a nightmare. And especially for the United States, which has trusted more of its infrastructure to digital systems than most other countries have.¶ We’ve been in this spot before. As General William Mitchell predicted, airpower allowed a devastating and unprecedented strike on our ships in Pearl Harbor. We responded with an outpouring of new technologies, new weapons, and new strategies.¶ Today, the threat of new cyber weapons is just as real, but we have responded with an outpouring, not of technology or strategy but of law review articles, legal opinions, and legal restrictions. Military lawyers are tying themselves in knots trying to articulate when a cyber attack can be classified as an armed attack that permits the use of force in response.6 State Department and National Security Council lawyers are implementing an international cyberwar strategy that relies on international law “norms” to restrict cyberwar.7 CIA lawyers are invoking the strict laws that govern covert action to prevent the Pentagon from launching cyber attacks.8 Justice Department lawyers are telling our military that it violates the law of war to do what every cyber criminal has learned to do—cover their tracks by routing attacks through computers located in other countries.9 And the Air Force recently surrendered to its own lawyers, allowing them to order that all cyber weapons be reviewed for “legality under [the law of armed conflict], domestic law and international law” before cyberwar capabilities are even acquired.10 (And that’s just the lawyers’ first bite at the apple; the directive requires yet another legal review before the weapons are used.)11¶ The result is predictable, and depressing. Top Defense Department officials recently adopted a cyberwar strategy that simply omitted any plan for conducting offensive operations.12 Apparently, they’re still waiting for all these lawyers to agree on what kind of offensive operations the military is allowed to mount.¶ \* \* \*¶ I have no doubt that the lawyers think they’re doing the right thing. Cyberwar will be terrible. If the law of war can stave off the worst civilian harms, they’d argue, surely we should embrace it. There’s just one problem: That’s exactly what we tried when airpower transformed war.¶ And we failed.¶ In the first half of the 20th century, the airplane did for warfighters what information technology has done in the last quarter of a century. Like cyber attacks, airpower was first used to gather intelligence and not to fight. Perhaps for this reason, there was never a taboo about using either airpower or cyber weapons. By the time officials realized just how ugly these weapons could be, the cat was already out of the bag¶ By the 1930s, though, everyone saw that aerial bombing would reduce cities to rubble in the next war. We have trouble today imagining how unprecedented and terrible airpower must have seemed at this time. Just a few years earlier, the hellish slaughter where armies met in the trenches of World War I had destroyed the Victorian world; now airpower promised to bring that hellish slaughter to the home front.¶ Former Prime Minister Stanley Baldwin summed up Britain’s strategic position in 1932 with a candor no American leader has dared to match in talking about cyberwar:¶ I think it is well also for the man in the street to realize that there is no power on earth that can protect him from being bombed, whatever people may tell him. The bomber will always get through. . . . The only defence is in offence, which means that you have got to kill more women and children more quickly than the enemy if you want to save yourselves.13¶ The British may have been realists about air war, but Americans still hoped to head off the nightmare. The American tool of choice was international law. (Some things never change.) When war broke out on September 1, 1939, President Franklin D. Roosevelt sent a cable to all the combatants seeking express limits on the use of airpower and expressing his view that:¶ [R]uthless bombing from the air of civilians in unfortified centers of population . . . has sickened the hearts of every civilized man and woman, and has profoundly shocked the conscience of humanity. . . . I am therefore addressing this urgent appeal to every government which may be engaged in hostilities publicly to affirm its determination that its armed forces shall in no event, and under no circumstances, undertake the bombardment from the air of civilian populations or of unfortified cities. . . .14¶ President Roosevelt had a pretty good legal case. The Hague Conventions on the Law of War, adopted just two years after the Wright Brothers’ first flight, declared that in bombardments, “all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.”15 The League of Nations had recently declared that, in air war, “the intentional bombing of civilian populations is illegal.”16¶ But FDR didn’t rely just on law. He asked for a public pledge that would bind all sides.17 Remarkably, he got it. The horror of aerial bombardment ran so deep in that era that England, France, Germany, and Poland all agreed—before nightfall on the same day.18¶ What’s more, they tried to honor their pledges. In a June 1940 order for Luftwaffe operations against Britain, Hermann Göring “stressed that every effort should be made to avoid unnecessary loss of life amongst the civilian population.”19¶ It began to look like a great victory for the international law of war. All sides had stared into the pit of horrors that civilian bombing would open up. And all had stepped back.¶ It was exactly what the lawyers and diplomats now dealing with cyberwar hope to achieve.¶ But as we know, that’s not how this story ends. On the night of August 24, a Luftwaffe air group made a fateful navigational error. Aiming for oil terminals along the Thames, they miscalculated, instead dropping their bombs in the civilian heart of the city of London.¶ It was a mistake. But that’s not how Prime Minister Winston Churchill saw it. He insisted on immediate retaliation. The next night, British bombers hit targets in Berlin for the first time. The military effect was negligible, but the political impact was profound. Göring had promised that the Luftwaffe would never allow a successful attack on Berlin. The Nazi regime was humiliated, the German people enraged. Ten days later, Hitler told a wildly cheering crowd that he had ordered the bombing of London: “Since they attack our cities, we will extirpate theirs.”20¶ The Blitz was on.¶ In the end, London survived. But the extirpation of enemy cities became a permanent part of both sides’ strategy. No longer an illegal horror to be avoided at all costs, the destruction of enemy cities became deliberate policy. Later in the war, British strategists would launch aerial attacks with the avowed aim of causing “the destruction of German cities, the killing of German workers, . . . the disruption of civilized life throughout Germany . . . the creation of a refugee problem on an unprecedented scale, and the breakdown of morale both at home and at the battle fronts.”21¶ The Hague Conventions, the League of Nations resolution, even the explicit pledges given to President Roosevelt—all these “norms” for the use of airpower had been swept away by the logic of the technology and the predictable psychology of war.¶ \* \* \*¶ So, why do today’s lawyers think that their limits on cyberwar will fare better than FDR’s limits on air war?¶ It beats me. If anything, they have a much harder task. Roosevelt could count on a shared European horror at the aerial destruction of cities. He used that to extract an explicit and reciprocal understanding from both sides as the war was beginning. We have no such understanding, indeed no such shared horror. Quite the contrary, for some of our potential adversaries, cyber weapons are uniquely asymmetric—a horror for us, another day in the field for them. It doesn’t take a high-tech infrastructure to maintain an army that is ready in a pinch to live on grass.¶ What’s more, cheating is easy and strategically profitable. American compliance will be enforced by all those lawyers. Our adversaries can ignore the rules and say—hell, they are saying—”We’re not carrying out cyber attacks. We’re victims, too. Maybe you’re the attacker. Or maybe it’s Anonymous. Where’s your proof?”¶ Even if all sides were genuinely committed to limiting cyberwar, as all sides were in 1939, we’ve seen that the logic of airpower eventually drove all sides to the horror they had originally recoiled from. Each side felt that it had observed the limits longer than the other. Each had lawyerly justifications for what it did, and neither understood or gave credence to the other’s justifications. In that climate, all it took was a single error to break the legal limits irreparably.¶ And error was inevitable. Bombs dropped by desperate pilots under fire go astray. But so do cyber weapons. Stuxnet infected thousands of networks as it searched blindly for Natanz. The infections lasted far longer than intended. Should we expect fewer errors from code drafted in the heat of battle and flung at hazard toward the enemy?¶ Of course not. But the lesson for the lawyers and the diplomats is stark: Their effort to impose limits on cyberwar is almost certainly doomed.¶ No one can welcome this conclusion, at least not in the United States. We have advantages in traditional war that we lack in cyberwar. We are not used to the idea that launching even small wars on distant continents may cause death and suffering here at home. That is what drives the lawyers. They hope to maintain the old world. But they’re driving down a dead end.¶ If we want to defend against the horrors of cyberwar, we need first to face them, with the candor of a Stanley Baldwin. Then we need to charge our military strategists, not our lawyers, with constructing a cyberwar strategy for the world we live in, not the world we’d like to live in.¶ That strategy needs both an offense and a defense. The offense must be powerful enough to deter every adversary with something to lose in cyberspace, and so it must include a way to identify our attacker with certainty. The defense, too, must be realistic, making successful cyber attacks more difficult and less effective because we have built resilience and redundancy into our infrastructure.¶ Once we have a strategy for winning a cyberwar, we can ask the lawyers for their thoughts. We can’t do it the other way around.

Credible threat of OCOs are the only way to solve Iran prolif – stuxnet proves

Albright et al. 12 [David Albright, chairperson of ISIS, Paul Brannan, senior analyst at ISIS who has done extensive research and analysis on the international nuclear black market, Andrea Stricker, research analyst, Christina Walrond, and Houston Wood, “PREVENTING IRAN FROM GETTING NUCLEAR WEAPONS: CONSTRAINING ITS FUTURE NUCLEAR OPTIONS,” The Institute for Science and International Security, March 5, http://w.isis-online.org/uploads/isis-reports/documents/USIP\_Template\_5March2012-1.pdf]

Iran’s efforts to build covert nuclear sites, which it could operate out of sight of IAEA inspectors, have¶ time and again failed either through good IAEA detective work or Western intelligence agency¶ discoveries. The most recent case is¶ the confirmation by Western intelligence in mid¶ -¶ 2009 that Iran was¶ building a clandestine centrifuge plant near the city of Qom. Senior officials close to the IAEA suspect¶ that this enrichment site was intended to be part of a parallel, secret program to¶ produce weapon¶ -¶ grade¶ uranium under the control of the Iranian military. That facility, now called the Fordow Fuel Enrichment¶ Plant (FFEP), is currently under IAEA safeguards, and Iran declared that it is dedicated to the production¶ of 3.5 percent and 19.7¶ 5 percent uranium. The November 2011 IAEA safeguards report on Iran¶ contains numerous other examples of secret military related nuclear activities and facilities in Iran¶ discovered by about ten IAEA member states, including the United States, Britain, Fra¶ nce, Germany, and¶ Israel.¶ In order to deter Iran from constructing covert nuclear sites, intelligence options aimed at their¶ detection remain vitally important. Known methods used by intelligence agencies include human¶ spying, cyber snooping, aerial surve¶ illance, and bugging of equipment procured by Iran overseas.¶ Intelligence agencies are also encouraging more defectors from the nuclear program with some notable¶ successes.¶ As a result, Iran must be increasingly anxious that its nuclear program is highly¶ penetrated by foreign¶ intelligence agencies. It may hesitate in making decisions to construct parallel, clandestine facilities to¶ make weapon grade uranium; currently, there is no evidence of a secret enrichment site able to¶ produce weapon¶ -¶ grade uranium.¶ The 2009/2010 cyber attack by the Stuxnet malware on the Natanz¶ enrichment plant likely worsened Iran’s paranoia. Whichever nation launched that attack had a¶ surprising amount of confidential detail a¶ bout operations at the facility¶ -¶ far more inside information¶ than could be acquired from IAEA reporting. Intelligence agencies needed to penetrate both the inner¶ workings of that plant and a collection of Iranian companies, which illicitly obtained Siemens computer¶ control equipment and software and prepared¶ it for delivery to the centrifuge program, leading to the¶ Stuxnet attack. Moreover, Stuxnet also functioned to gather information about operations at Iran’s¶ centrifuge sites and broadcast them through the Internet to command and control servers located¶ out¶ side Iran.¶ Stuxnet is an example of a covert effort that seeks to actively damage Iranian nuclear equipment¶ subject to U.N. Security Council resolutions. It destroyed at least 1,000 IR¶ -¶ 1 centrifuges at the Natanz¶ Fuel Enrichment Plant and set the progra¶ m back by about a year. It may have caused lingering effects¶ that contribute to centrifuge problems at the Natanz plant today. Despite their controversy, more cyber¶ attacks may yet occur. A Stuxnet 2.0 or 3.0 may sorely test Iran’s claim that it improved i¶ ts cyber¶ security and its ability to significantly mitigate the effects of another cyber attack on the centrifuges at¶ Natanz.¶ The discovery in the fall of 2011 of the ―Duqu‖ malware heightened expectations of additional attacks.¶ This malware, according¶ to the computer security firm Symantec, which analyzed the code, has nearly¶ identical components to the original Stuxnet malware and appears to be the precursor to a future¶ Stuxnet¶ -¶ like attack. Symantec found that ―Duqu’s purpose is to gather intelligence¶ data and assets from¶ entities, such as industrial control system manufacturers, in order to more easily conduct a future¶ attack against another third party. The attackers are looking for information such as design documents¶ that could help them mount a fut¶ ure attack on an industrial control facility.‖¶ 11¶ Despite the downsides¶ and risks associated with cyber attacks against Iranian nuclear facilities, the tactic is becoming more¶ widely accepted as a means to slow down Iran’s nuclear progress and stymie progr¶ ams which violate¶ UNSC resolutions, particularly the uranium enrichment program.¶ 16¶ Broader sabotage of Iran’s imported equipment is another well¶ -¶ known tactic of Western intelligence¶ agencies. Intelligence agencies first infiltrate an Iranian smuggling networ¶ k and provide the goods the¶ network seeks, but not before they first modify the goods so they will not work, perhaps in a way that¶ will damage adjacent equipment. Sometimes bugging devices are placed in the equipment and send¶ information about operations a¶ fter the equipment is installed at a site. This technique has likely¶ revealed at least one of Iran’s secret nuclear sites and, according to official Iranian statements, to have¶ caused centrifuges to break. Undoubtedly, the tactic is being pursued more dili¶ gently today by a range¶ of countries.¶ There are several riskier strategies that are being pursued against Iran that have serious downsides¶ and implications. Assassinations of Iranian nuclear scientists and engineers have occurred with greater¶ frequency b¶ ut should be stopped because they carry too high a risk of retaliation and involve terrorism¶ against civilians. Moreover, assassinations are unlikely to be effective in setting back the nuclear¶ program, which involves thousands of specialists and ingrained know - how. Furthermore, Iran could¶ argue that assassinations are equivalent to a military attack and use this as justification for further¶ provocations. An under¶ -¶ siege mentality created by use of such tactics could motivate Iran to further¶ degrade its cooperation with the IAEA and resist offers of negotiation.¶ Recent major accidents at Iranian facilities have led to speculation that countries are conducting¶ sabotage against significant Iranian missile and nuclear¶ -¶ related sites. An explosion late last yea¶ r at a¶ major missile production facility outside Tehran is being called sabotage by some.¶ 12¶ In December 2012,¶ there was an explosion at the newly opened¶ Ghadir steelworks¶ in Yazd that reportedly could have been¶ making maraging steel. Despite Iranian denial¶ s of sabotage and a lack of clear evidence of sabotage,¶ these cases have ignited a debate into the risks, feasibility, and desirability of sabotaging major¶ facilities via covert operations that go beyond cyber attacks.

Nuclear war

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

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

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

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

n-player competition

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

## Intervention

Congress cant check use of force

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 6-8

The role that Congress plays in deciding whether a war is continued or concluded is of intrinsic interest to academics, policymakers, and casual observers of contemporary American politics alike. Yet the belief that Congress retains some capacity to shape the conduct of military affairs after a venture is launched is also a critically important and untested proposition underlying most theories **asserting** congressional influence over the initiation of military action. Why, according to this emerging literature, do presidents facing a strong opposition party in Congress use force less frequently than do their peers with strong partisan majorities in Congress? The most commonly offered answer is that presidents anticipate Congress's likely reaction to a prospective use of force and respond accordingly.14 Presidents who confront an opposition-led Congress anticipate that it is more willing and able to challenge the administration's conduct of military action than a Congress controlled by their partisan allies. Therefore, the frequency with which presidents use force abroad covaries with the strength of their party in Congress. However, this anticipatory logic requires that Congress has the ability to raise the costs of military action for the president, once that action has begun. If Congress lacks this capacity, presidents have little reason to adjust their willingness to initiate the use of force in anticipation of an adverse congressional response." As a result, determining whether and how Congress can influence the scope and duration of ongoing military operations is critically important even to evaluating prior research that asserts congressional influence over the initiation of military actions. Without it, such analyses rest on shaky ground. Unfortunately, because the dynamics change dramatically once American troops are deployed abroad, simply drawing lessons from existing studies of interbranch dynamics in military policymaking at the conflict initiation phase and applying them to the conflict conduct phase is unlikely to offer much insight." The decision-making environment at the conflict conduct phase differs from that at the conflict initiation phase along at least three key dimensions: the incentives and constraints governing congressional willingness to challenge presidential discretion; the relative institutional capacities of the executive and legislative branches to affect military policymaking; and finally, the ability of unfolding conflict events to change further the political and strategic environment in which the two branches vie for power. With regard to the political constraints that limit would-be adversaries in Congress, the president may **be in an even stronger position** after American troops are deployed in the field. Ordering troops abroad is akin to other unilateral presidential actions; by seizing his office's capacity for independent action, a president can dramatically **change the status quo** and fundamentally alter the political playing field on which Congress and other actors must act to challenge his policies.17 Once the troops are overseas, the political stakes for any congressional challenge to the president's policies are inexorably raised; any such effort is subject to potentially ruinous charges of failing to support the troops. Georgia Senator Richard Russell's conversion from opposition to U.S. intervention in Vietnam in the early 196os to stalwart support for staying the course after Lyndon Johnson's escalation of the American commitment there illustrates this change: "We are there now, and the time for debate has passed. Our flag is committed, and—more importantly—American boys are under fire."" Russell's sentiment was loudly echoed forty years later in the allegations by the Bush administration and its partisan allies in Congress that any legislative efforts to curtail the war in Iraq undermined the troops. As a result of these potentially **intense political costs**, there are reasons to question whether Congress can mount an effective challenge to the policies of the commander in chief. If it cannot, this would compel a reassessment of prior theories asserting congressional influence over the initiation of military actions through the logic of anticipated response. Certainly, more empirical analysis is needed to answer this question.

That goes nuclear

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.

**No accidental launch**

**Williscroft 10** (Six patrols on the *John Marshall* as a Sonar Technician, and four on the *Von Steuben* as an officer – a total of twenty-two submerged months. Navigator and Ops Officer on *Ortolan* & *Pigeon* – Submarine Rescue & Saturation Diving ships. Watch and Diving Officer on *Oceanographer* and *Surveyor*. “Accidental Nuclear War” http://www.argee.net/Thrawn%20Rickle/Thrawn%20Rickle%2032.htm)

Is there a realistic chance that we could have a nuclear war by accident? Could a ballistic submarine commander launch his missiles without specific presidential authorization? Could a few men conspire and successfully bypass built-in safety systems to launch nuclear weapons? The key word here is “realistic.” In the strictest sense, yes, these things are possible. But are they realistically possible? This question can best be answered by examining two interrelated questions. Is there a way to launch a nuclear weapon by accident? Can a specific accidental series of events take place—no matter how remote—that will result in the inevitable launch or detonation of a nuclear weapon? Can one individual working by himself or several individuals working in collusion bring about the deliberate launch or detonation of a nuclear weapon? We are protected from accidental launching of nuclear weapons by mechanical safeguards, and by carefully structured and controlled mandatory procedures that are always employed when working around nuclear weapons. Launching a nuclear weapon takes the specific simultaneous action of several designated individuals. System designers ensured that conditions necessary for a launch could not happen accidentally. For example, to launch a missile from a ballistic missile submarine, two individuals must insert keys into separate slots on separate decks within a few seconds of each other. Barring this, the system cannot physically launch a missile. There are additional safeguards built into the system that control computer hardware and software, and personnel controls that we will discuss later, but—in the final analysis—without the keys inserted as described, there can be no launch—it’s not physically possible. Because the time window for key insertion is less than that required for one individual to accomplish, it is physically impossible for a missile to be launched accidentally by one individual. Any launch must be deliberate. One can postulate a scenario wherein a technician bypasses these safeguards in order to effect a launch by himself. Technically, this is possible, but such a launch would be deliberate, not accidental. We will examine measures designed to prevent this in a later column. Maintenance procedures on nuclear weapons are very tightly controlled. In effect always is the “two-man rule.” This rule prohibits any individual from accessing nuclear weapons or their launch vehicles alone. Aside from obvious qualification requirements, two individuals must be present. No matter how familiar the two technicians may be with a specific system, each step in a maintenance procedure is first read by one technician, repeated by the second, acknowledged by the first (or corrected, if necessary), performed by the second, examined by the first, checked off by the first, and acknowledged by the second. This makes maintenance slow, but absolutely assures that no errors happen. Exactly the same procedure is followed every time an access cover is removed, a screw is turned, a weapon is moved, or a controlling publication is updated. Nothing, absolutely nothing is done without following the written guides exactly, always under two-man control. This even applies to guards. Where nuclear weapons are concerned, a minimum of two guards—always fully in sight of each other—stand duty. There is no realistic scenario wherein a nuclear missile can be accidentally launched...ever...under any circumstances...period!

## Warfighting

Data disproves hegemony impacts

Fettweis, 11

Christopher J. Fettweis, Department of Political Science, Tulane University, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence.

The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated.

Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered.

However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation.

It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

No challengers

Kaplan, senior fellow – Center for a New American Security, and Kaplan, frmr. vice chairman – National Intelligence Council, ‘11

(Robert D and Stephen S, “America Primed,” *The National Interest*, March/April)

But in spite of the seemingly inevitable and rapid diminution of U.S. eminence, to write America’s great-power obituary is beyond premature. The United States remains a highly capable power. Iraq and Afghanistan, as horrendous as they have proved to be—in a broad historical sense—are still relatively minor events that America can easily overcome. The eventual demise of empires like those of Ming China and late-medieval Venice was brought about by far more pivotal blunders.

Think of the Indian Mutiny against the British in 1857 and 1858. Iraq in particular—ever so frequently touted as our turning point on the road to destruction—looks to some extent eerily similar. At the time, orientalists and other pragmatists in the British power structure (who wanted to leave traditional India as it was) lost some sway to evangelical and utilitarian reformers (who wanted to modernize and Christianize India—to make it more like England). But the attempt to bring the fruits of Western civilization to the Asian subcontinent was met with a violent revolt against imperial authority. Delhi, Lucknow and other Indian cities were besieged and captured before being retaken by colonial forces. Yet, the debacle did not signal the end of the British Empire at all, which continued on and even expanded for another century. Instead, it signaled the transition from more of an ad hoc imperium fired by a proselytizing lust to impose its values on others to a calmer and more pragmatic empire built on international trade and technology.1 There is no reason to believe that the fate of America need follow a more doomed course.

Yes, the mistakes made in Iraq and Afghanistan have been the United States’ own, but, though destructive, they are not fatal. If we withdraw sooner rather than later, the cost to American power can be stemmed. Leaving a stable Afghanistan behind of course requires a helpful Pakistan, but with more pressure Washington might increase Islamabad’s cooperation in relatively short order.

In terms of acute threats, Iran is the only state that has exported terrorism and insurgency toward a strategic purpose, yet the country is economically fragile and politically unstable, with behind-the-scenes infighting that would make Washington partisans blanch. Even assuming Iran acquires a few nuclear devices—of uncertain quality with uncertain delivery systems—the long-term outlook for the clerical regime is itself unclear. The administration must only avoid a war with the Islamic Republic.

To be sure, America may be in decline in relative terms compared to some other powers, as well as to many countries of the former third world, but in absolute terms, particularly military ones, the United States can easily be the first among equals for decades hence.

China, India and Russia are the only major Eurasian states prepared to wield military power of consequence on their peripheries. And each, in turn, faces its own obstacles on the road to some degree of dominance.

The Chinese will have a great navy (assuming their economy does not implode) and that will enforce a certain level of bipolarity in the world system. But Beijing will lack the alliance network Washington has, even as China and Russia will always be—because of geography—inherently distrustful of one another. China has much influence, but no credible military allies beyond possibly North Korea, and its authoritarian regime lives in fear of internal disruption if its economic growth rate falters. Furthermore, Chinese naval planners look out from their coastline and see South Korea and a string of islands—Japan, Taiwan and Australia—that are American allies, as are, to a lesser degree, the Philippines, Vietnam and Thailand. To balance a rising China, Washington must only preserve its naval and air assets at their current levels.

India, which has its own internal insurgency, is bedeviled by semifailed states on its borders that critically sap energy and attention from its security establishment, and especially from its land forces; in any case, India has become a de facto ally of the United States whose very rise, in and of itself, helps to balance China.

Russia will be occupied for years regaining influence in its post-Soviet near abroad, particularly in Ukraine, whose feisty independence constitutes a fundamental challenge to the very idea of the Russian state. China checks Russia in Central Asia, as do Turkey, Iran and the West in the Caucasus. This is to say nothing of Russia’s diminishing population and overwhelming reliance on energy exports. Given the problems of these other states, America remains fortunate indeed.

The United States is poised to tread the path of postmutiny Britain. America might not be an empire in the formal sense, but its obligations and constellation of military bases worldwide put it in an imperial-like situation, particularly because its air and naval deployments will continue in a post-Iraq and post-Afghanistan world. No country is in such an enviable position to keep the relative peace in Eurasia as is the United States—especially if it can recover the level of enduring competence in national-security policy last seen during the administration of George H. W. Bush. This is no small point. America has strategic advantages and can enhance its power while extricating itself from war. But this requires leadership—not great and inspiring leadership which comes along rarely even in the healthiest of societies—but plodding competence, occasionally steely nerved and always free of illusion.

Heg doesn’t solve war

Mastanduno, 9 – Professor of Government at Dartmouth

(Michael, World Politics 61, No. 1, Ebsco)

During the cold war the United States dictated the terms of adjustment. It derived the necessary leverage because it provided for the security of its economic partners and because there were no viable alter natives to an economic order centered on the United States. After the cold war the outcome of adjustment struggles is less certain because the United States is no longer in a position to dictate the terms. The United States, notwithstanding its preponderant power, no longer enjoys the same type of security leverage it once possessed, and the very success of the U.S.-centered world economy has afforded America’s supporters a greater range of international and domestic economic options. The claim that the United States is unipolar is a statement about its cumulative economic, military, and other capabilities.1 But preponderant capabilities across the board do not guarantee effective influence in any given arena. U.S. dominance in the international security arena no longer translates into effective leverage in the international economic arena. And although the United States remains a dominant international economic player in absolute terms, after the cold war it has found itself more vulnerable and constrained than it was during the golden economic era after World War II. It faces rising economic challengers with their own agendas and with greater discretion in international economic policy than America’s cold war allies had enjoyed. The United States may continue to act its own way, but it can no longer count on getting its own way.

## SOP

Legitimacy not key to human rights pressure – backlash isn’t prohibitive

Ignatieff, 2 – Carr professor of human rights, Kennedy School of Government @ Harvard

(Michael, “NO EXCEPTIONS?” *Legal Affairs*, May/June)

This defense of the United States does not, however, address the charge of hypocrisy. If America wants to be a human rights leader, the argument goes, it must obey the rules it seeks to champion. Leadership depends on legitimacy, and legitimacy requires consistency. But it's not clear that the effective use of American power in fact depends on being consistent, or on being seen by others as legitimate. Perceived legitimacy eases but it isn't essential to the exercise of power.

Being seen as hypocritical or double-dealing may impose some costs on a superpower, but these costs are rarely prohibitive. America has faced a storm of protest about its treatment of the Guantanamo Bay prisoners—a storm that has led the Bush Administration to concede that the Geneva Convention should determine which protections Taliban prisoners (though not Al Qaeda ones) receive. At the same time, the prisoners remain, and are likely to remain, in American custody and subject to American justice.

In another example, Slobodan Milosevic is in detention in The Hague, thanks in large measure to the pressure of the United States on the Serbian government. America could exert that pressure despite resisting the creation of a permanent criminal court with the power to try American citizens. (Milosevic will make much of this resistance to demonstrate that he is the casualty of victor's justice.) And again, as a matter of equity and ethics, it may be undesirable for the United States to support international tribunals for others but not for its own citizens. It is less clear, however, that this prevents American support for these tribunals from being effective.

Preemption is good - solves global war

Steven Westphal, Lt. Col. 2003, Counterterrorism: Policy of Preemptive Action, http://www.au.af.mil/au/awc/awcgate/army-usawc/westphal.pdf

Preemptive strikes risk causing potential crisis to escalate quickly. However, **the risk of inaction is** far greater **than the risk of action**. **Weapons of mass destruction** could **enable our adversaries to inflict** massive harm **on the United States,** our military forces at home and abroad **and our allies** and friends. Some **states, including several that** have supported and **continue to support terrorism, already possess weapons of mass destruction and are seeking even greater capabilities,** as tools of coercion and intimidation. For them, these are not weapons of last resort, but militarily useful weapons of choice intended to overcome our nation’s advantages in conventional forces and to deter us from responding to aggression against our friends and allies in regions of vital interest. In addition, terrorist groups are seeking to acquire weapons of mass destruction with the stated purpose of killing large numbers of our people and those friends and allies – without compunction and without warning.29 It is against these **adversaries,** rogue states and terrorist groups that preemptive strikes are ideally intended and suited. **Preemptive strikes are** not **intended for** the **illegitimate use of the strong to further** their own **imperialistic agendas**. **Preemptive strikes are intended to be used as a preventive deterrent against an enemy, initiated on the basis of** incontrovertible evidence**, to prevent an enemy attack that is imminent** or to prevent an attack that will occur at a later time. The underlying emphasis is that preemptive strikes are a deterrent and preventive measure used to forestall, preclude and stop anticipated or feared attacks by an enemy based on incontrovertible evidence.

**Because** deterrence may not succeed, **and because of the potentially** devasting consequences **of weapons of mass destruction use against our forces and civilian population, U.S. military forces** and appropriate civilian agencies **must have the capability to defend against WMD – armed adversaries, including** in appropriate cases through preemptive measures.30

The **U**nited **S**tates’ policy on Counter-Terrorism and its **acknowledgement and use of preemptive strikes; is** good, pragmatic, rational and just. The nature of the enemy has changed; **the nature of the threat has changed, so the response to the new enemy and new threats must change**. Given the goals of rogue states and terrorist, **the U.S. can not solely rely on a reactive posture** as we have in the past. **Preemptive strikes may be our best or** only option **to avert a catastrophic attack.** Prudence dictates that **the United States must act preemptively, and it must act alone if necessary, to stop rogue states, terrorism and terrorists before they have the opportunity to inflict potentially catastrophic attacks upon our country and the world. The economies, environments, freedoms, interest, liberties, lives and values of millions of peoples and countries around the world depend upon our ability to act preemptively to stop terrorist and rogue states before they can attack**. The stated policy, written policy and justifiable use of Preemptive Strikes by the United States, is a **necessary response and a necessary method to deter and eventually stop the scourge of terrorism.**

Preemption solves laundry list of impacts - Iran, Korea, Terrorism

Jonas 12 [George Jonas (staffwriter for Natl Post; contributer to WSJ and others; prolific author) “What's wrong with 'pre-emptive' war?”; January 11, 2012; http://fullcomment.nationalpost.com/2012/01/11/george-jonas-the-case-for-pre-emptive-war/]

**What justifies preemptive war**? Presidential hopeful Ron Paul may think he alone worries about this. In fact, it's hard to find anyone who doesn't. Last time I raised the question was more than a decade ago, after Osama bin Laden told Pakistani journalist Hamid Mir that he had nuclear weapons. The lie fooled no one, but it invited the question of **why was it necessary to wait until it became the truth?**

I wrote at the time that no month passes without a police officer being investigated for having an itchy trigger finger. The facts are usually identical. **A suspect appears to reach for what the officer thinks is a gun, to which the officer responds by shooting first.**

B**y definition, pre-emptive action is always "too early." If it's not too early, it isn't preemptive, and if it's not preemptive,** it's often too late. No month passes without a police officer being shot, either, for choosing to wait for a suspect to pull the trigger first.

**The dilemma becomes** infinitely greater **when it goes beyond police officers and guns to sovereign nations and** nuclear weapons. U.S. president George W. Bush had to face it, just as Barack Obama is facing it today.

Eleven years ago, in a speech beamed by satellite to the Warsaw meeting of East European leaders, Bush raised the specter of bin Laden's alQaeda network going after nuclear weapons. Though he spoke before bin Laden made his claim (Bush's speech may have given him the idea) the president's reference was quite specific. By then, Pakistan had nuclear weapons. While General Pervez Musharraf 's government was America's ally (sort of) in the war against terror, Pakistan itself had been instrumental in setting up the Taliban regime in Afghanistan. There was always a substantial and militant minority in Pakistan - among the general population as well as in the governing elite, such as the powerful Inter-Service Intelligence or ISI - that supported the Taliban's fanatical Islamists who hosted and protected al-Qaeda before and since 9/11.

**It was evident** 10 years ago **that if** General **Musharraf 's government, which was by no means secure, were to be toppled,** there was at least a chance that **bin Laden might gain access to nuclear weapons**. As The Daily Telegraph reported at the time, two Pakistani nuclear scientists admitted - boasted might be a better word - of having met bin Laden earlier in 2001, and Pakistan moved its nuclear weapons "to ensure their safety in the event of an Islamic coup." **The scenario**, though not likely, **was viewed as having a 5% probability. A small chance - but with** colossal consequences.

No responsible government would accept a 5% chance of a catastrophe of such magnitude in an area of public hygiene. The authorities would unquestionably take the position that an ounce of pre-emption is worth a pound of cure. But what would "preemption" entail in a case of armed fanatics? On a minor scale, consider the 1993 tragedy at Waco.

Though the FBI may have stormed David Koresh's compound as an act of administrative vengeance, the authorities also wanted to pre-empt a fanatical cult that had an arsenal of illegal firearms from harming others. The ensuing mayhem, particularly the fiery deaths of children, rightly shocked the conscience of a nation.

The mayhem at Waco would be a boy scout jamboree compared to the results of a pre-emptive strike (let alone a pre-emptive nuclear strike) on a country. How would the mere possession of nuclear capability justify such an attack?

After all, no one loses any sleep over, say, France's nuclear capabilities. If France can have weapons of mass destruction without the world feeling endangered, why should Pakistan, or even Iran, be judged by a different yardstick? What's wrong with a "Muslim bomb"? If the West can possess nuclear weapons, why can't Islam?

"Because the West is more civilized than Islam," blurted out Italian Prime Minister Silvio Berlusconi 10 years ago, before quickly apologizing for his remark. But Berlusconi aside, the difference between storing a case of dynamite at the Army Corps of Engineers or in the chimp enclosure at the zoo is self-evident.

We let chimps store dynamite to teach them responsible behaviour. **If North Korea and Pakistan have nuclear weapons today; if Iran is on the verge of acquiring them, it's because, having no stomach for hard choices,** we reduced our choices to zero. Paradoxically, if the world blows up tomorrow, our humanitarian scruples will share the blame.

After Waco, the authorities pleaded that they had a duty to force their way into the compound because of the threat Koresh and his armed disciples represented to the larger community. The courts agreed. But if guns in the hands of Koresh & company's justified the incineration of children, **it's hard to think of collateral damage that keeping w**eapons of **m**ass **d**estruction **from** Mahmoud **Ahmadinejad or Kim Jong-un wouldn't justify.**

**Iran's rulers are pressing on.** They're now threatening to close international sea lanes to shipping in the Persian Gulf. They don't yet have the bomb. **What will they threaten to do when they do? We shall all soon know.**

# 2nc cp

## at: perm avoids link to politics

Perm is executive surrender – Obama self restrains in order to avoid congressional restriction of broader war power – proves he would necessarily fight back against congress, but the plan assures he loses!

Fiat means that Obama loses the fight over the plan—that destroys the agenda.

Loomis 7 (Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php)

American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

That’s particularly true for the budget debate and the plan

Carrie Budoff Brown, Jake Sherman, Politico, 9/4/13, President Obama’s political capital spreads thin, dyn.politico.com/printstory.cfm?uuid=59456290-12C8-4DCA-970E-0856C9FA6E6C

President Barack Obama faced a heavy lift in Congress this fall when his agenda included only budget issues and immigration reform.

Now with Syria in the mix, **the president appears ready to spend a lot of the political capital that he would have kept in reserve for his domestic priorities.**

A resolution authorizing the use of force in Syria won’t make it through the House or the Senate without significant cajoling from the White House. That means Obama, who struggles to get Congress to follow his lead on almost everything, could burn his limited leverage convincing Democrats and Republicans to vote for an unpopular military operation **that even the president says he could carry out** with or **without their approval**.

“The only effect is — and I don’t mean this to be dismissive in any way — it will be taking up some time and there be some degree of political capital expended by all,” said Sen. Bob Corker (R-Tenn.), the Foreign Relations Committee ranking member who helped draft the Senate resolution. “At the end of the day, it’s a tough vote for anybody because the issue is trying to draft an authorization knowing that they’re going to implement it.”

The West Wing says it’s too early to know how Obama’s surprise decision to seek congressional authorization will affect the rest of his agenda, but his advisers are betting that a win could usher in other domestic successes. A failed vote, however, would undoubtedly weaken him.

A senior administration official said the effort could build some trust between the White House and Republicans that might ease tensions in negotiations over the budget and other issues.

White House aides have long argued that success begets success. Their latest test of that theory was the broad bipartisan Senate vote for comprehensive immigration reform bill, which was supposed to compel the House to act. So far, it has not — and House Republicans don’t think the Syria vote will be any different.

“The idea that passing the authorization for use of military force in Syria would give the administration more leverage in future political debates is absurd**,”** one senior GOP leadership aide said. “They are currently spending political capital they don’t have.”

No matter how it plays out, the sudden emergence of a fight over Syria presents both political and logistical challenges for Congress and the White House.

House Republicans were already grumbling about the prospect of several perilous votes this fall — first on raising the debt limit and extending government funding, then on a package of reforms to the immigration system. White House aides began hearing skepticism from Republican leaders that they could force a debt limit hike through the chamber and then press for passage of even a pared-back immigration bill.

Adding a vote on military intervention in Syria could create even more friction between the Obama administration and House Republicans, as lawmakers are being put in a position of potentially voting against their party leaders. House Speaker John Boehner (R-Ohio) and Majority Leader Eric Cantor (R-Va.) are backing Obama, but the vast majority of the conference appears to oppose the resolution, at least at this point.

## at: cp links to politics

CP is executive action—obviously avoids Congressional fights

Fine 12

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We also should expect presidents to prioritize and be strategic in the types of executive orders that they create to maneuver around a hostile Congress. There are a variety of reasons that can drive a president’s decision. For example, presidents can use an executive order to move the status quo of a policy issue to a position that is closer to their ideal point. **By doing so, presidents are able to pressure Congress to respond**, perhaps by passing a new law that represents a compromise between the preferences of the president and Congress. Forcing Congress’s hand to enact legislation might be a preferred option for the president, if he perceives Congress to be unable or unwilling to pass meaningful legislation in the ﬁrst place. While it is possible that such unilateral actions might spur Congress to pass a law to modify or reverse a president’s order, such responses by Congress are rare (Howell 2003, 113-117; Warber 2006, 119). Enacting a major policy executive order allows the president to move the equilibrium toward his preferred outcomewithout having to spend time lining up votes or forming coalitions with legislators**.** As a result, and since reversal from Congress is unlikely, presidents have a greater incentive to issue major policy orders to overcome legislative hurdles.

Their evidence assumes we are executive action that goes through Congress—not our mechanism

The CP triggers Congressional follow-on and avoids confrontation

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

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And **the world at large sees him** -for better or for worse -**as the** authentic voice of America.

To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America.

This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." **And a president who is willing to do so publicly**, while skillfully cultivating friends and allies on Capitol Hill, **can** then **establish such intimidating credibility that it is politically unwise to confront him**. This is exactly what Obama needs to do now.

## compliance – 2nc

We get the same durable fiat as the aff: Legislation stays on the books unless repealed. So do executive orders unless revoked.

And executive orders have the force of law:

Oxford Dictionary of English 2010

(Oxford Reference, Georgetown Library)

executive order

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

Executive orders are permanent

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

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

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

CP constrains future Presidents – it creates a legal framework

Brecher, JD University of Michigan, December 2012

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

The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of **constraining future administrations** or preempting legislative intervention. n149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation. n150 Additionally, while executive orders are hardly binding, **the inertia following adoption of an order may help constrain future administrations**, which may be more or less trustworthy than the current one. **Creating a presumption through an executive order** also **establishes a stable legal framework** for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

Executive order binds future administrations

Jensen, JD Drake University, Summer 2012

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

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

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

Internal checks negate need for external checks and avoid the war powers disad

Neal Katyal, former acting solicitor general, is a professor of national security law at Georgetown, 2006, THE MOST DANGEROUS BRANCH? MAYORS, GOVERNORS, PRESIDENTS, AND THE RULE OF LAW: A SYMPOSIUM ON EXECUTIVE POWER: ESSAY: Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within, 115 Yale L.J. 2314

After all, Publius's view of separation of powers presumes three branches with equivalent ambitions of maximizing their powers, yet legislative abdication is the reigning modus operandi. It is often remarked that "9/11 changed everything"; n2 particularly so in the war on terror, in which Congress has been absent or content to pass vague, open-ended statutes. The result is an executive that subsumes much of the tripartite structure of government.

Many commentators have bemoaned this state of affairs. This Essay will not pile on to those complaints. Rather, it begins where others have left off. If major decisions are going to be made by the President, then how might separation of powers be reflected **within the executive branch**? The first-best concept of "legislature v. executive" checks and balances must be updated to contemplate second-best "executive v. executive" divisions. And this Essay proposes doing so in perhaps the most controversial area: foreign policy. It is widely thought that the President's power is at its apogee in this arena. By explaining the virtues of internal divisions in the realm of foreign policy, this Essay sparks conversation on whether checks are necessary in other, domestic realms.

That conversation desperately needs to center on how best to structure the ever-expanding modern executive branch. From 608,915 employees working in agencies in 1930, n3 to 2,649,319 individuals in 2004, n4 the growth of the executive has not generated a systematic focus on internal checks. We are all fond of analyzing checks on judicial activism in the post-Brown, post-Roe era. So too we think of checks on legislatures, from the filibuster to judicial review. But [\*2317] there is a paucity of thought regarding checks on the President beyond banal wishful thinking about congressional and judicial activity. This Essay aims to fill that gap.

A critical mechanism to promote internal separation of powers is bureaucracy. Much maligned by both the political left and right, bureaucracy creates a civil service not beholden to any particular administration and a cadre of experts with a long-term institutional worldview. These benefits have been obscured by the now-dominant, caricatured view of agencies as simple anti-change agents. This Essay celebrates the potential of bureaucracy and explains how legal institutions can better tap its powers.

A well-functioning bureaucracy contains agencies with differing missions and objectives that intentionally overlap to create friction. Just as the standard separation-of-powers paradigms (legislature v. courts, executive v. courts, legislature v. executive) overlap to produce friction, so too do their internal variants. When the State and Defense Departments have to convince each other of why their view is right, for example, better decision-making results. And when there is no neutral decision-maker within the government in cases of disagreement, the system risks breaking down.

In short, the executive is the home of two different sorts of legitimacy: political (democratic will) and bureaucratic (expertise). A chief aim of this Essay's proposal is to allow each to function without undermining the other. This goal can be met without agency competition overlapping jurisdiction is simply one catalyzing agent. Other ideas deserve consideration, alongside or independent of such competition, such as developing career protections for the civil service modeled more on the Foreign Service.

Executives of all stripes offer the same rationale for forgoing bureaucracy-executive energy and dispatch. n5 Yet the Founders assumed that massive changes to the status quo required legislative enactments, not executive decrees. As that concept has broken down, the risks of unchecked executive power have grown to the point where dispatch has become a worn-out excuse for capricious activity.

Such claims of executive power are not limited to the current administration, nor are they limited to politicians. Take, for example, Dean Elena Kagan's rich celebration of presidential administration. n6 Kagan, herself a former political appointee, lauded the President's ability to trump bureaucracy. Anticipating the claims of the current administration, Kagan argued that the [\*2318] President's ability to overrule bureaucrats "energizes regulatory policy" because only "the President has the ability to effect comprehensive, coherent change in administrative policymaking." n7 Yet it becomes clear that the Kagan thesis depends crucially on oversight by the coordinate legislative branch (typically controlled by a party in opposition to the President). Without that checking function, presidential administration can become an engine of concentrated power.

This Essay therefore outlines a set of mechanisms that create checks and balances within the executive branch. The apparatuses are familiar separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts. But these restraints have been informally laid down and inconsistently applied, and in the wake of September 11 they have been decimated. n8 A general framework statute is needed to codify a set of practices. In many ways, **the status quo is the worst of all worlds** because it creates the facade of external and internal checks when both have withered.

This Essay's proposed reforms reflect a more textured conception of the presidency than either the unitary executivists or their critics espouse. In contrast to the unitary executivists, I believe that the simple fact that the President should be in control of the executive branch does not answer the question of how institutions should be structured to encourage the most robust flow of advice to the President. Nordoes that fact weigh against modest internal checks **that**, while subject to presidential override, could constrain presidential adventurism on a day-to-day basis. And in contrast to the doubters of the unitary executive, I believe a unitary executive serves important values, particularly in times of crisis. Speed and dispatch are often virtues to be celebrated.

**Instead of doing away with the unitary executive**, **this Essay proposes** designs that force **internal checks** but permit temporary departures when the need is great. Of course, the risk of incorporating a presidential override is that its great formal power will eclipse everything else, leading agency officials to fear that the President will overrule or fire them. But just as a filibuster does not tremendously constrain presidential action, modest internal checks, buoyed by reporting requirements, can create **sufficient deterrent costs**.

The entire executive branch will comply after an OLC ruling

Johnsen, professor of law at Indiana University, August 2007

(Dawn, “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

The Torture Opinion thrust into the public eye a previously obscure, though enormously influential, office within the Department of Justice: the Office of Legal Counsel. The constitutional text and structure make plain the President's obligation to act in conformity with the law and to ensure that all in the executive branch do the same as they perform myriad responsibilities. To fulfill their oath of office n82 and obligation to "take Care that the Laws be faithfully executed," n83 Presidents require a reliable source of legal advice. In recent decades OLC has filled that role. Thus, OLC's core function is to provide the legal advice that the President - and, by extension, the entire executive branch - needs to faithfully execute the laws.

[\*1577] OLC functions as a kind of general counsel to the numerous other top lawyers in the executive branch who tend to send OLC their most difficult and consequential legal questions. n84 OLC's staff of about two dozen lawyers (most of whom are career employees, led by several political appointees) responds to legal questions from the counsel to the President, the attorney general, the general counsels of the various executive departments and agencies, and the assistant attorneys general for the other components of the Department of Justice. A relatively high percentage of OLC's work comes from the White House or otherwise involves the White House. Regulations require the submission of legal disputes between executive branch agencies to OLC for resolution. n85 **By virtue of regulation and tradition**, **OLC's legal interpretations** typically **are** considered **binding within the executive branch**, unless overruled by the attorney general or the President (an exceedingly rare occurrence). n86

OLC's advice therefore ordinarily must be **followed by the entire executive branch**, from the counsel to the President and cabinet officers to the military and career administrators, **regardless of any disagreement or unhappiness**. The President, however, may overrule the advice through formal means or simply by declining to follow it. To take a quasi-hypothetical example, if the CIA wanted to use waterboarding to interrogate a detainee but the Department of Justice's criminal division and the U.S. Department of State believed that doing so would be illegal, OLC would resolve that dispute. The CIA would be bound by an OLC conclusion that waterboarding was unlawful. The President or attorney general could lawfully override OLC only pursuant to a good faith determination that OLC erred in its legal analysis. The President would violate his constitutional obligation if he were to reject OLC's advice solely on policy grounds. [\*1578] Of course, even if OLC were to find waterboarding lawful, the President or other appropriate officials could make the policy determination not to use it as a method of interrogation. The President or the attorney general also could disagree with OLC's interpretation of the relevant law and prohibit waterboarding on legal grounds.

Presidential endorsement guarantees

Morrison, professor of law at Columbia, May 2011

(Trevor W., ‘LIBYA, "HOSTILITIES," THE OFFICE OF LEGAL COUNSEL, AND THE PROCESS OF EXECUTIVE BRANCH LEGAL INTERPRETATION,’ 124 Harv. L. Rev. F. 62, Lexis)

OLC does not have the power to impose conclusive, binding legal obligations on the President, but by longstanding tradition its opinions are treated as presumptively binding and are virtually never overruled by the President or Attorney General. As re-specified by Ackerman, that is the most the Supreme Executive Tribunal could ever hope for -- but without the benefit of longstanding traditions to sustain it. In either case, the key is not any external statutory guarantee of interpretive authority, but **a commitment by the White House to respect the legal conclusions in question**. Yet if presidents are not willing to engage in executive self-binding with respect to a time-honored institution like OLC, why should we expect they would do so for Ackerman's new Tribunal? We should not. What this reveals is that newfangled institutions are not the answer. As I say in the conclusion to my review of Decline and Fall, "[t]he key lies not in any transformation of the executive branch but in the 'cultural norms' of offices like OLC . . . and in a President, [\*74] Congress, and public that care whether those norms are preserved." n32

That alone creates solvency

Johnsen, professor of law at Indiana University, August 2007

(Dawn, “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

Public cynicism notwithstanding, **it is** both **possible** and necessary **for executive branch lawyers to constrain** unlawful **executive branch action**. Ultimately, though, **the President's own attitude toward the rule of law will go a long way toward setting the tone for the administration**. If the President desires only a rubberstamp, OLC will have to struggle mightily to provide an effective check on unlawful action. In addition to being prepared to say no, therefore, the assistant attorney general for OLC and other top Department of Justice officials must also be prepared to resign in the extraordinary event the President persists in acting unlawfully or demands that OLC legitimize unlawful activity. Even from within the Bush Administration, some cause for optimism can be found in reports of internal opposition to extreme interrogation policies, as well as in the threatened resignation of up to thirty Department of Justice officials if Bush had persisted in a domestic surveillance program the Department had determined was unlawful. n169 This is as it should be: Commitment to the rule of law must not be a partisan issue. Congress, the courts, and the public should all work to empower principled executive branch legal advisors - in administrations of both political parties - to safeguard our constitutional democracy.

## signal – 2nc

The counterplan sends an effective signal – mechanism toolbox allows for ways to demonstrate benign intent – means fiating legally binding action has a snowball effect for credibility – that’s Posner

CP sends the most powerful signal (while avoiding Congressional confrontation)

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

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the authentic voice of America.

To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America.

This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

Self-restraint creates a credible signal

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

Our aim in this Article is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it. We focus on emergencies and national security but cast the analysis within a broader framework. Our basic claim is that **the credibility dilemma can be addressed by** executive signaling. **Without any new constitutional amendments, statutes, or legislative action**, law and executive practice already contain resources to allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying policies to institutional mechanisms that impose heavier costs on ill-motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.

Bipartisan independent commission solves credibility

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

2. Independent commissions.

We now turn to some conceptually coherent mechanisms of executive signaling. Somewhat analogously to Katyal's idea of the internal separation of powers, a well-motivated executive might establish independent commissions to review policy decisions, either before or after the fact. Presidents do this routinely, especially after a policy has had disastrous outcomes, but sometimes beforehand as well. Independent commissions are typically blue-ribbon and bipartisan. n83

We add to this familiar process the idea that the President might **gain credibility** by publicly committing or binding himself to give the commission authority on some dimension. For example, the president might publicly promise to follow the recommendations of such a commission, or to allow the commission to exercise de facto veto power over a policy decision before it is made, or might promise before the policy is chosen that the commission will be given power to review its success after the fact. To be sure, there will always be some wiggle room in the terms of the promise, but that is true of almost all commitments, which raise the costs of wiggling out even if they do not completely prevent it.

Consider whether George W. Bush's credibility would have been enhanced had he appointed a blue-ribbon commission to examine the evidence for weapons of mass destruction in Iraq before the 2003 invasion, and publicly promised not to invade unless the commission found substantial evidence of their existence. Bush would have retained his preexisting legal authority to order the invasion even if the commission found the evidence inadequate, but the political costs of doing so would have been large. Knowing this, and knowing that Bush [\*900] shared that knowledge, the public could have inferred that Bush's professed motive -elimination of weapons of mass destruction -was also his real motive. Public promises that inflict reputational costs on badly motivated behavior help the well-motivated executive to credibly distinguish himself from the ill-motivated one.

The more common version of this tactic is to appoint commissions after the relevant event, as George W. Bush did to investigate the faulty reports by intelligence agencies that Iraq possessed weapons of mass destruction. n84 If the president appoints after-the-fact commissions, the commissions can enhance his credibility for the next event -by showing that he will be willing, after that event, to subject his statements to scrutiny by public experts. Here, however, the demonstration of credibility is weaker, because there is no commitment to appoint any after-the-fact commissions in the future, but merely a plausible inference that the president's future behavior will track his past behavior.

3. Bipartisan appointments.

In examples of the sort just mentioned, the signaling arises from public position-taking. The well-motivated executive might produce similar effects through appointments to office. n85 A number of statutes require partisan balance on multimember commissions; presidents might approve them because they allow the president to commit to a policy that legislators favor, thus encouraging legislators to increase the scope of the delegation in the first place. n86 For similar reasons, presidents may consent to restrictions on the removal of agency officials, [\*901] because the restriction enables the president to commit to giving the agency some autonomy from the president's preferences. n87

Similar **mechanisms can work** even where no statutes are in the picture. As previously mentioned, during World War II, FDR appointed Republicans to important cabinet positions, making Stimson his Secretary of War. n88 Clinton appointed William Cohen, a moderate Republican, as Secretary of Defense in order to shore up his credibility on security issues. Bipartisanship of this sort might improve the deliberation that precedes decisions, by impeding various forms of herding, cascades, and groupthink; n89 however, we focus on its credibility-generating effects. By (1) expanding the circle of those who share the president's privileged access to information, (2) ensuring that policy is partly controlled by officials whose preferences differ from the president's, and (3) inviting a potential whistleblower into the tent, bipartisanship helps to dispel the suspicion that policy decisions rest on partisan motives or extreme preferences, which in turn encourages broader delegations of discretion from the public and Congress.

Congress doesn’t solve signal – Presidential leadership is key

Tobin, Senior Online Editor of *Commentary* magazine, 9/3/2013

(Jonathan, Congress Can’t Fill Obama’s Leadership Void, http://www.commentarymagazine.com/2013/09/03/congress-cant-fill-obamas-leadership-void-syria/)

The implications of the congressional debate that will ensue on the future of American foreign policy are clear. Given the growth of isolationism on the right and the left, Obama’s decision to punt on Syria has opened the gates for those who have advocated for an American retreat from global responsibilities to gain more influence. Even if, as it is to be hoped, a majority of both houses of Congress vote to back American action in Syria, it’s not likely that the result of what will follow in the coming days will convince the world that America is still prepared to lead. Although there are good reasons to worry about any intervention in Syria, the arguments for inaction are unpersuasive. Given the stakes involved in letting Assad survive in terms of increasing the power of his Iranian and Hezbollah allies and the precedent set in terms of allowing the use of chemical weapons, the case for action in Syria is powerful.

Boehner deserves credit for speaking up after meeting with the president and making it clear the leadership of the House of Representatives is not prepared to bow to the growing chorus of politicians who are more concerned with placing limits on the executive or opposing Obama at every turn than the need to stand up against genocidal dictators. Given the refusal of many Republicans to stand up to the Rand Paul wing of their party, it is refreshing for the normally cautious House speaker to show his willingness to put the national interest above partisan concerns.

But no matter what Boehner or people like John McCain or Peter King say this week, there is no substitute for presidential leadership. As I wrote last week, it is axiomatic that liberal Democrats are far better placed to convince a majority of Americans that military action is needed in any circumstance than a conservative Republican. Though the left is just as uncomfortable with the assertion of American power as many on the right, there is little doubt that the president is far better placed than his predecessor was or any Republican might be to rally the country behind a policy that would draw a line in the sand about weapons of mass destruction. But with Obama faltering, no one should labor under the illusion that a divided Congress can either stiffen his spin or step into the leadership vacuum he has left.

Congress has zero credibility – ruins the signal

Cook, Editor of *The Cook Political Report*, Columnist for the *National Journal*, 2011

(Charlie, “Congress Becomes a Laughingstock,” http://cookpolitical.com/story/3210)

My wife told me recently about a Facebook post by an acquaintance that held Congress up to ridicule. Apparently, the sentiment was enthusiastically endorsed by people who spanned her entire network of friends—from the most liberal to the most conservative. My wife couldn’t recall anything else that had been so universally embraced by such a politically diverse group of people.

If this debt-ceiling debate is producing any political winners or beneficiaries, they have no connection to Congress or the White House. The unfavorable ratings for both parties are climbing, and President Obama’s job-approval rating in the Gallup Poll fell to 43 percent in one recent week, tied for the lowest of his presidency. (At this writing, it is at 46 percent approval/46 percent disapproval, hardly what a president seeking reelection wants to see.) The debt-ceiling debacle has become like a bomb that keeps exploding in Washington, hurting both sides and each end of Pennsylvania Avenue, effectively damaging everyone in sight.

Sadly, my view is that it will probably take a significant stock-market plunge of 500 or 1,000 points in the Dow Jones industrial average, perhaps triggered by a bond-ratings downgrade, to focus minds and cut through the political posturing. The stock and bond markets, neurotic and skittish under the best of circumstances, have been remarkably patient, looking the other way and quietly assuming that everything will work out. They may reach the end of their patience any day. Even a modest deal on deficit reduction and a short-term increase in the debt ceiling may not bring enough confidence to the markets.

A significant market plunge would cause great pain to 401(k) retirement plans, other personal savings, and the economy in general. The negative wealth effect would be great, but another type of loss would be just as bad—just not as obvious.

Washington is now sullying America’s long-deserved reputation as the leading country in the world to such an extent that we are becoming a laughingstock. The renowned, late journalist A.J. Liebling, a fixture for many years in The New Yorker and a chronicler of then-Louisiana Gov. Earl Long, once wrote that the home state I share with Long was “the northernmost of the banana republics.” If Liebling were alive today, he might expand his “northernmost” banana republic to include the whole United States, with Washington as its sorry capital. My guess is that most members of Congress and their aides are too close to the process and don’t fully appreciate what they are doing to themselves, the institution, and the nation’s political process. The Pictorial Directory test will determine if I’m right.

## at: perm do cp

[NOTE: These cards and more are in the T file.]

The counterplan is neither “statutory” nor “judicial” and it doesn’t restrict authority – it addresses executive practice but leaves authority in place

Severance is a voting issue – the stable plan is the sole focus of the debate. We test one policy at a time. Scrapping it in the 2AC kills neg strategy.

Authority is power vested in an agent by a principal

Oxford Dictionary of Law 2009

(“Authority,” Oxford University Press via Oxford Reference, Georgetown University Library)

authority

n.

1 Power delegated to a person or body to act in a particular way. The person in whom authority is vested is usually called an agent and the person conferring the authority is the principal.

Changing authority requires the principal – the agent only operates within the powers it has been given

Hohfeld, Yale Law, 1919

(Wesley, http://www.hku.hk/philodep/courses/law/HohfeldRights.htm)

Many examples of legal powers may readily be given. Thus, X, the owner of ordinary personal property "in a tangible object" has the power to extinguish his own legal interest (rights, powers, immunities, etc.) through that totality of operative facts known as abandonment; and-simultaneously and correlatively-to create in other persons privileges and powers relating to the abandoned object,-e. g., the power to acquire title to the latter by appropriating it. Similarly, X has the power to transfer his interest to Y, that is to extinguish his own interest and concomitantly create in Y a new and corresponding interest. So also X has the power to create contractual obligations of various kinds. Agency cases are likewise instructive. By the use of some metaphorical expression such as the Latin, qui facit per alium, facit per se\* the true nature of agency relations is only too frequently obscured. **The creation of an agency relation involves**, inter alia, **the grant of legal powers to the so-called agent**, and the creation of correlative liabilities in the principal. That is to say, one party, P, has the power to create agency powers in another party, A,-for example, the power to convey P's property, the power to impose (so called) contractual obligations on P, the power to discharge a debt owing to P, the power to "receive" title to property so that it shall vest in P, and so forth. In passing, it may be well to observe that **the term** "**authority**," so frequently used in agency cases, **is** very ambiguous and **slippery in its connotation**. **Properly employed** in the present connection, the word seems to be an abstract or qualitative term corresponding to the concrete "authorization," the latter consisting of a particular group of operative facts taking place between the principal and the agent. All too often, however, the term in question is so used as to blend and **confuse these operative facts with the powers and privileges thereby created in the agent**. A careful discrimination in these particulars would, it is submitted, go far toward clearing up certain problems in the law of agency.

The President is subject to statutory and judicial restrictions – doesn’t create them

Fisher, Scholar in Residence at The Constitution Project, 2012

(Louis, served for four decades at the Library of Congress, as Senior Specialist, Congressional Research Service, “Basic Principles of the War Power,” 2012 Journal of National Security Law & Policy 5 J. Nat'l Security L. & Pol'y 319)

The second value that the Founders embraced in the Commander-in-Chief Clause is accountability. Hamilton in Federalist No. 74 wrote that the direction of war "most peculiarly demands those qualities which distinguish the exercise of power by a single hand." The power of directing war and emphasizing the common strength "forms a usual and essential part in the definition of the executive authority." n29 Presidential leadership is essential but it cannot operate outside legislative control. **The President is subject to the rule of law**, **including statutory and judicial restrictions**.

The President has discretion within the bounds of “authority” – doesn’t affect statutory or judicial restrictions

Luna, professor of law at the University of Utah, May 2000

(Erik, 85 Iowa L. Rev. 1107, Lexis)

For present purposes, a modest definition will suffice--discretion is the power to choose between two or more courses of conduct. An official, therefore, has discretion when the boundaries of his authority leave him with the freedom to choose how to act--or not to act. n88 This discretionary power is a "residual" n89 concept, the latitude remaining after the authority and decisions of other actors have been tallied. Dworkin employed a colorful simile for discretion to capture its relative, contextual nature: "Discretion, like the hole of a doughnut, does not exist except as an area left open by a surrounding belt of restriction." n90 Using this pastry-based metaphor, imagine a box containing a single doughnut. If the box's total area represents all potential courses of conduct for a particular actor, and the doughnut symbolizes the restrictions on the actor's discretion, the region within the doughnut--the doughnut hole--delineates the totality of his discretionary power. Outside of this area, the actor has no freedom of choice; he must either act in a prescribed manner or not act at all. In other words, the actor is without discretion. Greater specificity is possible by delineating discretion within American constitutionalism. Discretion inheres in each of the three branches of government--the legislative, the executive, and the judicial. n91 The term "ex  [\*1134]  ecutive discretion," therefore, refers to the authority of executive officers to choose how to act or not to act. A variety of officials enforce federal or state laws and are appropriately deemed executive officers--the President, the Secretary of Defense, a state governor, a city mayor, the local dog catcher, and so on. Each of these officials exercises a degree of executive discretion to choose a particular course of conduct without violating the dictates of the other branches. For example, a state legislature might mandate that restaurants cook food in a "safe environment"; a state court might then interpret "safe" as referring to bacterial and viral hazards to the customers rather than the risks of the work environment to the employees. But once the legislative branch has enacted the law and the judiciary has interpreted the law (or squared it with the relevant constitutional provisions), the executive official generally has the discretion to enforce the law as seen fit. The relevant executive officer might, for instance, establish a grading system or minimum standards for the sanitary condition of restaurants. It is this residual power, the freedom to choose a particular course of conduct after the other branches have exercised their authority, that can be referred to as executive discretion. B. Criminal Justice Discretion in the Abstract Discretion can be further specified by placing it within the context of penal law. American constitutionalism has adopted a number of strategies to strike a balance between individual liberty and societal order in the criminal justice system. n92 Most notably, the federal Constitution enumerates individual rights protected from "the vicissitudes of political controversy," n93 thereby removing certain subjects as fodder for order maintenance. But American constitutionalism also secures order and liberty through the structural design of government, dividing official power between the three coordinate branches. n94 Specifically, the legislature determines what acts are criminal and subject to coercive sanction. The judiciary interprets the criminal law where necessary, nullifies those penal statutes that are deemed inconsistent with relevant constitutional provisions, and precludes certain modes of enforcement of otherwise valid criminal laws. Finally, the executive enforces those criminal laws that have been duly enacted by the  [\*1135]  legislature and approved by the judiciary, pursuant to procedures prescribed by the legislature or (more likely) found by the courts to pass constitutional muster. A couple of caveats should be mentioned. Not all laws are backed by penal sanctions, and not all executive officials are empowered to enforce criminal law. In general, only two groups--police and prosecutors--have the authority to implement the relevant penal code. The term "police" refers to those actors officially licensed to uncover and investigate crime and arrest suspected offenders: FBI agents, city police officers, county sheriffs, and so on. Similarly, the term "prosecutors" refers to the officials authorized to bring criminal charges against an alleged offender and to represent the government in a subsequent criminal case against the accused: the U.S. Attorney General, a U.S. Attorney, a state attorney general, a county district attorney, and their subordinates. Moreover, the passage, judicial approval, and execution of a penal statute do not necessarily follow a linear progression in practice. A given criminal law might be enacted and administered, but its constitutionality might never be questioned in the courts. Or the statute might be judicially approved in an initial proceeding but subsequently unenforced by executive officials. In turn, the courts might strike down a criminal law prior to enforcement, or the statute might not be reviewed until some official attempts to apply its strictures to a particular individual. Moreover, the ostensibly clean division among the three branches is the subject of ongoing academic and professional debate, including the battle between "formalism" and "functionalism" in the separation of powers. n95 Finally, various checks and balances are intended to ensure an interrelationship and interdependency among the branches of government. For example, a proposed federal criminal statute only becomes law if the President signs the bill or if Congress overrides his veto by a two-thirds majority. With these admonitions, it can be said that the legislature enacts criminal laws, the judiciary reviews the constitutionality of the laws and relevant enforcement procedures, and the executive administers the laws consistent with the mandates of the other branches. n96 An executive officer is without authority to suppress conduct that the legislature has not deemed criminal. Likewise, the officer has no power to enforce penal statutes that have been judicially invalidated or to use enforcement techniques disapproved by the courts.  [\*1136]  Building upon Dworkin's doughnut metaphor, Figure 1 schematically depicts American criminal justice. n97 The total area of the figure represents all potential combinations of criminal law and enforcement procedures. The area within the exterior circle ("the legislative act") depicts all conduct that has been criminalized by the legislature and the methods of enforcement that have been expressly or implicitly approved by the legislature. n98 The first band within the circle (B) represents those laws that the judiciary deems substantively invalid and therefore unenforceable under any procedure. The second band (C) represents those criminal statutes that pass constitutional muster but are being administered in an unconstitutional fashion. Finally, the internal core (D) depicts the combination of criminal laws and enforcement procedures that have been enacted by the legislature and are deemed unobjectionable by the courts. This area represents executive discretion in criminal justice--the freedom to enforce or not enforce particular criminal laws pursuant to particular procedures without interference from the other branches.  [\*1137]  To test this structure, imagine a hypothetical law "making it a crime for any person to remove another person's gall bladder." n99 Prior to the statute's enactment, assume that it was perfectly legal to remove gall bladders for any reason; graphically, this conduct exists outside of the exterior circle (A) and therefore well beyond any type of executive discretion to administer coercive sanctions. Once duly enacted by the legislature, the courts might review the statute's content under the substantive constitutional provisions: First Amendment freedom of speech and conscience, Fifth Amendment substantive due process, Eighth Amendment prohibition of cruel and unusual punishment, Fourteenth Amendment equal protection, and so on. If the gall bladder statute was found to be constitutionally obnoxious as a matter of substance--lying in area B of the graph--the executive branch would be precluded from enforcing this statute under any policing methodology. Now assume that the courts determine that there is nothing objectionable about the law's content but find that the mode of enforcing its provisions violates the procedural aspects of the Constitution. For example, maybe the police burst into a doctor's office without a warrant or probable cause and discover her performing the prohibited operation; or maybe law enforcement agents beat the physician into confessing her crimes. This time the problem is not the substance of the statute but the executive officer's impermissible enforcement. The police conduct--represented in area C--is lawless and therefore, outside the area of executive discretion. Once again, in area A the executive has not been authorized to act by the legislature; in area B the judiciary has invalidated the relevant criminal  [\*1138]  statute as substantively unconstitutional; and in area C the courts have precluded a particular enforcement methodology of an otherwise valid law. What if the legislature enacts the gall bladder statute and the courts approve both the substantive content of the law and the subsequent method of enforcement? This combination of criminal law and police procedure lies in area D, the totality of executive discretion in criminal justice. In this area, executive officials exercise complete freedom in the administration of the criminal law. In the abstract, the legislative and judicial branches might make every attempt to narrow the scope of unchecked executive discretion. For example, lawmakers might enact only a few criminal statutes and repeal ineffective or counterproductive laws, thereby limiting the grounds for coercive enforcement. Statutory drafters might also be very specific in the coverage of a particular provision, making clear the situations in which the law applies. In turn, the judicial branch might exercise substantial oversight in all facets of the criminal process, including decisions not to enforce the law. Courts might strike down or narrowly interpret vague criminal statutes and refuse to allow the application of penal provisions suffering from desuetude. Judicial review might freely entertain claims of selective enforcement or prosecutorial overreaching in the plea bargaining process. Graphically, the circumference of legislatively proscribed conduct ("the legislative act") would be relatively constricted, the band of judicial review and invalidation (B and C) would be broad, and the residual area of executive discretion (D) would be quite small.

## cp links to war powers

Links to war powers

Katyal 13 (Neal, Paul and Patricia Saunders Professor of Law, Georgetown University, “BOOK REVIEW: STOCHASTIC CONSTRAINT” February, 2013, 126 Harv. L. Rev. 990)

In the end, there is a deep risk that Goldsmith’s new constraints will not leave the presidency in quite the same place as would Madisonian checks and balances. Sometimes, as with a popular President, the Executive may be constrained far less than in a Madisonian system. And sometimes, the President may be constrained too much, for when Presidents overreach, there is always the risk of a corresponding overreaction by the other branches and the public. What is more, the multiple different actors that might engage in Goldsmith’s checking function (and the many possible permutations of actors that might work together) make the ultimate result — and the process used to get there (which will often impact that result) — unpredictable. Such an overreaction may push policy further back, to a place more constrained than what is optimal. By acting too hastily or too independently and by relying on Goldsmith’s new mechanisms of constraint, the Executive may end up with less power than it truly needs.

## cyber pic

## 2nc impact overview

Iran prolif outweighs –

Quick regional prolif ensures accidents and miscalc – that’s Edelman.

Extinction

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

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

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

Most probable

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

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

# 1NR

## ov

Economic decline causes global instability that goes nuclear—that’s Kemp

Best studies validate the impact - causes net more interventions

Jedidiah **Royal 10**, Director of Cooperative Threat Reduction at the U.S. Department of Defense, “Economic Integration, Economic Signalling And The Problem Of Economic Crises”, in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215

Second, on a dyadic level. Copeland's (1996. 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession lends to amplify the extent to which international and external conflicts self-rein force each other. (Blombcrj! & Hess. 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg. Hess. & Weerapana, 2004). which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995), and Blombcrg. Mess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999). and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics arr greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force.

causes prolif - makes escalation of their impacts more likely

Burrows, Director of the Science & Environmental Reporting Program @ NYU, ‘94

(William and Robert Windram, *Critical Mass,* p. 491-2)

Economics is in many respects proliferation’s catalyst. As we have noted, economic desperation drives Russia and some of the former Warsaw Pact nations to peddle weapons and technology. The possibility of considerable profits or at least balanced international payments also prompts Third World countries like China, Brazil, and Israel to do the same. Economics, as well as such related issues as overpopulation, drive proliferation just as surely as do purely political motives. Unfortunately, that subject is beyond the scope of this book. Suffice it to say that, all things being equal, well-off, relatively secure societies like today’s Japan are less likely to buy or sell superweapon technology than those that are insecure, needy, or desperate. Ultimately, solving economic problems, especially as they are driven by population pressure, is the surest way to defuse proliferation and enhance true national security.

## Shutdown

Their card doesn't say anything - just that some committees aren't meeting - even if appropriations aren't happening that doesn't matter for plan

They can still pass stuff

CSPAN from today, "Government Shutdown Continues; Congress Returns Monday", http://www.c-span.org/Events/Government-Shutdown-Continues-Congress-to-Meet-Over-Weekend/10737441826/

As the government shutdown stretches to nearly a week, both houses of congress met in unusual Saturday sessions. The House passed a bill to pay furloughed government workers.

The House returns Monday for work on a series of funding bills for specific parts of the government, including veterans' benefits, nutrition assistance for low-income women and children, and emergency and disaster recovery. The Senate will also resume debate Monday.

On Wednesday and Thursday, the House passed five of these smaller bills to reopen parts of the government. All measures passed by the House next go the Senate for consideration. To date, the Senate has not taken up any of these stop-gap funding bills. One bill that might find bipartisan support is a bill to retroactively pay government workers for time lost during the shutdown.

fiat is least means necessary - causes congress to pass it now - key to negative disad link ground

## PC Key

Will avoid default - shutdown brought new pressure on GOP and gave Obama momentum - that's Gergen - specific uniqueness frames debat - their ev = old - shutdown

Obama pressure now—its working

William Saletan, Slate, 10/2/13, The “Republican Shutdown”, www.slate.com/articles/news\_and\_politics/frame\_game/2013/10/republican\_shutdown\_will\_obama\_s\_partisan\_attack\_break\_the\_gop\_s\_resistance.html

The federal shutdown will end when House Republicans drop their demands and agree to a simple resolution that funds the government. What will make them give in? One approach is to sweet-talk House leaders and Republican moderates, inviting them to do the right thing. The other approach is to make the shutdown painful for the entire GOP.

Viscerally, President Obama has always preferred the nice-guy approach. Today, however, he turned up the heat. He seems to be realizing that reason may help, but pain will break the deadlock.

Obama likes to think of himself as the paragon of reason, transcending partisanship. He often praises “reasonable Republicans,” as he did two weeks ago in his radio address and in a speech about the impending fiscal standoff. He often credits the GOP with influencing the Affordable Care Act, noting that the bill “drew on a lot of Republican ideas.” He aims his criticism at “Tea Party Republicans,” a “faction on the far right of the Republican Party.”

A few days ago, as the shutdown approached, Obama tried to stay bipartisan, noting that “the United States Senate—Democrats and Republicans—acted responsibly by voting to keep our government open.” He also drew distinctions among Republican governors:

Unfortunately, we’ve still got a few Republican governors who are so opposed to [Obamacare] that they haven’t lifted a finger to help cover more people. Some of them have actually tried to harm the law before it takes effect. But a lot of Republican governors are putting politics aside and doing the right thing. And they deserve congratulations for that.

Until now, Obama has generally portrayed House Republican leaders as victims of the Tea Party. “The House Republicans are so concerned with appeasing the Tea Party that they’ve threatened a government shutdown,” he said on Sept. 27. Three days later, he complained that “House Republicans continue to tie funding of the government to ideological demands … all to save face after making some impossible promises to the extreme right wing of their party.”

If that’s true—if the right wing is controlling House Republican leaders through intimidation—then the logical question to ask is: Why not try the same tactic from the other direction? Why not make the shutdown so painful for the whole party that Speaker John Boehner and other House leaders have to give in? Why not make them more afraid of continuing the shutdown than of defying the Tea Party?

Over the last couple of days, the White House has pretended that the blame game doesn’t matter. Yesterday, a reporter asked White House Press Secretary Jay Carney: “Are you confident that this will be a political disaster for Republicans if there’s a shutdown?” Carney demurred. “We don't care about the politics,” he insisted. “The president cares about making sure that the American people aren't hurt.” Later, Carney deflected another question, arguing that it “supposes that we're approaching this in terms of how much political pressure will it take for Republicans to do the right thing. And we're hoping maybe zero, and maybe they'll just do the right thing.”

Please. Drop the fake innocence. This is a political fight, and it will end when the GOP decides to cut its losses. Speaking from the Rose Garden today, Obama signaled that he’s ready to bring the pain:

At midnight last night, for the first time in 17 years, Republicans in Congress chose to shut down the federal government. … This Republican shutdown did not have to happen. … This shutdown is about rolling back our efforts to provide health insurance to folks who don’t have it. It’s all about rolling back the Affordable Care Act. This, more than anything else, seems to be what the Republican Party stands for these days. I know it’s strange that one party would make keeping people uninsured the centerpiece of their agenda, but that apparently is what it is.

Obama went on, repeatedly calling the standoff a “Republican shutdown.” That’s language he has never used before. His slam at “what the Republican Party stands for these days” was his broadest indictment of the GOP ever. He’s escalating the pressure on the entire party in a big way.

It’s a risky move. Spreading the blame may antagonize moderate Republicans. At today’s White House press briefing, a reporter asked Carney, “How does it help you get a deal if you’re calling Republicans extortionists and terrorists?” The answer may be that overtures and sweet talk haven’t worked. The standoff ends when the other side can no longer bear its wounds.

pushing now

Anita Kumar, McClatchy DC, 10/1/13, Obama to use the bully pulpit to pressure Republicans to re-open government, www.mcclatchydc.com/2013/10/01/203850/obama-to-use-the-bully-pulpit.html

Obama to use the bully pulpit to pressure Republicans to re-open government

President Barack Obama will meet with business leaders on Wednesday and visit a small local construction company on Thursday as he hopes to push Congress to re-open the federal government.

White House spokesman Jay Carney said Obama has not canceled his trip to Asia this weekend for a series of summits and meetings, though some say it will be unlikely the president would travel overseas during a shutdown.

We certainly hope that, in the time between now and the president's scheduled departure, the Speaker does the right thing," Carney said.

Obama was briefed by his senior staff Tuesday morning about the shutdown, but had not spoken to congressional leaders since Monday evening before the closure. Carney said that Obama expects to speak them in the coming days.

Carney dismissed two of the latest House proposals -- holding a conference committee at this late date and passing a series of smaller bills -- as not serious.

It's a "piecemeal approach to funding the government is not a serious approach any more than it would be a serious way to try to deal with the consequences of default and the absolute necessity to maintain the full faith and credit of the United States," he said.

Carney said Obama is willing to negotiate with "serious-minded" Republicans, but that he will not negotiate over funding the government or raising the debt ceiling.

bully pulpit

Mark Mardell, BBC, 9/30/13, Obama takes to the 'bully pulpit', www.bbc.co.uk/news/world-us-canada-24342431

President Obama sounded grim and fed up as he took to the bully pulpit. He said he hoped that those in Congress would do their job, and do the right thing, at the 11th hour.

It doesn't look very likely they will budge. Certainly he won't. The president is playing hard ball and, from a tactical point of view, he is right to do so. While he struck an appropriately downbeat note, he has little to lose, and a fair bit to gain, by taking a stand.

He accused the Republicans of trying to save face with an extreme right-wing faction, of the height of irresponsibility, being willing to throw a wrench in the economy and hurt people, because they couldn't accept a law and wanted to re-fight the last presidential election.

Democrats have decided it is better to fight this battle now, rather than go through exactly the same thing in a couple of weeks' time over the debt ceiling, which all economists agree would have far more serious consequences.

Obama’s singular focus on the debt ceiling will cause GOP capitulation—the plan ruins his fine balance

Julie Pace, AP White House Correspondent, 10/3/13, Obama seeks to strike a balance during shutdown, Lexis

Attend a black-tie gala? No. Meet with business leaders who oppose a government shutdown? Yes. Jet off to Asia for a four-country tour? Maybe, but shorten the trip and keep the option to cancel.

President Barack Obama's strategy during the partial shutdown of the federal government is aimed at keeping up the appearance of a leader focused on the public's priorities and avoiding looking tone deaf to the hundreds of thousands of Americans forced off the job. He's also trying to maintain what the White House sees as a political advantage over Republicans, with nearly all the president's events providing him a platform to blast House GOP lawmakers for opposing a Senate bill to keep the government running.

Republicans have sharply criticized the president's approach, saying that if he were serious about ending the shutdown, he would be negotiating a solution. Obama did summon congressional lawmakers to the White House to discuss the shutdown Wednesday evening, but the leaders emerged to say no progress had been made.

"The meeting was cordial but unproductive," said Senate Republican leader Mitch McConnell of Kentucky.

The president's allies say Obama is best served by staying away from the negotiating table and letting Republicans argue among themselves.

"I think if you're the White House, you just sit back and watch," said Robert Gibbs, former White House press secretary and a longtime Obama adviser. "I don't think there's anything for you to do. I don't think there's anything you should do."

The government shut down after Congress failed to pass a spending bill by Monday's midnight deadline, forcing about 800,000 federal workers off the job, shuttering national parks, and halting a range of government services. House Republicans are demanding changes to Obama's health care law in exchange for funding the government, a tactic the White House opposes.

Most polling ahead of the shutdown shows Republicans taking more of the heat than Obama for the political impasse. No polling on the shutdown itself has been completed.

The power of the presidential bully pulpit does give Obama one distinct advantage over Republicans. He can streamline the message coming from the White House, while GOP leaders must contend with the different factions of their party airing competing and sometimes contradictory views.

In the opening days of the shutdown, Obama's message has been squarely focused on the economic impact of the shutdown and the benefits of the health care law Republicans are seeking to curtail. On Tuesday, he met with Americans who say they're being helped by the new health law. On Wednesday, he met with business executives traditionally a core Republican constituency to discuss the impact of the shutdown and the upcoming debt-ceiling debate on the economy. And on Thursday, he plans to visit a construction company in nearby Maryland to highlight how small businesses are affected by the shutdown.

But Obama canceled an appearance Wednesday night at the glitzy Congressional Hispanic Caucus gala, an event he has attended every year since winning the White House. The White House also announced that the president was scaling back his upcoming trip to Asia, canceling stops in Malaysia and the Philippines two of the four countries he had planned to visit.

The White House also left open the possibility that the whole trip might be canceled. Obama is scheduled to depart Saturday night for economic summits in Indonesia and Brunei.

National Security Council spokeswoman Caitlin Hayden said the White House "will continue to evaluate those trips based on how events develop throughout the course of the week."

Even a shortened trip abroad could be risky for Obama. Presidential travel is a high-dollar endeavor that may not sit well with Americans facing financial burdens because of the shutdown. A trip to Asia would also require Obama to spend long stretches on an airplane, limiting the amount of time he can be making his case to the public for restarting the government. And the time difference would mean that nearly all of his events would take place when most Americans are sleeping.

Chris Lehane, a Democratic consultant who worked for President Bill Clinton during the 1995 government shutdown, said Obama needs to strike "a very fine balance" between overseeing the shutdown and his other obligations as president.

"You're the president of the United States, you have a thousand things you need to do and you need to continue to be in position to do those things," Lehane said. "But the optics of being in Washington, D.C., ready to move the government forward are important."

## Link

Plan causes massive interbranch conflict - seen as obama losing which causes him to focus pc on shoring up authority - Syria empirically proves that even if he likes the policy he wants to preserve flexible authority - that's Kriner

Bipart isn't relevant - just means bigger fight

Empirically key for 2nd term

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 282-3

**There is also considerable** circumstantial **evidence suggesting that the intense congressional opposition** to Bush's Iraq War policies **imposed an additional, significant political cost on the president**: it brought action on virtually every other issue on his domestic and international agendas to a grinding halt. With an approval rating mired in the low thirties throughout his final year in office and with more than twice that figure disapproving of his job performance, Bush devoted every bit of his political capital to insuring continued funding for the war in Iraq.

Measuring the costs that congressional wartime opposition exacts on other presidential agenda items is perhaps even more difficult than conclusively showing its influence on public opinion. However, on several metrics the data strongly suggests that Bush failed to achieve almost all of his non-Iraq legislative priorities in his final two years in office. One commonly used measure of legislative productivity is Mayhew's class of "sweep one" significant enactments. In raw numerical terms, the emergence of sustained, significant congressional challenges to the war in Iraq did not dampen legislative productivity. The 110th Congress enacted thirteen pieces of landmark legislation, versus fourteen in the 109th Congress, although this total was boosted significantly by three bills responding to the financial crisis. However, a simple comparison of numbers obscures precisely whose agenda items comprised these lists of significant enactments. Landmark initiatives passed in the I09th Congress included a major reform of bankruptcy laws that favored lenders over consumers; the Class Action Fairness Act, which made it more difficult for individuals to bring such suits against businesses; billions of dollars of tax breaks to increase energy production; the Central American Free Trade Agreement; and the opening of more than eight million acres of the Gulf of Mexico to offshore drilling. These and most other items on the list clearly reflected Bush's legislative priorities. By contrast, many of the landmark initiatives enacted by the 110th Congress clearly reflected the priorities of the Democratic majority: an increase in the minimum wage; ethics and lobbying reform; an overhaul of the student loan program that cut subsidies to private lenders and increased federal aid to low-income families; an energy bill raising automobile gas mileage standards and encouraging conservation; and a bill requiring insurance companies to provide equal coverage for mental and physical illnesses.'9

All second-term presidents at some point grapple with the reality of becoming a lame duck, and all presidents in periods of divided government must grapple with legislatures possessing their own programmatic agendas. **By** almost **any standard, however, Bush succeeded in achieving even fewer of his legislative priorities in the final two years of his presidency than** his immediate **predecessors**. The reasons for this are undoubtedly multifaceted. However, **an important piece of the puzzle may** well **be that Bush**, who in 2001 had been the most popular president in the history of the Gallup poll, **was forced to expend every remaining bit of political energy in waging a rearguard action against Congress to preserve his policies** in Iraq. The animus that his intransigence in Iraq had generated among the American people and many in Congress, even among some in his own party, left him stripped of the political capital needed to advance the remainder of his policy agenda.

That strains the agenda past the breaking point

Robert Reich, Eurasia Review, 9/3/13, Obama’s Political Capital And The Slippery Slope Of Syria – OpEd, www.eurasiareview.com/03092013-obamas-political-capital-and-the-slippery-slope-of-syria-oped/

Even if **the President** musters enough votes to strike Syria, at what political cost? Any president **has a** limited amount of political capital **to mobilize support for his agenda, in Congress** and, more fundamentally, with the American people. **This is especially true of a president in his second term of office.** Which makes President Obama’s campaign to strike Syria all the more mystifying.

President Obama’s domestic agenda is already precarious: implementing the Affordable Care Act, ensuring the Dodd-Frank Act adequately constrains Wall Street, raising the minimum wage, saving Social Security and Medicare from the Republican right as well as deficit hawks in the Democratic Party, ending the sequester and reviving programs critical to America’s poor, rebuilding the nation’s infrastructure, and, above all, crafting a strong recovery.

Time and again we have seen domestic agendas succumb to military adventures abroad — both because the military-industrial-congressional complex drains money that might otherwise be used for domestic goals, and because the public’s attention is diverted from urgent problems at home to exigencies elsewhere around the globe.

The plan destroys debt ceiling resolution and undermines Obama - causes GOP emboldenment

Seeking Alpha, 9/10/13, Syria Could Upend Debt Ceiling Fight, http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight

Unless President Obama can totally change a reluctant public's perception of another Middle-Eastern conflict, it seems unlikely that he can get 218 votes in the House, though he can probably still squeak out 60 votes in the Senate. This defeat would be totally unprecedented as a President has never lost a military authorization vote in American history. To forbid the Commander-in-Chief of his primary power renders him all but impotent. At this point, a rebuff from the House is a 67%-75% probability.¶ I reach this probability by looking within the whip count. I assume the 164 declared "no" votes will stay in the "no" column. To get to 218, Obama needs to win over 193 of the 244 undecided, a gargantuan task. Within the "no" column, there are 137 Republicans. Under a best case scenario, Boehner could corral 50 "yes" votes, which would require Obama to pick up 168 of the 200 Democrats, 84%. Many of these Democrats rode to power because of their opposition to Iraq, which makes it difficult for them to support military conflict. The only way to generate near unanimity among the undecided Democrats is if they choose to support the President (recognizing the political ramifications of a defeat) despite personal misgivings. The idea that all undecided Democrats can be convinced of this argument is relatively slim, especially as there are few votes to lose. In the best case scenario, the House could reach 223-225 votes, barely enough to get it through. Under the worst case, there are only 150 votes. Given the lopsided nature of the breakdown, the chance of House passage is about one in four.¶ While a failure in the House would put action against Syria in limbo, I have felt that the market has overstated the impact of a strike there, which would be limited in nature. Rather, investors should focus on the profound ripple through the power structure in Washington, which would greatly impact impending battles over spending and the debt ceiling.¶ Currently, the government loses spending authority on September 30 while it hits the debt ceiling by the middle of October. Markets have generally felt that Washington will once again strike a last-minute deal and avert total catastrophe. Failure in the Syrian vote could change this. For the Republicans to beat Obama on a President's strength (foreign military action), they will likely be emboldened that they can beat him on domestic spending issues.¶ Until now, consensus has been that the two sides would compromise to fund the government at sequester levels while passing a $1 trillion stand-alone debt ceiling increase. However, the right wing of Boehner's caucus has been pushing for more, including another $1 trillion in spending cuts, defunding of Obamacare, and a one year delay of the individual mandate. Already, Conservative PACs have begun airing advertisements, urging a debt ceiling fight over Obamacare. With the President rendered hapless on Syria, they will become even more vocal about their hardline resolution, setting us up for a showdown that will rival 2011's debt ceiling fight.¶ I currently believe the two sides will pass a short-term continuing resolution to keep the government open, and then the GOP will wage a massive fight over the debt ceiling. While Obama will be weakened, he will be unwilling to undermine his major achievement, his healthcare law. In all likelihood, both sides will dig in their respective trenches, unwilling to strike a deal, essentially in a game of chicken. If the House blocks Syrian action, it will take America as close to a default as it did in 2011. Based on the market action then, we can expect massive volatility in the final days of the showdown with the Dow falling 500 points in one session in 2011.¶ As markets panicked over the potential for a U.S. default, we saw a massive risk-off trade, moving from equities into Treasuries. I think there is a significant chance we see something similar this late September into October. The Syrian vote has major implications on the power of Obama and the far-right when it comes to their willingness to fight over the debt ceiling. If the Syrian resolution fails, the debt ceiling fight will be even worse, which will send equities lower by upwards of 10%. Investors must be prepared for this "black swan" event.¶ Looking back to August 2011, stocks that performed the best were dividend paying, less-cyclical companies like Verizon (VZ), Wal-Mart (WMT), Coca-Cola (KO) and McDonald's (MCD) while high beta names like Netflix (NFLX) and Boeing (BA) were crushed. Investors also flocked into treasuries despite default risk while dumping lower quality bonds as spreads widened. The flight to safety helped treasuries despite U.S. government issues. I think we are likely to see a similar move this time.¶ Assuming there is a Syrian "no" vote, I would begin to roll back my long exposure in the stock market and reallocate funds into treasuries as I believe yields could drop back towards 2.50%. Within the stock market, I think the less-cyclical names should outperform, making utilities and consumer staples more attractive. For more tactical traders, I would consider buying puts against the S&P 500 and look toward shorting higher-beta and defense stocks like Boeing and Lockheed Martin (LMT). I also think lower quality bonds would suffer as spreads widen, making funds like JNK vulnerable. Conversely, gold (GLD) should benefit from the fear trade.¶ I would also like to address the potential that Congress does not vote down the Syrian resolution. First, news has broken that Russia has proposed Syria turn over its chemical stockpile. If Syria were to agree (Syria said it was willing to consider), the U.S. would not have to strike, canceling the congressional vote. The proposal can be found here. I strongly believe this is a delaying tactic rather than a serious effort. In 2005, Libya began to turn over chemical weapons; it has yet to complete the hand-off. Removing and destroying chemical weapons is an exceptionally challenging and dangerous task that would take years, not weeks, making this deal seem unrealistic, especially because a cease-fire would be required around all chemical facilities. The idea that a cease-fire could be maintained for months, essentially allowing Assad to stay in office, is hard to take seriously. I believe this is a delaying tactic, and Congress will have to vote within the next two weeks.¶ The final possibility is that Democrats back their President and barely ram the Syria resolution through. I think the extreme risk of a full-blown debt stand-off to dissipate. However, Boehner has promised a strong fight over the debt limit that the market has largely ignored. I do believe the fight would still be worse than the market anticipates but not outright disastrous. As such, I would not initiate short positions, but I would trim some longs and move into less cyclical stocks as the risk would still be the debt ceiling fight leading to some drama not no drama.¶ Remember, in politics everything is connected. Syria is not a stand-alone issue. Its resolution will impact the power structure in Washington. A failed vote in Congress is likely to make the debt ceiling fight even worse, spooking markets, and threatening default on U.S. obligations unless another last minute deal can be struck.

## Spillover

Agenda crowd-out

William G Howell, University of Chicago Professor in American, and Jon C. Pevehouse, Professor of Political Science at the University of Wisconsin-Madison, 2008, While Dangers Gather, p. 239-40

On this, almost everyone agreed. According to reports during the final weeks of the midterm election campaigns, with control of Congress Democrats would launch "made-for-television hearings |that) would focus on faulty intelligence used to justify the invasion of Iraq, strategic and tactical missteps once there and the sending of troops into combat with insufficient armor."53 Said Norman Ornstein of the American Enterprise Institute, "Two things will change: there will be lots of investigations, on Iraq, torture, intelligence failures, and so on; and there will be more congressional pushback on the unprecedented expansion of executive power."34 Or, as Washington Post columnist Jeff Birnbaum noted, "If Democrats take control of the House, the Senate, or both, expect oversight and investigative hearings—and not very friendly ones from Bush's standpoint—to pop up on issues ranging from Darfur to North Korea."3¶ Democrats themselves made no secret of their plans. Asked what a change in part)' control of Congress would yield, Ike Skelton (D-MO) responded: Oversight. I'll repeat it: oversight, oversight, oversight! Congress has done a poor job of overseeing the conduct of the war, the corruption in the reconstruction program in Iraq, the recruiting problems, particularly in the Army. They have rubber-stamped the Pentagon. What we need today is a Truman Commission."3\*¶ Carl Levin (D-MI) insisted that a Democratic takeover would constitute a "referendum" on changing course in Iraq.37 According to Democratic strategist Victor Kamber, "First and foremost will be tough questioning on the Iraq War. . .. We need open, honest hearings to understand what our military is saying, what we really know and didn't know, when we knew it and why we're there."311¶ Prolonged hearings, observers anticipated at the time, would pose a variety of challenges for the Bush administration. For starters, hearings probably would displace other features on the administration's legislative agenda, such as proposed immigration, social security, entitlement, and tax reforms. Depending on the public's reactions, a Democratic majority might also follow up the hearings with legislation designed to further restrict the president's discretion to wage war abroad.As one observer noted:¶ Oversight is not just a matter of playing political piñata with administration witnesses. Such hearings can convert unfocused anxieties into irresistible momentum for budget cuts, budget increases, or reform legislation. Bipartisan revolts have already speeded up new armor for troops in Iraq; reduced the executive branch's discretion to spend money through leasing, "other transaction authorities," or "multiycar procurement"; and increased the size of the Army over the Pentagon's objections. Those votes indicate that Republican defectors arc ready to move if the Democrats hit the right pressure points.3\*

## Econ Turn

Doesn't kill the economy

**Hoffman ‘13**

Frank, studied under FPRI founder Robert Strausz-Hupé at the University of Pennsylvania. He is a retired Marine officer and served as a senior executive and political appointee in the Pentagon during the Clinton, Bush and Obama Administrations. Mr. Hoffman is a Senior Research Fellow at the Institute for National Strategic Studies, National Defense University, and a member of FPRI’s Board of Advisors., “Forward Partnership: A Sustainable American Strategy,” Orbis, Winter 2013

**It is not the end of the American era**.59 Yet, in a world of dynamic change and shaky geopolitical equilibrium, the United States needs to craft a grand strategy that will frame its interests, **shape the various instruments of national power**, and most importantly marshal the necessary investments to underwrite its national security interests. The **U**nited **S**tates has enormous reserves in terms of human and fiscal capital, a dynamic economic base, incentives for innovation, and a superb university education system.60 Renewing its economic foundation and getting its house in order will be part of any grand strategy for the United States, but that strategy cannot be used to turn it away from its international role and challenges beyond its shores. We should acknowledge the need for renewal and reshaping but we need not embrace retreat or retrenchment. We should not become complacent or Pollyannish about the world we live in today; North Korea, Iran, the Arab Spring, and the South China Sea all remain hotspots.61 The United States, **despite ominous fiscal constraints**, will remain the world’s foremost power for decades to come. But that position will not contribute to its strategic interests without conscious and deliberate effort. Its core interests, including a stable international system that favors access to the global commons, as well as markets and resources, must be secured and advanced. This mandates the preservation of our global reach and focused engagement. Yet, our ability to predict the time and place of the next crisis or conflagration is limited, mandating the need to have the freedom of maneuver to shift forces and resources to different regions to prevent crises and support partners over the long haul.

## Econ Defense

Causes war – economics are a key factor

Niall Ferguson, Prof. History @ Harvard, April, ‘9

(<http://www.foreignpolicy.com/story/cms.php?story_id=4681&page=0>)

Seven years ago, in his State of the Union address on Jan. 29, 2002, U.S. President George W. Bush warned of an “axis of evil” that was engaged in assisting terrorists, acquiring weapons of mass destruction, and “arming to threaten the peace of the world.” In Bush’s telling, this exclusive new club had three members: Iran, Iraq, and North Korea. Bush’s policy prescription for dealing with the axis of evil was preemption, and just over a year later he put this doctrine into action by invading Iraq.

The bad news for Bush’s successor, Barack Obama, is that he now faces a much larger and potentially more troubling axis—an axis of upheaval. This axis has at least nine members, and quite possibly more. What unites them is not so much their wicked intentions as their instability, which the global financial crisis only makes worse every day. Unfortunately, that same crisis is making it far from easy for the United States to respond to this new “grave and growing danger.”

When Bush’s speechwriters coined the phrase “axis of evil” (originally “axis of hatred”), they were drawing a parallel with the World War II alliance between Germany, Italy, and Japan, formalized in the Tripartite Pact of September 1940. The axis of upheaval, by contrast, is more reminiscent of the decade before the outbreak of World War II, when the Great Depression unleashed a wave of global political crises.

The Bush years have of course revealed the perils of drawing facile parallels between the challenges of the present day and the great catastrophes of the 20th century. Nevertheless, there is reason to fear that the biggest financial crisis since the Great Depression could have comparable consequences for the international system.

For more than a decade, I pondered the question of why the 20th century was characterized by so much brutal upheaval. I pored over primary and secondary literature. I wrote more than 800 pages on the subject. And ultimately I concluded, in The War of the World, that three factors made the location and timing of lethal organized violence more or less predictable in the last century. The first factor was ethnic disintegration: Violence was worst in areas of mounting ethnic tension. The second factor was economic volatility: The greater the magnitude of economic shocks, the more likely conflict was. And the third factor was empires in decline: When structures of imperial rule crumbled, battles for political power were most bloody.

In at least one of the world’s regions—the greater Middle East—two of these three factors have been present for some time: Ethnic conflict has been rife there for decades, and following the difficulties and disappointments in Iraq and Afghanistan, the United States already seems likely to begin winding down its quasi-imperial presence in the region. It likely still will.

Now the third variable, economic volatility, has returned with a vengeance**.** U.S. Federal Reserve Chairman Ben Bernanke’s “Great Moderation”—the supposed decline of economic volatility that he hailed in a 2004 lecture—has been obliterated by a financial chain reaction, beginning in the U.S. subprime mortgage market, spreading through the banking system, reaching into the “shadow” system of credit based on securitization, and now triggering collapses in asset prices and economic activity around the world.

After nearly a decade of unprecedented growth, the global economy will almost certainly sputter along in 2009, though probably not as much as it did in the early 1930s, because governments worldwide are frantically trying to repress this new depression. But no matter how low interest rates go or how high deficits rise, there will be a substantial increase in unemployment in most economies this year and a painful decline in incomes. Such economic pain nearly always has geopolitical consequences. Indeed, we can already see the first symptoms of the coming upheaval.

Most comprehensive data sets

Brock Blomberg, Professor of Economics at Wellesley College, Gregory Hess, Professor of Economics at Oberlin College, February 2002, “The Temporal Links between Conflict and Economic Activity,” Journal of Conflict Resolution

To begin this temporal “causal” investigation, we first need to develop a statistical framework to estimate the joint, dynamic determination of the occurrence of internal conflict, external conflict, and growth. Because conflict is measured as a discrete variable, researchers typically estimate the occurrence as a probability, or if we consider both internal and external conflict, we can always estimate the joint probability distribution. But are there similar interpretations of economic activity as a discrete state? Indeed, a broad literature considers the evolution of states in the economy as the natural progression of phases. In fact, one of the key historical studies of U.S. and international business cycles, undertaken by Burns and Mitchell (1944), treated the state of the economy as either an expansion or contraction, on which the National Bureau of Economic Research’s dating procedure for recessions was founded. 4 The relevance for our study is that breakpoints in the state of the economy, either expansion or recession, are analogous to break points in peace—internal or external conflicts.5 Using an unbalanced panel of data covering 152 countries from 1950 to 1992, we therefore consider the joint determination of internal conflict, external conflict, and the state of the economy as measured by the aforementioned discrete variables. We find that the relationship between the variables is not a simple one. Conflict does appear to be highly related to the economy for the entire sample. However, it seems to be most highly related when considering certain nation-groups. For nondemocracies or in regions highly populated by nondemocracies, there seems to be an intimate link between a poor economy and the decision to go to war—both internally and externally. These results confirm much of the original hypotheses put forth in Blomberg, Hess, and Thacker (2001)—namely, that there is compelling evidence of a conditional poverty-conflict trap.

# 2NR

GOP fracturing now

Michael Memoli, LA Times, 10/1/13, Republican moderates hold key to ending government shutdown , www.latimes.com/nation/la-na-government-shutdown-20131002,0,1045296,full.story

For most of the last two decades, Republicans such as Rep. Patrick Meehan, who represents a politically competitive district near Philadelphia, have been the odd men out in a House caucus dominated by conservatives such as those aligned with the tea party.

But with Congress' deadlock resulting in the first government shutdown in more than 17 years, Meehan and like-minded colleagues may be the ones who decide how — and when — the standoff ends.

"This whole Congress has been on Cruz control for the last two or three weeks," said Meehan, referring to Sen. Ted Cruz (R-Texas), a tea party favorite. "To a certain extent, you have to let some air out of the balloon."

No matter how legislative standoffs start, they almost always end the same way: One side or the other suffers defections that force its leadership to back down. In any such fight, each side tries to find fault lines in the other's support and see whether pressure can break those fissures open.

In the current battle, conservative Republicans have forced votes on issues they hoped would cause Democratic senators from Republican-majority states to break with Senate Majority Leader Harry Reid (D-Nevada).

Democrats have hoped to divide suburban moderates such as Meehan from hard-line conservatives, who have repeatedly tried to tie money for government agencies to measures aimed at delaying or dismantling President Obama's healthcare law.

On Tuesday, as the shutdown took hold and more Republicans questioned their party's strategy, the gaps on the GOP side were clearly widening. But the party's less conservative members have shown little willingness in the past to fight the right wing. Whether they will now could determine how long the shutdown lasts.

The Republican leadership adopted a new plan to at least buy time — offering three measures that would reopen specific, popular parts of the government, including parks and veterans services.

Democrats quickly circled the wagons against the idea, and the White House threatened a veto.

"This shutdown isn't about spending or deficit or budgets," the president said at the White House. "This shutdown is about rolling back our efforts to provide health insurance to folks who don't have it. This, more than anything else, seems to be what the Republican Party stands for these days."

"People shouldn't have to choose between help for our veterans and cancer research," said Sen. Charles E. Schumer (D-N.Y.). "And we shouldn't have to choose between visiting our national parks or enrolling kids in Head Start."

The GOP's bills, which came up in the House under rules requiring a two-thirds majority to pass, each failed as Democrats voted lopsidedly against them.

A striking degree of Democratic unity has confounded Republican strategies so far. In the Senate, Democrats have remained outwardly unworried about a Republican tack targeting their most politically vulnerable colleagues.

At a House GOP rally after an attempt last month to stop the healthcare law, House Majority Leader Eric Cantor (R-Va.) singled out Democratic senators who were up for reelection in 2014 in red states.

"I want to know where Sen. Pryor stands on protecting the middle class from the consequences of this horrific bill," he said, referring to Mark Pryor, the Democratic senator from Arkansas, as Republican lawmakers assembled behind Cantor cheered.

"How about Kay Hagan in North Carolina?" he demanded to more cheers. "What about Mary Landrieu of Louisiana? ... Mark Begich of Alaska?"

Those senators all have stood with their party during the current budget impasse, knowing their earlier votes to pass the healthcare law would be used against them in next year's campaigns regardless of their votes today.

"A group of folks thought that they saw the potential to change some Democrats in the Senate. I was gung-ho to try that. We tried that a couple of times," said Rep. Mario Diaz-Balart (R-Fla.). "I wish it had worked. That unfortunately was not the case. So now we need to take a step back and figure out how we move forward."

By contrast, the split among Republicans appears to be widening.

On Tuesday, Meehan was one of several who publicly urged the party leadership to pass a simple, short-term spending bill — a continuing resolution, or CR, in legislative jargon — without controversial add-ons, as the Senate did.

"We fought the good fight. Time for a clean CR," said another member of the group, Rep. Scott Rigell of Virginia.

Many hard-core conservatives, who have out-fought the party's more centrist members for years, are skeptical. House Speaker John A. Boehner (R-Ohio) can't afford to capitulate now, they say.

"We have certain times in the calendar year when we have must-pass bills. This is one of them," said Rep. Marlin Stutzman (R-Ind.). "For John Boehner, he goes this far and doesn't walk out with something, it doesn't look good. He has to get something."

Since taking the speaker's job, Boehner has operated in an environment in which his most conservative members have been able to exercise what in effect has been a tea party filibuster in the House.

Republicans hold a 232-to-200 advantage in the chamber. That's the second-largest GOP majority in generations. But because Democrats vote in near unison on high-profile legislation, as few as 16 Republican defections can defeat bills offered by the majority or prevent them from reaching the floor.

Such dissent has most often come from the right. Pressure from conservatives in the House forced Boehner and his leadership colleagues to embrace the conservatives' anti-Obamacare approach to the spending battle.

As the likelihood of a shutdown increased over the weekend, however, the marginalized moderates began to stir.