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#### Syria puts PC on the brink – passes debt ceiling

**Garrett, 9/19/13 -** National Journal Correspondent-at-Large and Chief White House Correspondent for CBS News(Major, National Journal, “A September to Surrender: Syria and Summers Spell Second-Term Slump” <http://www.nationaljournal.com/all-powers/a-september-to-surrender-syria-and-summers-spell-second-term-slump-20130917>)

There are no “obstructionist” Republican fingerprints on the conspicuous and power-depleting defeats for Obama. He never sought a vote on Syria and therefore was not humiliated. The same is true for Summers. But Obama lost ground on both fronts and ultimately surrendered to political realities that, for the first time in his presidency, were determined by his own obdurate party.

This does not mean Obama will lose coming fights over the sequester, shutdown, or debt ceiling. But he is visibly weaker, and even his sense of victory in Syria is so unidimensional, it has no lasting sway in either Democratic cloakroom. More important, Democrats are no longer afraid to defy him or to disregard the will of their constituents—broadly defined in the case of Syria; activist and money-driving in the case of Summers. This, of course, indirectly announces the beginning of the 2016 presidential campaign and an intra-party struggle over the post-Obama Democratic matrix.

This shift—a tectonic one—will give Republicans new opportunities on the fiscal issues and in coming debates over immigration and implementation of Obamacare. Republicans have never known a world where Democratic defections were so unyielding and damaging.

This does not mean Republicans will find a way to exploit these fissures. The GOP’s current agony over delaying or defunding Obamacare and the related shambling incoherence around the sequester/shutdown/debt ceiling suggest not.

#### Restrictions on authority are a loss that spills over to the debt ceiling

**Parsons, 9/12/13** (Christi, Los Angeles Times, “Obama's team calls a timeout”

<http://www.latimes.com/nation/la-na-obama-congress-20130913,0,2959396.story>)

After a week in which President Obama narrowly averted a bruising defeat on Capitol Hill over a military strike on Syria, the decision had the feeling of a much-needed timeout.

The messy debate over a resolution to authorize military force put a harsh light on the president's already rocky relationship with Congress.

Despite a charm offensive earlier this year, complete with intimate dinners and phone calls, Obama faced contrary lawmakers in both parties, a climate that is certain to persist through the next round of legislative fights, if not to the end of his second term.

In deciding to seek approval for military action, Obama banked on the long-standing deference to the commander in chief on matters of national defense. But by the time he pressed "pause" on the intense White House lobbying effort, he was finding as much defiance as deference.

Although the White House cast the issue as a matter of national security and a crucial test of U.S. power, dozens of lawmakers from both parties were set to deliver a rare rebuke to a president on foreign policy. Even Democratic loyalists seemed unswayed by appeals to preserve the prestige of the presidency — and this president. Hawkish Republicans offering to reach across the aisle to support the president said they found the White House distant and uninterested.

The canceled picnic punctuated a week of aggravated feelings.

"We obviously have divided government. We have sometimes contentious, sometimes very effective relations with Congress. But we keep at it," said White House spokesman Jay Carney, who denied the picnic cancellation had anything to do with the state of relations between the two branches of government.

On Capitol Hill, the week's episode strained Obama's traditional alliance with his fellow Democrats, many of whom were wary of another military involvement, unclear about the president's plans for a missile strike and surprised by his decision to ask them to vote on it.

"Not only was it a hard ask, but it was not a well-prepared ask," said Sen. Sheldon Whitehouse (D-R.I.). "His willingness to back away from the ultimatum and pursue the disarmament proposal was extremely welcome, and I think that helped all of us in our relationship with him."

Obama's relationship with his Republican critics was not helped. As lawmakers look ahead to the rest of the fall agenda, including the coming budget battles, the administration's performance this week will not be easy to forget, some said.

"It's just more lack of confidence that they know what they're doing," said Sen. Tom Coburn (R-Okla.).

"There's only so much political capital," said Sen. Rob Portman (R-Ohio).

Democrats defended the president, blaming Republicans for a "knee-jerk" opposition to any initiative tied to this White House, a phenomenon that Obama aides regularly cite but that the president appears to have disregarded in his decision to put a use-of-force resolution before Congress.

"Historically, when it comes to military force, Republicans and conservatives have led that. Now they're opposed to it," said Sen. Richard J. Durbin (D-Ill.). In a private meeting this week, Durbin said, Obama himself joked that "a lot of Republicans on Capitol Hill are discovering their inner doves on Syria."

The next set of negotiations will be far more predictable and on familiar territory. By the end of the month, the president and Congress must agree on a plan to continue funding the government, or it will shut down. And by mid-October, they will have to agree to raise the debt limit, or risk a default.

The White House has said it won't negotiate on the debt limit, as it did twice before, counting on the public and business groups to pressure Republicans.

Democrats were hopeful the budget issues would put the White House back on more solid political footing.

"I think the public has a heck of a lot more confidence in the president on economics and budget than [in] the House Republicans," said Sen. Carl Levin (D-Mich.).

That may be wishful thinking, said Ross Baker, a political science professor at Rutgers University, who studies the Senate.

"These things carry over. There's no firewall between issues," he said. "Failure in one area leads to problems in other areas."

The debate over the war in Syria may be on an extended pause, although prospects of Obama returning to Congress to ask for a use-of-force authorization seem slim.

A bipartisan group of senators is drafting an amended authorization, but the group is not expected to fully air its proposal until diplomatic talks conclude.

There were some signs that the debate may have won the president some empathy, if not support. At a private lunch with Republican senators this week, Obama asked them not to undermine him on the world stage. Sen. Ron Johnson of Wisconsin, who is part of a group of GOP senators working with the White House on fiscal issues, said the appeal resonated.

#### Capital is finite, spending it prevents a debt ceiling deal

**Moore, 9/10/13 -** Guardian's US finance and economics editor.(Heidi, “Syria: the great distraction” The Guardian, <http://www.theguardian.com/commentisfree/2013/sep/10/obama-syria-what-about-sequester>)

The country will crash into the debt ceiling in mid-October, which would be an economic disaster, especially with a government shutdown looming at the same time. These are deadlines that Congress already learned two years ago not to toy with, but memories appear to be preciously short.

The Federal Reserve needs a new chief in three months, someone who will help the country confront its raging unemployment crisis that has left 12 million people without jobs. The president has promised to choose a warm body within the next three weeks, despite the fact that his top pick, Larry Summers, would likely spark an ugly confirmation battle – the "fight of the century," according to some – with a Congress already unwilling to do the President's bidding.

Congress was supposed to pass a farm bill this summer, but declined to do so even though the task is already two years late. As a result, the country has no farm bill, leaving agricultural subsidies up in the air, farmers uncertain about what their financial picture looks like, and a potential food crisis on the horizon.

The two main housing agencies, Fannie Mae and Freddie Mac, have been in limbo for four years and are desperately in need of reform that should start this fall, but there is scant attention to the problem.

These are the problems going unattended by the Obama administration while his aides and cabinet members have been wasting the nation's time making the rounds on television and Capitol Hill stumping for a profoundly unpopular war. The fact that all this chest-beating was for naught, and an easy solution seems on the horizon, belies the single-minded intensity that the Obama White House brought to its insistence on bombing Syria.

More than one wag has suggested, with the utmost reason, that if Obama had brought this kind of passion to domestic initiatives, the country would be in better condition right now. As it is, public policy is embarrassingly in shambles at home while the administration throws all of its resources and political capital behind a widely hated plan to get involved in a civil war overseas.

The upshot for the president may be that it's easier to wage war with a foreign power than go head-to-head with the US Congress, even as America suffers from neglect.

This is the paradox that President Obama is facing this fall, as he appears to turn his back on a number of crucial and urgent domestic initiatives in order to spend all of his meager political capital on striking Syria.

Syria does present a significant humanitarian crisis, which has been true for the past two years that the Obama administration has completely ignored the atrocities of Bashar al-Assad.

Two years is also roughly the same amount of time that key domestic initiatives have also gone ignored as Obama and Congress engage in petty battles for dominance and leave the country to run itself on a starvation diet imposed by sequestration cuts. Leon Panetta tells the story of how he tried to lobby against sequestration only to be told:

Leon, you don't understand. The Congress is resigned to failure.

Similarly, those on Wall Street, the Federal Reserve, those working at government agencies, and voters themselves have become all too practiced at ignoring the determined incompetence of those in Washington.

Political capital – the ability to horse-trade and win political favors from a receptive audience – is a finite resource in Washington. Pursuing misguided policies takes up time, but it also eats up credibility in asking for the next favor. It's fair to say that congressional Republicans, particularly in the House, have no love for Obama and are likely to oppose anything he supports. That's exactly the reason the White House should stop proposing policies as if it is scattering buckshot and focus with intensity on the domestic tasks it wants to accomplish, one at a time.

#### Default kills the econ

**Davidson, 9/10/13** – co-founder of NPR’s Planet Money (Adam, “Our Debt to Society” New York Times, <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=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.

#### Nuclear war

**Friedberg and Schoenfeld 8**

[Aaron, Prof. Politics. And IR @ Princeton’s Woodrow Wilson School and Visiting Scholar @ Witherspoon Institute, and Gabriel, Senior Editor of Commentary and Wall Street Journal, “The Dangers of a Diminished America”, 10-28, <http://online.wsj.com/article/SB122455074012352571.html>]

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

### 2

#### the aff allows the government to deploy victimhood of 9/11 to wage wars and erases agency

**Faulkner, ‘8** professor at the University of New South Wales (Joanne Faulkner, Spring/Autumn 2008, “The Innocence of Victimhood Versus the “Innocence of Becoming”: Nietzsche, 9/11, and the “Falling Man,”” The Journal of Nietzsche Studies, Iss. 35/36)//CC

It would seem that there is very little about the events of the September 11, 2001, that has not already been said or imagined. Our understanding of these events, and especially the attacks on the Twin Towers, has been overdetermined by the seemingly endless repetition of (by now) iconic images: of planes perforating the clear, tranquil surface of those seemingly impenetrable buildings and thus opening a rupture in the Western consciousness, the reparation of which is not yet in sight. Other images also populate the post-9/11 memory: images of disbelief, of grief, and of bravery—especially with respect to the members of the New York Fire Department, who rose to the occasion of providing a sense of American resilience and fortitude, thus representing a possible future after the catastrophe. These images played a major role in enabling certain mainstream media groups in the United States to reconstruct a narrative concerning their particular place in the world and with respect to each other: a narrative about national character and identity, hope, fear, and desire. The images drawn on to illustrate this narrative were therefore of critical importance; what was needed was a strong and coherent picture of innocence: the innocence of those killed in the attacks, to be sure, but also of the American people more generally—who, after a brief period of tending to their wounds, would need to collect themselves and return to the everyday commerce of existence, secure in the belief that evil is radically external to their “way of life” and that their government will ultimately protect them.1 Such a narrative, however, also served to exclude images that could not support the specific requirements of its coherence: equivocal images that jar against our [End Page 67] sense of propriety, certainly now after the effects of repetition have etched within us a certain understanding of the experience of 9/11. But also, interestingly, just after the attacks and before the grooves of this understanding had been consolidated, spontaneous and diffuse acts of censorship regulated the kinds of experiences, fears, and decisions that the victims of the attacks could enact. This article addresses one such image, which proved to be disruptive of the limits of identity asserted immediately following 9/11: Richard Drew’s “Falling Man,” depicting an unknown victim of the attacks in midflight from the North Tower of the World Trade Center. This image complicates the very culturally specific notion of innocence that was invoked during the reconstruction of national identity following the terrorist attacks against America. In particular, it will be argued that the “falling man” compromised the vision of an innocence that solicits protection precisely because it is outside the sphere of action. The image represents a decision—a wild and hopeless decision but a decision nonetheless—that, from the perspective of a claim to innocence, conceived as passive and guiltless, is difficult to comprehend or acknowledge as a “proper” comportment of an innocent. The falling man reveals and embodies a traumatic horror, difficult to encounter: the horror of choosing the means of one’s own particular death in the face of a less certain but more protracted demise at the hands of another. This article argues for a reconsideration of “innocence” that might emphasize agency and creativity above morality and victimhood and in so doing hopes to promote an understanding of those who found themselves preferring to jump than to burn on that fateful morning. Conceptual development along these lines will also affect the concept of agency in accordance with Nietzsche’s critique of morality and metaphysics. The broader project to which this essay contributes is concerned with the manner in which the application of innocence to a group can serve to erode their political agency: governments thus soothe our civic conscience while also establishing a mandate of protection in relation to their citizens. The events of 9/11 precipitated a shift from innocence to victimhood and, finally, to a loss of civil liberties for populations across the “West,” not only in the United States. It is therefore imperative to disrupt this equation of innocence with helplessness and to restore agency to the victims of terrorism and citizens alike. In response to antidemocratic policies enacted by governments after 9/11, much political theory has orbited about the constellation of Giorgio Agamben and Carl Schmitt, with Nietzsche lurking in the background as a conceptual precursor to Schmitt’s friend/enemy motif (Z:1 “Of the Friend”).2 We have therefore latterly seen an emphasis placed on the sovereign decision of the executive, the state of exception, and this in turn enlarges the sense that citizens of democracies are politically disempowered. In this context, the falling man is emblematic of the manner in which we might rework the concept of agency [End Page 68] to empower victims and those whose range of choices is limited. This kind of move is necessary, I contend, if the sense of hopelessness and futility that increasingly accompanies political subjectivity in Western democracies might be alleviated and a space for civil creativity might be opened. The essay will proceed by providing an account of the juridical or moral (Judeo-Christian) understanding of innocence and interrogating its conceptual relation to agency and belongingness to the political community. An alternative account of innocence—drawn from an interpretation of Nietzsche’s concept of the “innocence of becoming”—is then considered, through which the memory of the falling man might perhaps be redeemed. The article’s primary question thus concerns how this latter account might assist us in a revaluation of the falling man as innocent and of the “innocent” as capable of moral decision making and political participation.

#### 1ac cedes authority to the hands of the government to restrict itself – it uses that to create endless violence

**Duschinsky, ’11** Professor at University of Northumbria (Robbie Duschinsky, Spring 2011, “Nietzsche: Through the Lens of Purity,” Journal of Nietzsche Studies Iss. 41)//CC

By contrast, Joanne Faulkner demonstrates both the salience of the theme of purity in Nietzsche and the important contemporary stakes in co nducting such a reading.23 In the context of examining discourses of innocence in post–9/11 reconstructions of American identity, Faulkner proposes that at the core of social contract theory is an assumption that a state of personal and communal innocence has to be set aside to enter into the dirtying, compromised, fallen world of civil association. For Faulkner, it is this guilt that, as Nietzsche states, is the precondition of sovereign individuals who can make promises and who take responsibility for themselves and their actions. The implication is that the innocent can have no effective political agency and must be protected. The innocent victims of 9/11 have mandated war abroad and the curtailment of civil liberties at home, as "an eternally aggrieved icon of national identity: a perennially threatened and victimized creature of ressentiment who 'in order to exist first needs a hostile external world.'"24 Against this, Faulkner sets Nietzsche's notion of the innocence of becoming, which insists that there is no transcendent realm against which our lives can be judged. The innocence of becoming poses rather that creative activity and choices, based on the available options that chance presents to the individual, serve as their own justification.25 The metaphysical purity of innocent victim-hood has made certain bellicose actions on the part of state institutions appear as natural and seemingly neutral. Thus Faulkner's work indicates the stakes in using Nietzsche for considering alternative ways of seeing innocence and purity.

#### choose death in the face of inevitability – your ballot allows you to reclaim agency

**Faulkner, ‘8** professor at the University of New South Wales (Joanne Faulkner, Spring/Autumn 2008, “The Innocence of Victimhood Versus the “Innocence of Becoming”: Nietzsche, 9/11, and the “Falling Man,”” The Journal of Nietzsche Studies, Iss. 35/36)//CC

Most significantly, for the purposes of this essay, we can perhaps see now how for Nietzsche agency is compatible with innocence. Indeed, innocence—regarded as what is unsullied by moral thinking—is integral to the skillful exercise of agency. Understood in these terms, innocence is neither a precious ideal to be protected from the forces of chance nor a moralistic instrument for the meting of punishment to those who threaten society. Rather, innocence is conceived as a style of existence that becomes active by claiming to itself what chance throws up before it. Innocence would here suggest a resistance to passivity and victimhood and a choice to take part in the inevitability of the moment—even if this agency ultimately extinguishes the subject through which it is performed. Perhaps at this point, then, we might attempt a return to the acts of the 9/11 jumpers, who in the light of the above can be understood as agents of their own demise but in a manner that nonetheless does not compromise their innocence.

The visions of falling bodies from the Twin Towers do not sit well with orthodox imagery surrounding 9/11 because they invoke an uncomfortable ambiguity with respect to their victim status. In their final moments of animation and on the precipice of death, these bodies occupy a middle space between life and death that renders us uncomfortable in our own mortality. But they also mark a cleavage between innocence and guilt: their decision to seize the opportunity to escape confinement within their smoky “tombs” signals a confusing complicity with the terrorists who had perpetrated the attacks. In the terms that Nietzsche (and Spinoza) set out above, the jumpers took an active part in the causes that led to their deaths—causes that originate in a terrorist plot against America. And in the eyes of some, this exposed them as irresolute, and even disloyal, in the face of what later emerged to be a monumental national threat.

In theological terms also—and keeping in mind the religious frame through which many in the United States view global politics—Drew’s photograph, especially, resonates with a near-godly defiance of death: the subject’s fall can be read as the taking of a liberty against God, who claims a privilege with respect to determining who lives or dies. The image may thus evoke to the viewing public humanity’s primal scene and the original sin that it demonstrates: the [End Page 80] taking of the fruit of knowledge that marks a new beginning for humanity. Even the photograph’s title would seem to suggest a proximity to the guilt through which humanity is engendered, by means of its irreparable separation from innocence. Likewise, its subject is separated from the other victims of the attacks who (more appropriately) awaited divine sanction on their lives and have thus continued to be redeemed (drawn back into the community’s fold) by means of the various ceremonies and purification rites since performed at Ground Zero. The resigned posture of the subject of “The Falling Man” surely gives the viewer pause: it looks like a suicide attempt, and the suicide cannot be connected to a redemptive innocence. Yet, according to Nietzsche’s refiguring of agency, the decision to die can be reconciled with innocence: and moreover, innocence comes to be the very condition of an agency—as opposed to (fictitious) free will—an agency that, rather, refuses the moralizing economy of guilt and punishment.

The decision to jump hundreds of meters to one’s death from a burning building might seem a limited, and somewhat undesirable, instance of agency. Clearly, it is a choice these people would not have made on any other morning and in any other circumstance. In the light of Nietzsche’s account of agency as conditioned by context and circumstance, however, it is possible to count the jumpers among the innocents lost to 9/11—and to do so in full recognition of their specific choice to take their lives into their own hands. In the context of Nietzsche’s innocence of becoming, we may understand innocence as a suspension of moral judgment rather than as prior to (and separate from) social existence. Nietzschean innocence emerges from within existence and gives rise to an agency that responds to the chance necessities life occasions. Likewise, the innocence of becoming is not grounded in opposition to guilt but, rather, undercuts the understanding of social relations in terms of guilt and debt. For this reason, Nietzsche’s innocence of becoming furnishes the jumpers’ decision with a sense that would be otherwise unavailable, at least within the narrow parameters according to which moral action and worth are conventionally adjudged.

In the absence of an acknowledgment of the jumpers’ choice (and of the possibility of making a decision to die in one’s own way, where the choice to live is unavailable), we will continue to misunderstand their relationship to these events and thus to limit their political agency. In the context of the 9/11 attacks, the innocent—understood through the vista of Judeo-Christian moral tradition—has become an eternally aggrieved icon of national identity: a perennially threatened and victimized creature of ressentiment who “in order to exist first needs a hostile external world” (GM I:10).32 Although it is important to acknowledge the suffering of those affected, and this may indeed include the nation as a whole, what Nietzsche’s innocence of becoming reveals is that the relationship to one’s suffering is far from straightforward. If we subscribe too readily to the status of innocent-to-be-protected—thus recoiling from suffering and requiring that the [End Page 81] debts of enemies be paid in full—then we also deny the possibility of freedom opened by the affirmation of becoming. And such a predicament is all too well reflected in the erosion of civil liberties that is ongoing since the end of 2001 in the United States and elsewhere.

But were we to allow ourselves to imagine being trapped within those buildings and to contemplate the possibility that one might still make a choice, perhaps identification with the falling man might open the citizen to a new kind of agency in relation to government and nationhood. Remembering that the imagination furnishes us with knowledge of our situation—by means of the traces of interactions impressed upon memory—then we are able to develop a capacity for agency by using our imaginations to understand the decisions of those who have lived through what we have not. Through the rubric offered by the jumper’s predicament, we might then imagine a mode of resistance against attack, wherein strength is reappropriated from the enemy—even in death. Our reinterpretation of the falling man as innocent thus allows for a conception of freedom with respect to the chance events that constrain action. But moreover, it also allows us to develop a resistance to governments’ attempts to render us passive subjects by means of the moral mantle of innocence by which we are both idealized and contained. Such a modest and situated exercise of agency would involve attentiveness to the diffuse and unexpected opportunities that arise in one’s locality, to actively participate in the causes of change. For instance, one could organize a demonstration, write letters to political representatives and newspapers, meet with others who share one’s values, walk to work, or recycle.

Each of these activities, however humble or ambitious, contributes to the determination of life and prevents one being the mere passive object of external causes—disempowered and separated from agency. Such attunement to one’s situation, however, requires above all engaging one’s imagination: the site of ethical understanding—of what empowers the body and what the body should avoid. In this vein, we might reimagine the falling man as a figure of the active resistance that Nietzsche’s innocence of becoming teaches. And we can understand his final act of agency as such, without casting him out of the sanctum of human virtue. With respect to this reinterpretation of innocence, as a sensitivity to the specific opportunities that life grants, I will leave the last word to one who, mourning the loss of his wife, finds it within himself to understand her final decision: “Whether she jumped, I don’t know. I hoped that she had succumbed to the smoke but it doesn’t seem likely. In some ways it might just be the last element of control, that everything around you is happening and you can’t stop it, but this is something you can do. To be out of the smoke and the heat, to be out in the air … it must have felt like flying.”33 [End Page 82]

### 3

#### The President of the United States should issue an Executive Order committing the executive branch to Solicitor General representation and advance consultation with the Office of Legal Counsel over decisions regarding initiating offensive use of military force. The Department of Justice officials involved should counsel against initiating offensive use of military force prior to Congressional authorization. The Executive Order should also require written publication of Office of Legal Counsel opinions.

#### The counterplan restrains the executive through DOJ adjudication—solves case through pre-commitment

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

V. ENABLING EXECUTIVE CONSTITUTIONALISM

The courts indisputably do not and cannot fully assure our enjoyment of our constitutional rights, and it is equally clear that the federal executive has an independent constitutional duty to fulfill the Constitution's promise. Executive constitutionalism seems ripe with promise. Yet, it is striking how limited and court-centered the executive's normative and institutional approaches to constitutional questions remain.

One conceivable way to avoid the pitfalls of court-centric executive lawyering on one hand and constitutional decisions warped by political expedience on the other would be to make the Solicitor General and Office of Legal Counsel - or perhaps the entire Department of Justice - as structurally independent as an independent counsel or independent agency.207 Making the SG and OLC independent in order to insulate them from politics presumably would alleviate the "majoritarian difficulty" resulting from their service to elected clients. Promoting fuller independence in that sense does not, however, appear to be clearly normatively attractive, constitutionally permissible, nor particularly feasible. In all the criticism of our current constitutionalism, there is little call for an SG or OLC that would act, in effect, as a fully insulated and jurisprudentially autonomous constitutional court within the executive branch, operating with even less transparency and accountability than the Supreme Court. Moreover, as a practical matter it would be complex and problematic to increase the independence of the SG and OLC. The federal government faces Article II obstacles to formally insulating executive lawyers from politics and institutional pressures, and the president and his administration likely would be less amenable to guidance from such unaccountable lawyers.208

The challenge, rather, is to draw forth from the executive a constitutional consciousness and practice that helps the government actively to seek to fulfill the commitments of the Constitution and its Bill of Rights, interpreted by the executive as guiding principles for government. Adjustments to executive branch constitutional process and culture should be favored if they encourage the executive to use its experience and capacities to fulfill its distinctive role in effectuating constitutional guarantees. There is transformative potential in measures that break ingrained executive branch habits of looking to the Constitution only as it is mediated through the courts, and of reflexively seeking, where there is no clear doctrinal answer, to minimize constitutional constraint. It is difficult fully to imagine what kinds of changes would best prompt executive lawyers and officials to pick up constitutional analysis where the courts leave off, and to rely on the Constitution as an affirmative, guiding mandate for government action; what follows are not worked-out proposals, but are meant to be merely suggestive.

A. Correcting the Bias Against Constitutional Constraint

As we have seen, the SG's and OLC's default interpretive approach to individual rights and other forms of constitutional constraints on government is to follow what clear judicial precedents there are and, where precedents are not squarely to the contrary, to favor interpretations that minimize constitutional rights or other constitutional obligations on federal actors. Those court-centered and narrowly self-serving executive traditions produce a systematic skew against individual rights.

1. Encourage Express Presidential Articulation of Commitment to Constitutional Rights

To the extent that a president articulates his own rights-protective constitutional vision with any specificity, he ameliorates the tension his constitutional lawyers otherwise face between advancing individual rights and serving their boss's presumed interest in maximum governing flexibility. Case or controversy requirements and restrictions against courts issuing advisory opinions do not, of course, apply to the executive's internal constitutional decisionmaking, and presidents can better serve individual rights to the extent that they expressly stake out their constitutional commitments in general and in advance of any concrete controversy."° When the president takes a stand for advancing abortion rights, property rights, disability rights, "charitable choice," a right to bear arms, or full remediation of race and sex discrimination, he signals to his lawyers that they should, in those areas, set aside their default bias in favor of preserving executive prerogative, even if it requires extra executive effort or restraint to do so.

If presented in a concrete setting with a choice between interpreting and applying the Constitution in fully rights-protective ways or sparing themselves the effort where Supreme Court precedent can be read not to require it, government officials typically default to the latter course without considering whether they might thereby be giving short shrift to a constitutional duty. A president's stated commitment to protection of particular rights, however, flips the default position with respect to those rights, acting as a spur to executive-branch lawyers and other personnel to work to give effect to constitutional rights even where, for a range of institutional reasons, the courts would not. A president is thus uniquely situated to facilitate full executive-branch constitutional compliance by precommitting himself to a rights-protective constitutional vision, and thereby making clear that respect for constitutional rights is part of the executive's interest, not counter to it.

#### Disclosure makes the counterplan credible and checks impulsive decisions

**Marguiles 2012** – Professor of Law, Roger Williams University (5/15, Peter, Pepperdine Law Review, Volume 39, Issue 4, Article 1, “Reforming Lawyers into Irrelevance?: Reconciling Crisis and Constraint at the Office of Legal Counsel”, http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1370&context=plr)

\*NOTE: Marguiles not to be confused with Margolis, who worked in the DOJ after John Yoo

1. Disclosure

Disclosure is an important deliberative safeguard. From an ex ante perspective, disclosure protects against fringe views, since the author of an opinion knows that outside audiences will “kick the tires” and quickly discover and critique views that distort the relevant law.242 Disclosure also helps ex post, by allowing Congress, professional peers, and the public to see distortions as they emerge and campaign to correct them.243 Disclosure also works hand in hand with efforts by the President to secure ratification of an unorthodox view that responds to exigent circumstances; disclosure, at least to Congress, is a necessary incident of ratification.244 Certain opinions may contain sensitive information that makes immediate disclosure inappropriate.245 However, Congress could well require as part of its oversight that OLC engage in a deliberative process, including making express findings that become part of an opinion, when such circumstances prevail.

#### Presumptively binding opinions maintain OLC credibility without hurting flexibility

**Morrison 2011** – Professor of Law, Columbia University (Trevor W., Harvard Law Review, ““Hostilities,” the Office of Legal Counsel, and the Process of Executive Branch Legal Interpretation”, 124 HARV. L. REV.F. 62, http://web.law.columbia.edu/sites/default/files/microsites/constitutional-governance/files/Libya-Hostilities-Office-of-Legal-Counsel.pdf)

Once OLC arrived at its conclusion, it should have been clearly conveyed to the relevant parties, ideally in writing. Reducing an opinion to writing is not always possible when time is short, but where it is feasible it helps clarify the precise terms and bounds of OLC’s position. The recipients of OLC’s opinion (whether written or oral) should have regarded it as the presumptively final word on the “hostilities” question. The President certainly retains the authority to overrule OLC, but the traditions of executive branch legal interpretation do not contemplate routine relitigation before the President. Still, on matters of grave consequence where affected agencies strongly disagree with OLC’s analysis, there is nothing categorically inappropriate in their seeking presidential review. Importantly, any such presidential review should proceed on the understanding that OLC’s analysis should be adhered to in all but the most extreme circumstances. Presidential overruling should be rare because it can carry serious costs. To start, it can undermine OLC’s ability to produce legal opinions consistent with its best view of the law. Agency general counsels and the White House Counsel’s Office may approach legal questions not with the goal of seeking the best view of the law, but with the aim of finding the best, professionally responsible legal defense of their client’s preferred policy position. There is nothing wrong with that. But if the President routinely favors legal views of that sort over OLC’s conclusions, the traditional rationale for having an OLC at all will be undermined. OLC’s work product is significant today in large part because of the time-honored understanding that its conclusions are presumptively binding within the executive branch. Routine presidential overruling would weaken the presumption, which in turn would diminish the significance of OLC’s work and reduce its clients’ incentive to seek its views. To remain relevant, OLC would likely start intentionally tilting its analysis in favor of its clients’ (here, the President’s) preferred policies. Put another way, the strong presumption in favor of the authoritativeness of OLC’s analysis provides OLC with the institutional space and cover to provide answers based on its best view of the law. If the former is weakened, the latter is jeopardized.

### 4

#### Presidential war power expansion is inevitable – legal restrictions are temporary and unenforceable in the long term

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 41-45)

Liberal legalists, following Madison, describe Congress as the deliberative institution par excellence. On this view, Congress is a summation of local majorities, bringing local information and diverse perspectives to national issues. The bicameral structure of Congress aids deliberation; the House shifts rapidly in response to changing conditions and national moods, while the Senate provides a long-term perspective, and cools off overheated or panicky legislation. The Madisonian emphasis on the cooling-off function of the Senate functions as a check on executive claims that an emergency is at hand.

The application of the Madisonian view to crises or emergencies is the default position among legal academics. On this view, even in crisis situations the executive may act only on the basis of clear congressional authorization that follows public deliberation, and the executive’s actions must presumptively be subject to judicial review. A proviso to the Madisonian view is that if immediate action is literally necessary, the executive may act, but only until Congress can convene to deliberate; if the executive’s interim actions were illegal, it must seek ratification from Congress and the public after the fact.53

In the Schmittian view, by contrast, the Madisonian vision of Congress seems hopelessly optimistic. Even in normal times, Schmitt believed, the deliberative aspirations of classical parliamentary democracy have become a transparent sham under modern conditions of party discipline, interest-group conflict, and a rapidly changing economic and technical environment. Rather than deliberate, legislators bargain, largely along partisan lines. Discussion on the legislative floor, if it even occurs, is carefully orchestrated posturing for public consumption, while the real work goes on behind closed doors, in party caucuses.

How does this picture relate to Schmitt’s point that legislatures invariably “come too late” to a crisis? Crises expose legislative debility to view, but do not create it. Indeed, legislative failure during crises is in part a consequence of legislative failure during the normal times that precede crises. The basic dilemma for legislators, is that before a crisis, they lack the motivation and information to provide for it in advance, while after the crisis has begun, they lack the capacity to manage it themselves. We will describe each horn of the dilemma in detail.

BEFORE THE CRISIS

In the precrisis state, legislatures mired in partisan conflict about ordinary politics lack the motivation to address long-term problems. Legislators at this point act from behind a veil of uncertainty about the future, and may thus prove relatively impartial; at least high uncertainty obscures the distributive effects of legislation for the future, and thus reduces partisan opposition. However, by virtue of these very facts, there is no strong partisan support for legislation, and no bloc of legislators has powerful incentives to push legislation onto the crowded agenda. The very impartiality that makes ex ante legislation relatively attractive, from a Madisonian perspective, also reduces the motivation to enact it.

This point is related to, but distinct from, Schmitt’s more famous claim about the “norm” and the “exception.” In a modern rendition, that claim holds that ex ante legal rules cannot regulate crises in advance, because unanticipated events will invariably arise. Legislatures therefore either decline to regulate in advance or enact emergency statutes with vague standards that defy judicial enforcement ex post. Here, however, a different point is at issue: even if ex ante legal rules could perfectly anticipate all future events, legislatures will often lack the incentive to adopt them in advance.

Occasionally, when a high-water mark of public outrage against the executive is reached, legislatures do adopt framework statutes that attempt to regulate executive behavior ex ante; several statutes of this kind were adopted after Watergate. The problem is that new presidents arrive, the political coalitions that produced the framework statute come apart as new issues emerge, and public outrage against executive abuses cools. Congress soon relapses into passivity and cannot sustain the will to enforce, ex post, the rules set out in the framework statutes. As we will discuss more fully in chapter 3, the post-Watergate framework statutes have thus, for the most part, proven to impose little constraint on executive action in crisis, in large part because Congress lacks the motivation to enforce them.

DURING THE CRISIS

The other horn of the dilemma arises after the crisis has begun to unfold. Because of their numerous memberships, elaborate procedures, and internal structures, such as bicameralism and the committee system, and internal problems of collective action, legislatures can rarely act swiftly and decisively as events unfold. The very complexity and diversity that make legislatures the best deliberators, from a Madisonian perspective, also raise the opportunity costs of deliberation during crises and disable legislatures from decisively managing rapidly changing conditions. After 9/11, everyone realized that another attack might be imminent; only an immediate, massive response could forestall it. In September 2008, the financial markets needed immediate reassurance: only credible announcements from government agencies that they would provide massive liquidity could supply such reassurance. Indeed, though commentators unanimously urged Congress to take its time, within weeks the Bush administration was being criticized for not acting quickly enough. In such circumstances, legislatures are constrained to a reactive role, at most modifying the executive’s response at the margins, but not themselves making basic policy choices.

Liberal legalists sometimes urge that the executive, too, is large and unwieldy; we pointed out in the introduction that the scale of executive institutions dwarfs that of legislative and judicial institutions. On this view, the executive has no systematic advantages in speed and decisiveness. Yet this is fatally noncomparative. The executive is internally complex, but it is structured in a far more hierarchical fashion than is Congress, especially the Senate, where standard procedure requires the unanimous consent of a hundred barons, each of whom must be cosseted and appeased. In all the main cases we consider here, the executive proved capable of acting with dispatch and power, while Congress fretted, fumed, and delayed.

The main implication of this contrast is that crises in the administrative state tend to follow a similar pattern. In the first stage, there is an unanticipated event requiring immediate action. Executive and administrative officials will necessarily take responsibility for the front-line response; typically, when asked to cite their legal authority for doing so, they will either resort to vague claims of inherent power or will offer creative readings of old statutes. Because legislatures come too late to the scene, old statutes enacted in different circumstances, and for different reasons, are typically all that administrators have to work with in the initial stages of a crisis. “Over time, the size and complexity of the economy will outgrow the sophistication of static financial safety buffers”54—a comment that can also be made about static security safety buffers, which the advance of weapons technology renders obsolete. In this sense, administrators also “come too late”—they are forced to “base decisions about the complex, ever-changing dynamics of contemporary economic [and, we add, security] conditions on legal relics from an oftentimes distant past.”55

Thus Franklin Roosevelt regulated banks, in 1933, by offering a creative reading of the Trading with the Enemy Act of 1917, a statute that needless to say was enacted with different problems in mind. Likewise, when in 2008 it became apparent on short notice that the insurance giant AIG had to be bailed out, lest a systemwide meltdown occur, the Treasury and Federal Reserve had to proceed through a strained reading of a hoary 1932 statute. While the statute authorized “loans,” it did not authorize government to purchase private firms; administrators structured a transaction that in effect accomplished a purchase in the form of a loan. Ad hoc “regulation by deal,”56 especially in the first phase of the financial crisis, was accomplished under the vague authority of old statutes. The pattern holds for security matters as well as economic issues, and for issues at the intersection of the two domains. Thus after 9/11, the Bush administration’s attempts to choke off Al Qaeda’s funding initially proceeded in part under provisions of the International Emergency Economic Powers Act, a 1977 statute whose purpose, when enacted, was actually to restrict the president’s power to seize property in times of crisis.57

#### But even temporary restraints are bad – they undermine speed and flexibility in a crisis

**Posner and Vermeule, 7** – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian, Terror in the Balance: Security, Liberty, and the Courts p. 170)

A requirement of ex post statutory authorization thus seems more plausible than the ex ante statutory framework approach, but it does not seem better than the judicial deference approach. As we discussed in chapter 1, the involvement of Congress produces costs as well as benefits. On the cost side, congressional deliberation is slow and unsuited for emergencies. Congress has trouble keeping secrets and is always vulnerable to obstruction at the behest of members of Congress who place the interests of their constituents ahead of those of the nation as a whole. It is implicitly for these reasons that Ackerman gives the president the freedom to act unilaterally at the start of the emergency. But there is no reason to think that the problem of congressional obstruction and inefficiency will decline over time.

What are the benefits of congressional involvement? One possible benefit is that Congress has technical information about the advantages and disadvantages of various security measures and, relying on this information, will be able to block poorly considered security measures. But it is doubtful that Congress’s information is better than the executive branch’s, and in any event Congress can share this information with the executive branch if necessary. The modern national security system deprives Congress of useful information about threats to national security, and Congress by necessity must play a passive role.

The main possible benefit from congressional involvement is that Congress can prevent the executive from using the emergency as an opportunity to engage in self-aggrandizement, to obtain new powers, and to entrench them so that the executive will be more powerful even after the emergency ends. As we argued in chapter 1, however, it is not at all clear that executive aggrandizement during emergencies is a problem, and even if it is, congressional involvement might make things worse, not better. The value of congressional authorization is ambiguous as a theoretical matter. It slows down executive action, which is costly during emergencies, but may (or may not) block efforts by the executive to aggrandize its power. We also argued in chapter 1 that the historical evidence suggests that Congress is too weak an institution, during emergencies, to provide the asserted benefits. Congress defers to the executive during emergencies because it agrees that the executive alone has the information and the means necessary to respond to imminent threats. The added risk of executive abuse is a cost that Congress and voters have been willing to bear.

#### Crises are inevitable and unpredictable – speed and flexibility in crisis response are vital to preserving US hegemony

**Berkowitz, 8** - research fellow at the Hoover Institution at Stanford University and a senior analyst at RAND. He is currently a consultant to the Defense Department and the intelligence community (Bruce, STRATEGIC ADVANTAGE: CHALLENGERS, COMPETITORS, AND THREATS TO AMERICA’S FUTURE, p. 1-4)

THIS BOOK is intended to help readers better understand the national security issues facing the United States today and offer the general outline of a strategy for dealing with them. National security policy—both making it and debating it — is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice. Yesterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers. Threats are also more likely to be intertwined—proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers.

Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat — the Soviet Union — was brittle, most of the potential adversaries and challengers America now faces are resilient. In at least one dimension where the Soviets were weak (economic efficiency, public morale, or leadership), the new threats are strong. They are going to be with us for a long time.

As a result, we need to reconsider how we think about national security. The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events.1 When you hold the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not. As national goals go, “keeping the strategic advantage” may not have the idealistic ring of “making the world safe for democracy” and does not sound as decisively macho as “maintaining American hegemony.” But keeping the strategic advantage is critical, because it is essential for just about everything else America hopes to achieve — promoting freedom, protecting the homeland, defending its values, preserving peace, and so on.

The Changing Threat

If one needs proof of this new, dynamic environment, consider the recent record. A search of the media during the past fifteen years suggests that there were at least a dozen or so events that were considered at one time or another the most pressing national security problem facing the United States — and thus the organizing concept for U.S. national security. What is most interesting is how varied and different the issues were, and how many different sets of players they involved — and how each was replaced in turn by a different issue and a cast of characters that seemed, at least for the moment, even more pressing. They included, roughly in chronological order,

• regional conflicts — like Desert Storm — involving the threat of war between conventional armies;

• stabilizing “failed states” like Somalia, where government broke down in toto;

• staying economically competitive with Japan;

• integrating Russia into the international community after the fall of communism and controlling the nuclear weapons it inherited from the Soviet Union;

• dealing with “rogue states,” unruly nations like North Korea that engage in trafficking and proliferation as a matter of national policy;

• combating international crime, like the scandal involving the Bank of Credit and Commerce International, or imports of illegal drugs;

• strengthening international institutions for trade as countries in Asia, Eastern Europe, and Latin America adopted market economies;

• responding to ethnic conflicts and civil wars triggered by the reemergence of culture as a political force in the “clash of civilizations”;

• providing relief to millions of people affected by natural catastrophes like earthquakes, tsunamis, typhoons, droughts, and the spread of HIV/AIDS and malaria;

• combating terrorism driven by sectarian or religious extremism;

• grassroots activism on a global scale, ranging from the campaign to ban land mines to antiglobalization hoodlums and environmentalist crazies;

• border security and illegal immigration;

• the worldwide ripple effects of currency fluctuations and the collapse of confidence in complex financial securities; and

• for at least one fleeting moment, the safety of toys imported from China.

There is some overlap in this list, and one might want to group some of the events differently or add others. The important point, however, is that when you look at these problems and how they evolved during the past fifteen years, you do not see a single lesson or organizing principle on which to base U.S. strategy.

Another way to see the dynamic nature of today's national security challenges is to consider the annual threat briefing the U.S. intelligence community has given Congress during the past decade. These briefings are essentially a snapshot of what U.S. officials worry most about. If one

briefing is a snapshot, then several put together back to back provide a movie, showing how views have evolved.2

Figure 1 summarizes these assessments for every other year between 1996 and 2006. It shows when a particular threat first appeared, its rise and fall in the rankings, and in some cases how it fell off the chart completely. So, in 1995, when the public briefing first became a regular affair, the threat at the very top of the list was North Korea. This likely reflected the crisis that had occurred the preceding year, when Pyongyang seemed determined to develop nuclear weapons, Bill Clinton's administration seemed ready to use military action to prevent this, and the affair was defused by an agreement brokered by Jimmy Carter.

Russia and China ranked high as threats in the early years, but by the end of the decade they sometimes did not even make the list. Proliferation has always been high in the listings, although the particular countries of greatest concern have varied. Terrorism made its first appearance in 1998, rose to first place after the September 11, 2001, terrorist attacks, and remains there today. The Balkans appeared and disappeared in the middle to late 1990s. A few of the entries today seem quaint and overstated. Catastrophic threats to information systems like an “electronic Pearl Harbor” and the “Y2K problem” entered the list in 1998 but disappeared after 2001. (Apparently, after people saw an airliner crash into a Manhattan skyscraper, the possible loss of their Quicken files seemed a lot less urgent.) Iraq first appeared in the briefing as a regional threat in 1997 and was still high on the list a decade later—though, of course, the Iraqi problem in the early years (suspected weapons of mass destruction) was very different from the later one (an insurgency and internationalized civil war).

All this is why the United States needs agility. It not only must be able to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources.

#### Flexible executive war powers are vital to preventing nuclear attack against the US

**Royal 11** \*John Paul Royal was the presidential fellow at the Institute of World Politics from 2010-11 [http://www.thepresidency.org/storage/Fellows2011/Royal-\_Final\_Paper.pdf, “War Powers and the Age of Terrorism”]

The international system itself and national security challenges to the United States in particular, underwent rapid and significant change in the first decade of the twenty-first century. War can no longer be thought about strictly in the terms of the system and tradition created by the Treaty of Westphalia over three and a half centuries ago. Non-state actors now possess a level of destructiveness formerly enjoyed only by nation states. Global terrorism, coupled with the threat of weapons of mass destruction developed organically or obtained from rogue regimes, presents new challenges to U.S. national security and place innovative demands on the Constitution’s system of making war.

In the past, as summarized in the 9/11 Commission Report, threats emerged due to hostile actions taken by enemy states and their ability to muster large enough forces to wage war: “Threats emerged slowly, often visibly, as weapons were forged, armies conscripted, and units trained and moved into place. Because large states were more powerful, they also had more to lose. They could be deterred" (National Commission 2004, 362). This mindset assumed that peace was the default state for American national security.

Today however, we know that threats can emerge quickly. Terrorist organizations half-way around the world are able to wield weapons of unparalleled destructive power. These attacks are more difficult to detect and deter due to their unconventional and asymmetrical nature. In light of these new asymmetric threats and the resultant changes to the international system, peace can no longer be considered the default state of American national security.

Many have argued that the Constitution permits the president to use unilateral action only in response to an imminent direct attack on the United States. In the emerging security environment described above, **pre-emptive action taken by the executive branch may be needed more often** than when nation-states were the principal threat to American national interests. Here again, the 9/11 Commission Report is instructive as it considers the possibility of pre-emptive force utilized over large geographic areas due to the diffuse nature of terrorist networks:

In this sense, 9/11 has taught us that terrorism against American interests “over there” should be regarded just as we regard terrorism against America “over here.” In this sense, the American homeland is the planet (National Commission 2004, 362).

Furthermore, the report explicitly describes the global nature of the threat and the global mission that must take place to address it. Its first strategic policy recommendation against terrorism states that the:

U.S. government must identify and prioritize actual or potential terrorist sanctuaries. For each, it should have a realistic strategy to keep possible terrorists insecure and on the run, using all elements of national power (National Commission 2004, 367).

Thus, fighting continues against terrorists in Afghanistan, Yemen, Iraq, Pakistan, the Philippines, and beyond, as we approach the tenth anniversary of the September 11, 2001 attacks.

Proliferation of weapons of mass destruction (WMD), especially nuclear weapons, into the hands of these terrorists is the most dangerous threat to the United States. We know from the 9/11 Commission Report that Al Qaeda has attempted to make and obtain nuclear weapons for at least the past fifteen years. Al Qaeda considers the acquisition of weapons of mass destruction to be a religious obligation while “more than two dozen other terrorist groups are pursing CBRN [chemical, biological, radiological, and nuclear] materials” (National Commission 2004, 397). Considering these statements, rogue regimes that are openly hostile to the United States and have or seek to develop nuclear weapons capability such as North Korea and Iran, or extremely unstable nuclear countries such as Pakistan, pose a special threat to American national security interests. These nations were not necessarily a direct threat to the United States in the past. Now, however, due to proliferation of nuclear weapons and missile technology, they can inflict damage at considerably higher levels and magnitudes than in the past. In addition, these regimes may pursue proliferation of nuclear weapons and missile technology to other nations and to allied terrorist organizations.

The United States must pursue condign punishment and appropriate, rapid action against hostile terrorist organizations, rogue nation states, and nuclear weapons proliferation threats in order to protect American interests both at home and abroad. Combating these threats are the “top national security priority for the United States...with the full support of Congress, both major political parties, the media, and the American people” (National Commission 2004, 361). Operations may take the form of pre-emptive and sustained action against those who have expressed hostility or declared war on the United States. Only the executive branch can effectively execute this mission, authorized by the 2001 AUMF. If the national consensus or the nature of the threat changes, Congress possesses the intrinsic power to rescind and limit these powers.

CONCLUSION

Alexis de Tocqueville, that prescient and inimitable observer of America, noted in his classic work Democracy in America that circumstances eventually would cause executive power to grow over time as the United States expanded in power and prestige. Observing the diminutive size and strength of the American armed forces of the period, he wrote that the “President of the United States is in the possession of almost royal prerogatives, which he has no opportunity of exercising; and those privileges which he can at present use are very circumscribed: the laws allow him to possess a degree of influence which circumstances do not permit him to employ” (de Tocqueville 1839, 119). Indeed at the time, the United States had little need for strong defenses since the country was isolated from the great powers of the day by two vast oceans; had few threats from its direct neighbors; and did not have major conflicting interests with other nations around the world.

But Tocqueville stated that as the United States grew and threats to the nation increased, so too would its dependence on executive power. In foreign affairs and national security, the executive power of a nation must “exert its skill and its vigor.” As Tocqueville predicted:

If the existence of the Union were perpetually threatened, and if its chief interests were in daily connection with those of other powerful nations, the executive government would assume an increased importance in proportion to the measures expected of it, and those which it would carry into effect (de Tocqueville 1839, 119).

And so it has come to pass. Certainly, the Executive has grown but so have the intelligence services, armed forces, and foreign policy apparatus of the United States. Congress created, funded, trained, and organized an international U.S. national security presence throughout the world capable of quickly deployable global missions executed by the President. In an increasingly dangerous and globalized world filled with “perpetual threats,” it was prudent and judicious of the Founders to establish a flexible and fluid constitutional order to protect national interests during times of uncertainty, crisis, and war.

#### Extinction

Ayson 10 [Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington (Robert, July. “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects.” Studies in Conflict & Terrorism, Vol. 33, Issue 7. InformaWorld.)]

But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents’ … long-standing interest in all things nuclear.”42 American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, bothRussia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability?

### warfighting

#### Heg – No impact

**Goldstein 2011**, Professor IR at American University [Joshua S. Goldstein, Professor emeritus of international relations at American University, “Thing Again: War,” Sept/Oct 2011,

http://www.foreignpolicy.com/articles/2011/08/15/think\_again\_war?print=yes&hidecomments=yes&page=full]

Nor do shifts in the global balance of power doom us to a future of perpetual war. While some political scientists argue that an increasingly multipolar world is an increasingly volatile one -- that peace is best assured by the predominance of a single hegemonic power, namely the United States -- **recent geopolitical history** suggests otherwise. Relative U.S. power and worldwide conflict have **waned in tandem** over the past decade. The exceptions to the trend, Iraq and Afghanistan, have been lopsided wars waged by the hegemon, not challenges by up-and-coming new powers. The best precedent for today's emerging world order may be the 19th-century Concert of Europe, a collaboration of great powers that largely maintained the peace for a century until its breakdown and the bloodbath of World War I.

#### Existential threats – don’t happen

Keith A. **Grant et al**, 200**9**; Professors of Political Science at the University of Arizona, Keith A. Grant, Thomas Volgy, Elizabeth Fausett, and Stuart Rodgers; Mapping the New World Order Chapter 3 Accounting for the New World Order of FIGO Architecture and Its Effectiveness p 57-58

An alternative to the "no fundamental change" explanation is provided by the "constitutionalist structure" argument, **best represented by Ikenberry's** (2001) **work**. Briefly, this approach suggests that at the end of World War II, the US - as the lead global power- built a series of institutions that would embed American policy preferences within a global order along with "constitutional" mechanisms allowing states joining these organizations to limit American power by participating in the decision-making process involving collaborative and cooperative practices. The US benefited from building these institutions with agendas consistent with its objectives. Other states benefited by getting the US to act (albeit not always) through these arrangements and thus partially checking American power. To the extent that these organizations were not destroyed at the end of the Cold War (whose end made mostly the USSR-based FIGOs such as the Warsaw Pact and COMECON technically irrelevant), the constitutional view suggests that Cold War institutions do not need to be replaced (although they can be incrementally modified), and predicts no fundamental transformation to organizational infrastructure. Given the "success" of these institutions and the potential costs and risks involved in trying to build new ones, this perspective questions the extent to which American policy makers would actually hold strong preferences for new world order construction, opting ultimately for incremental modifications to existing institutional mechanisms. Implicitly, the constitutionalist argument suggests that incremental adjustments to the constellation of cooperating institutions should be sufficient to address post-Cold War issues as long as the US remains dominant and its institutions continue into the new era. In fact, several salient, incremental changes have occurred since the end of the Cold War. The North Atlantic Treaty Organization (NATO) was expanded, both in membership and mission (e.g., out-of-theater operations). During the early phase of transition out of the Cold War, efforts were made to reform the United Nations (UN) and to have it play a larger role in "peace-making" activities. General Agreement on Tariffs and Trade (GATT) was eventually transformed into the World Trade Organization (WTO). Meanwhile regional arrangements were also reformulated. The European Community evolved into the European Union. Informal trade relationships in North America were broadened and formalized through North American Free Trade Agreement (NAFTA). Multilateral institutional agreements were reworked in Africa and in South America Mercosur was endowed with a broader mandate than just trade issues. Yet, we are skeptical of this "constitutionalist with reform" explanation. The post-Cold War world is substantially different from its predecessor. Incremental modifications have failed to address a large and diverse set of ongoing and emerging global and regional policy issues, and in fact (even before the second war in Iraq) the US had turned to more unilateral and bilateral initiatives, rather than relying on existing multilateral institutions. It has certainly fought the creation of new multilateral initiatives, including the Kyoto Protocol, the International Criminal Court (ICC), and scores of other initiatives proposed by other states. Even in the most pressing security arena -the fight against international terrorism- there has been no attempt by the US to create new formal multilateral organizations of collaboration, relying instead on unilateral, bilateral, and informal/ad hoc multilateral efforts to complement existing organizations that may be ill suited to the task. 1

### Intervention

#### No enforcement

**Crook 12** [Fall, 2012, Case Western Reserve Journal of International Law, 45 Case W. Res. J. Int'l L., “Presidential Powers and Foreign Affairs: The War Powers Resolution at 40: Still Controversial: The War Powers Resolution--A Dim and Fading Legacy,” John R. Crook\*, arbitrator in NAFTA and other investment disputes and served on the Eritrea-Ethiopia Claims Commission, Vice-President of the American Society of International Law and former General Counsel of the Multinational Force and Observers, the peacekeeping force in the Sinai, teaches international arbitration at George Washington University Law School]

The War Powers Resolution is the product of a time when Congress was riding particularly high and the presidency was particularly weak. n6 That unusual array of circumstances has not been repeated. In the ensuing years, no administration has accepted the constitutionality of the Resolution's key provisions. n7 At the other end of Pennsylvania Avenue, Congress has not mustered the collective will to insist on full and timely compliance with the Resolution in a wide range of cases. n8 From time to time, the Resolution has offered both Republican and Democratic presidents' political opponents an avenue to attack their compliance with particular policies or actions. Nevertheless, Congress has not shown itself willing or able to perform the role it set out for itself in Section 5 of the Resolution. n9 [\*160]

#### Accidents – don’t happen

**Slocombe 9** (Walter, senior advisor for the Coalition Provisional Authority in Baghdad and a former Under Secretary of Defense for Policy, he is a four-time recipient of an award for Distinguished Public Service and a member of the Council on Foreign Relations, “De-Alerting: Diagnoses, Prescriptions, and Side-Effects,” Presented at the seminar on Re-framing De-Alert: Decreasing the Operational Readiness of Nuclear Weapons Systems in the US-Russia Context in Yverdon, Switzerland, June 21-23)

Let’s start with Technical Failure – the focus of a great deal of the advocacy, or at least of stress on past incidents of failures of safety and control mechanisms.4 Much of the “de-alerting” literature points to a succession of failures to follow proper procedures and draw from that history the inference that a relatively simple procedural failure could produce a nuclear detonation. The argument is essentially that nuclear weapons systems are sufficiently susceptible of pure accident (including human error or failure at operational/field level) that it is essential to take measures that have the effect of making it necessary to undertake a prolonged reconfiguration of the elements of the nuclear weapons force for a launch or detonation to be physically possible. Specific measures said to serve this objective include separating the weapons from their launchers, burying silo doors, removal of fuzing or launching mechanisms, deliberate avoidance of maintenance measures need to permit rapid firing, and the like. . My view is that this line of action is unnecessary in its own terms and highly problematic from the point of view of other aspects of the problem and that there is a far better option that is largely already in place, at least in the US force – the requirement of external information – a code not held by the operators -- to arm the weapons Advocates of other, more “physical,” measures often describe the current arrangement as nuclear weapons being on a “hair trigger.” That is – at least with respect to US weapons – a highly misleading characterization. The “hair trigger” figure of speech confuses “alert” status – readiness to act quickly on orders -- with susceptibility to inadvertent action. The “hair trigger” image implies that a minor mistake – akin to jostling a gun – will fire the weapon. The US StratCom commander had a more accurate metaphor when he recently said that US nuclear weapons are less a pistol with a hair trigger than like a pistol in a holster with the safety turned on – and he might have added that in the case of nuclear weapons the “safety” is locked in place by a combination lock that can only be opened and firing made possible if the soldier carrying the pistol receives a message from his chain of command giving him the combination. Whatever other problems the current nuclear posture of the US nuclear force may present, it cannot reasonably be said to be on a “hair trigger.” Since the 1960s the US has taken a series of measures to insure that US nuclear weapons cannot be detonated without the receipt of both external information and properly authenticated authorization to use that information. These devices – generically Permissive Action Links or “PALs” – are in effect combination locks that keep the weapons locked and incapable of detonation unless and until the weapons’ firing mechanisms have been unlocked following receipt of a series of numbers communicated to the operators from higher authority. Equally important in the context of a military organization, launch of nuclear weapons (including insertion of the combinations) is permitted only where properly authorized by an authenticated order. This combination of reliance on discipline and procedure and on receipt of an unlocking code not held by the military personnel in charge of the launch operation is designed to insure that the system is “fail safe,” i.e., that whatever mistakes occur, the result will not be a nuclear explosion. Moreover, in recent years, both the US and Russia, as well as Britain and China, have modified their procedures so that **even if** a nuclear-armed missile were **launched**, it would go not to a “real” target in another country but – at least in the US case - to empty ocean. In addition to the basic advantage of insuring against a nuclear detonation in a populated area, the fact that a missile launched in error would be on flight path that diverged from a plausible attacking trajectory should be detectable by either the US or the Russian warning systems, reducing the possibility of the accident being perceived as a deliberate attack. De-targeting, therefore, provides a significant protection against technical error. These arrangements – PALs and their equivalents coupled with continued observance of the agreement made in the mid-90s on “de-targeting” – do not eliminate the possibility of technical or operator-level failures, but they come very close to providing absolute assurance that such errors cannot lead to a nuclear explosion or be interpreted as the start of a deliberate nuclear attack.6 The advantage of such requirements for external information to activate weapons is of course that the weapons remain available for authorized use but not susceptible of appropriation or mistaken use.

#### Interventions – don’t happen

**Mandelbaum 11** (Michael Mandelbaum, A. Herter Professor of American Foreign Policy, the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University, Washington DC; and Director, Project on East-West Relations, Council on Foreign Relations, “CFR 90th Anniversary Series on Renewing America: American Power and Profligacy,” Jan 2011) [http://www.cfr.org/publication/23828/cfr\_90th\_anniversary\_series\_on\_renewing\_america.html?cid=rss-fullfeed-cfr\_90th\_anniversary\_series\_on-011811&utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed:+cfr\_main+(CFR.org+-+Main+Site+Feed)](http://www.cfr.org/publication/23828/cfr_90th_anniversary_series_on_renewing_america.html?cid=rss-fullfeed-cfr_90th_anniversary_series_on-011811&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+cfr_main+%28CFR.org+-+Main+Site+Feed%29)

MANDELBAUM:  I think it is, Richard.  And I think that this period really goes back two decades.  I think the wars or the interventions in Somalia, in Bosnia, in Kosovo, in Haiti belong with the interventions in Afghanistan and Iraq, although they were undertaken by different administrations for different reasons, and had different costs.  But all of them ended up in the protracted, unexpected, unwanted and expensive task of nation building. Nation building has never been popular.  The country has never liked it.  It likes it even less now.  And I think we're not going to do it again.  We're not going to do it because there won't be enough money.  We're not going to do it because there will be other demands on the public purse.  We won't do it because we'll be busy enough doing the things that I think ought to be done in foreign policy.  And we won't do it because it will be clear to politicians that the range of legitimate choices that they have in foreign policy will have narrowed and will exclude interventions of that kind.  So I believe and I say in the book that the last -- the first two post-Cold War decades can be seen as a single unit.  And that unit has come to an end.

#### Food shortages – don’t happen

Michaels 11 Patrick Michaels is senior fellow in environmental studies at the CATO Institute. "Global Warming and Global Food Security," June 30, CATO, http://www.cato.org/publications/commentary/global-warming-global-food-security

While doing my dissertation I learned a few things about world crops. Serial adoption of new technologies produces a nearly constant increase in yields. Greater fertilizer application, improved response to fertilizer, better tractor technology, better tillage practices, old-fashioned genetic selection, and new-fashioned genetic engineering all conspire to raise yields, year after year.¶ Weather and climate have something to do with yields, too. Seasonal rainfall can vary a lot from year-to-year. That's "weather." If dry years become dry decades (that's "climate") farmers will switch from corn to grain sorghum, or, where possible, wheat. Breeders and scientists will continue to develop more water-efficient plants and agricultural technologies, such as no-till production.¶ Adaptation even applies to the home garden. The tomato variety "heat wave" sets fruit at higher temperatures than traditional cultivars.¶ However, Gillis claims that "[t]he rapid growth in farm output that defined the late 20th century has slowed" because of global warming.¶ His own figures show this is wrong. The increasing trend in world crop yields from 1960 to 1980 is exactly the same as from 1980 to 2010. And per capita grain production is rising, not falling.

#### The aff merely edits forty years of failure

**Crook 12** [Fall, 2012, Case Western Reserve Journal of International Law, 45 Case W. Res. J. Int'l L., “Presidential Powers and Foreign Affairs: The War Powers Resolution at 40: Still Controversial: The War Powers Resolution--A Dim and Fading Legacy,” John R. Crook\*, arbitrator in NAFTA and other investment disputes and served on the Eritrea-Ethiopia Claims Commission, Vice-President of the American Society of International Law and former General Counsel of the Multinational Force and Observers, the peacekeeping force in the Sinai, teaches international arbitration at George Washington University Law School]

II. The Resolution in Practice For the details of the often intricate interplay between Congress and various presidents under the Resolution, the best starting point is the detailed studies of past practice prepared by the Congressional Research Service of the Library of Congress. n10 In the forty years since the Resolution was adopted over President Nixon's veto, there have been at least 136 reports filed "consistent with" the Resolution. n11 Only one, President Ford's report on the deployment of U.S. forces to recover the SS Mayaguez twelve days after the fall of Saigon in 1975, specifically stated that forces had been introduced into hostilities or imminent hostilities. n12 While debates regarding compliance (or non-compliance) with the Resolution have arisen from time to time, the Resolution has not materially affected successive presidents' use-of-force decisions. I know of no case where a president, Republican or Democratic, refrained from utilizing U.S. military force solely because of the Resolution. In the forty years since its enactment, presidents of both parties have utilized U.S. forces in response to a wide array of challenges. I believe that, at most, the Resolution has affected these actions at the margins.

### SOP

#### Korea – no war

**Zhebin 11**—Ph.D. Political Science, head of the Korean Studies Center, RAS IFES (Alexander, Far Eastern Affairs, No. 1, 2011, “The Korean Peninsula: Approaching The Danger Line,” http://www.eastviewpress.com/Files/FEA\_FROM%20THE%20CURRENT%20ISSUE\_No.%201\_2011\_small.pdf, RBatra)

The myth of the alleged aggressiveness inherent in the DPRK and its readiness to attack its southern neighbor at any moment prevents to reach this. Meanwhile, serious experts who are well aware of the real correlation of forces on the peninsula and around it agree that the DPRK would hardly dare undertake large-scale offensive operations. First, in contrast to the Korean War, there are **no big powers** at present which would support such action. Russia and China have always come out for resolving all problems on the peninsula by peaceful diplomatic means. At the same time the United States officially declares that in case of aggression it will help its ally. The international situation of the DPRK is complicated by the sanctions imposed on it by the UN Security Council. Their broad interpretation by the United States and its allies and the introduction of additional unilateral sanctions by them have resulted in that even legal foreign trade and foreign economic activity of North Korea meets with serious obstacles. Secondly, western experts and South Korean military officers themselves know full well that South Korea surpasses the DPRK in conventional arms and the armed forces. It should also be taken into account that North Korea has not enough fuel, spare parts and other strategic reserves necessary for large-scale offensive operations. And last but not least: the DPRK has been in a quite complex socio-economic situation for the past 15 years and is faced with an acute food problem. Admittedly, **the** **North Korean leadership is well aware of all these factors**, takes them into account, and will not be the first to begin such action. As to South Korea, it can also hardly begin a full-scale war due to other reasons. First, most **South Koreans do not want to put to risk their economic achievements**, which have been gained at a high price, and their standard of living, which is one of Asia’s highest. Secondly, South Koreans cannot start any major conflict, all the more so, invasion of the North without Washington’s permission. From the time of the Korean War there has been an agreement between the United States and the Republic of Korea according to which the South Korean armed forces, in an event of a large-scale conflict on the peninsula, are placed under the supervision of the American general commanding the U.S. military contingent deployed in the Republic of Korea. Moreover, he automatically receives this right when the third degree of battle readiness is announced.

#### SoP useless – pres powers too big

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 17-18)

We begin with the constitutional framework, and with the official constitutional theory of liberal legalism. In this theory lawmaking powers are separated among three different branches-legislature, executive, and judiciary-in order to promote an institutional division of labor and to protect liberty The liberty-protecting function of the separation of powers, Madison suggested, is that the combination of powers in one institution would be "the very definition of tyranny". Mutual checking and monitoring by the branches of government would prevent concentration of power suppress the evils of factionalism, and conduce to better policymaking overall.

This theory has collapsed. Its fit with reality is no longer merely imperfect, in the way that all regulative ideals are imperfect; rather it does not even approximate the political terrain it purports to cover. We will proceed to explain this conclusion in three steps. First, we examine the checking function of the separation of powers. Here Madison made two crucial mistakes: first in assuming that the individual ambitions of government officials would cause them to support the power of the institutions they occupy and second in assuming that some invisible-hand mechanism would cause the mutual contest among institutions to produce a socially beneficial system of mutual checks. Nothing in the actual separation-of-powers system, however, guarantees or even generally tends to produce socially beneficial results. In particular, we show that the system will predictably lead to suboptimal checking-to a political regime in which some institutions (such as legislature and judiciary) do too little to check the swelling power of others (such as the executive).

Second, we examine the monitoring function of the separation of powers, focusing particularly on legislative and judicial monitoring of the executive. The vastly increased complexity and scale of the executive, since Madison's day ensures that the monitoring function is largely obsolete. In the administrative state, the scope of the executive's responsibility is vast, and legislative and judicial institutions lack the capacity to monitor any important fraction of what the executive does, even where opposing political parties occupy the executive and other branches, and even with the help of "fire alarms"-alerts from interest groups with stakes in particular issues.2 In many of the most important domains, and those most difficult to monitor-those involving intelligence, foreign affairs and national security or highly complex questions of economic policy-legislators and the courts are overmatched, for enduring structural reasons that prevail no matter what the contingent political constellation. We thus reject any strong version of the "congressional dominance" thesis-the idea that Congress, sometimes enlisting the aid of interest groups and the courts, exerts implicit but effective control over executive and administrative behavior.

#### Tyranny is absurd to the point of disingenuous—de facto constraints are easily sufficient

**Posner and Vermeule, 9** - \* University of Chicago – Law School AND \*\*Harvard University – Harvard Law School (Eric and Adrian, “Tyrannophobia” 9/15, SSRN)

Demography and the Administrative State. The best explanation for the lack of dictatorship in America – at least in America today, as opposed to the 19th century – is neither psychological nor institutional, but demographic. Part III examined the strong comparative evidence that wealth is the best safeguard for democracy. Equality, homogeneity, and education matter as well. How does the United States, circa 2009, fare on these dimensions? Ethnic, religious and linguistic homogeneity have declined, but because of its high performance on other margins, there is little cause for concern about American democracy. The United States has an **enormously rich**, relatively well-educated population and multiple overlapping cleavages of class, race, religion and geography. Simply by virtue of its high per capita income, the likelihood of dictatorship in the United States is almost nil, at least if the historical pattern reflects causation. The highwater mark of the modern presidency’s approach to domestic dictatorship – Nixon’s “third-rate burglary” of the offices of his political opponents – was **pathetic** stuff in historical and comparative perspective, and immediately put Nixon on a slippery slope to disgrace. Likewise, comparisons between Weimar Germany and the United States of the Bush administration87 were worse than irresponsible; they were ignorant.

We add a less obvious point. Legal scholars, especially those of a libertarian or civil-libertarian bent, often express concern that the formal separation of powers has atrophied over the course of the 20th century. On this account, economic and security crises, the rise of the administrative state, the death of the nondelegation doctrine, the imperial presidency, the ineffectual character of the War Powers Resolution and the other framework statutes of the 1970s, all mean that in many domains presidents operate without substantial legal checks, although they have **political incentives** to cooperate with Congress and to seek statutory authorization for their actions. Among the framer’s miscalculations was their failure to understand the “presidential power of unilateral action”88 – the president’s power to take action in the real world, with debatable legal authority or none at all, creating a new status quo that then constrains the response of other institutions. In the most overheated version of this view, such developments are taken to pose a real risk of executive tyranny in the United States.89

We suggest, however, that the same large-scale economic and political developments that have caused a relaxation of the legal checks on the executive have simultaneously strengthened the nonlegal checks. Legal checks on the presidency have been relaxed largely because of the need for centralized, relatively efficient government under the complex conditions of a modern dynamic economy and a highly interrelated international order. Yet those economic and political conditions have themselves helped to create **de facto constraints** on presidential power that make democracy in the United States extremely stable.

The modern economy, whose complexity creates the demand for administrative governance, also creates wealth, leisure, education and broad political information, all of which strengthen democracy and make a collapse into authoritarian rule nearly impossible. Modern presidents are substantially constrained, not by old statutes or even by Congress and the courts, but by the tyranny of public and (especially) elite opinion. Every action is scrutinized, leaks from executive officials come in a torrent, journalists are professionally hostile, and potential abuses are quickly brought to light. The modern presidency is a fishbowl, in large part because the costs of acquiring political information have fallen steadily in the modern economy, and because a wealthy, educated and leisured population has the time to monitor presidential action and takes an interest in doing so. This picture implies that modern presidents are both more accountable than their predecessors and more responsive to gusts of elite sentiment and mass opinion, but they are not dictators in any conventional sense.

More tentatively, we also suggest that the relaxation of legal checks may itself have contributed to the growth of the political checks, rather than both factors simply being the common result of a complex modern economy. On this hypothesis, the administrative and presidential state of the New Deal and later has, despite all its inefficiencies, plausibly supplied efficiency-enhancing regulation, political stability, and a measure of redistribution, and these policies have both added to national economic and cultural capital and dampened political conflict. The administrative state has thus helped to create a wealthy, educated population and a super-educated elite whose members have the leisure and affluence to care about matters such as civil liberties, who are politically engaged to a fault, and who help to check executive abuses. While the direct effects of wealth, education and other factors on the stability of democracy are clear in comparative perspective, there is more dispute about the overall economic effects of regulation and the administrative state,90 so we offer this as a hypothesis for further research.

#### Their claim is political misinformation

**Posner and Vermeule, 9** - \* University of Chicago – Law School AND \*\*Harvard University – Harvard Law School (Eric and Adrian, “Tyrannophobia” 9/15, SSRN)

Tyrannophobia is a central element of American political culture, and has been since the founding. We have offered several claims and hypotheses to illuminate its origins and importance. We suggest that tyrannophobia arises from the interaction between history and the quirks of political psychology, or from the differential costs of information about legal and political checks on the executive; that dictatorship, at least in any strong sense, is not a real possibility in the United States today, due to demographic factors; and that tyrannophobia therefore has little social utility in modern circumstances.

Whatever its possible utility in the past, a question on which we are agnostic, tyrannophobia today is just another misperception of risk, akin to a fear of genetically modified foods. Indeed, in light of the current evidence on the determinants of democratic stability, tyranny should be at the very bottom of the scale of public concern. The modern entrepreneurs of tyrannophobia – from George Orwell to George Lucas – ought not be lionized as defenders of the liberal state, but instead shunned, as purveyors of political misinformation.

#### If they were right, it would be way too late to solve

**Posner and Vermeule, 7** – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian, Terror in the Balance: Security, Liberty, and the Courts p. 39)

More generally, Weimar has received too much attention in this setting. Civil libertarians invoke the shadow of Weimar to imply, and occasionally say, that expanding government’s powers during emergencies will produce another Hitler. It will not, in today’s liberal democracies anyway; and if it did, there would be nothing that civil libertarian judges could do about it. Emergencies always pose novel challenges; information about the new post-emergency conditions is at a premium, so the value of historical analogies is low. Weimar was an unconsolidated and institutionally shaky transitional democracy extant some three-quarters of a century ago; its relevance for emergency politics in consolidated modern democracies is not obvious, and we will see evidence that transferring large chunks of power to the executive during emergencies need not, and usually does not, end in dictatorship. The real risk is that civil libertarian panic about the specter of authoritarianism will constrain government’s ability to adopt cost-justified security measures. We return to these points throughout.

## 2NC Counterplan

### 2nc doj cp overview

#### Their answers don’t assume a united front of OLC and Solicitor General

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

\*NOTE: OLC = Office of Legal Counsel; SG = Solicitor General. Both in Justice Department.

One such difference is that all of the OLC deputies are politically appointed, whereas in the SG's Office, three out of the four deputies are career employees. A more politically led office seems less likely to make impartial, arms-length constitutional decisions, but the political pedigree of OLC's leadership may give it credibility with the political leadership of client entities by helping them to trust that OLC will not use constitutional objections as a back-door way to stop or limit policies with which it simply disagrees. Only when clients are willing to abide by its advice can OLC play a client-checking role. Another difference between the two offices is that, whereas only one deputy reviews each matter in the SG's office, OLC customarily follows a "two-deputy rule," permitting advice on behalf of the office only after review and approval by two deputies. Without the immediate threat of an adverse court judgment against an agency that fails to follow its advice, OLC's clout depends more on support from other sources. Presenting a "united front," rather than lone authors more readily questioned as idiosyncratic, may enhance OLC's authority with its clients.125

#### Here’s ev in the context of war powers

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

Just as the SG is the federal government's chief litigator, the head of the Office of Legal Counsel is the executive branch's chief legal advisor. The Attorney General has formally delegated the legal-advice-giving part of his statutory responsibility to OLC.104 OLC has no enforcement or litigation responsibilities, and is devoted exclusively to giving legal advice. OLC's role within the executive branch has evolved over the years, with tasks calling for legal and, especially, constitutional judgment migrating to OLC, while more politicized tasks, like OLC's short involvement in vetting potential judicial nominees, being reassigned elsewhere.105

OLC's core work is to provide written and oral legal opinions to others within the executive branch, including the president, the Attorney General, and heads of other departments. In practice, the White House and the Attorney General are by far the most frequent requesters, often asking complex, momentous questions, frequently on short notice. OLC clients may seek opinions on matters such as the sustainability of a claim of executive privilege, or the lawfulness in a particular circumstance of a quarantine, detention, or use of military force. OLC has been consulted when troops have been sent abroad and when international criminals were arrested overseas.106 Much of OLC's work is more quotidian, including topics such as the constitutionality under the Appointments Clause of various boards and commissions, or the scope of an agency's statutory authority to alter a regulation or settle a case in a particular way. Its opinions "involve domestic problems, international issues, pet plans of bureaucrats, the application of the Constitution and the laws to administrative policies and procedures, the powers and jurisdictions of departments and agencies, the advisability of contemplated actions, [and various mundane and] momentous matters." 107

OLC traditionally requires that requests for advice come from the head or general counsel of the requesting agency, that advice-seekers submit their own view of the question to OLC, and that independent agencies (not already presumptively bound) agree in advance to abide by the advice - even oral advice - that OLC delivers.108 The agreement to be bound forestalls opportunistic advice-shopping by entities willing to abide only by advice they like, and it preserves the resources and authority of OLC against being treated merely as an extra source of legal research on issues that other lawyers or officials will ultimately resolve for themselves.109

### 1nc pres powers nb

#### Limiting OLC approval keeps the executive in check but keeps the good parts of crisis flexibility

**Marguiles 2012** – Professor of Law, Roger Williams University (5/15, Peter, Pepperdine Law Review, Volume 39, Issue 4, Article 1, “Reforming Lawyers into Irrelevance?: Reconciling Crisis and Constraint at the Office of Legal Counsel”, http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1370&context=plr)

\*NOTE: Marguiles not to be confused with Margolis, who worked in the DOJ after John Yoo

Capping OLC’s expansive presidential power opinions would complement the substantive standard and provide a further bulwark against abuse. Abuse occurs in two forms: overt reliance on inherent presidential power and use of the avoidance doctrine to narrowly construe statutes that might otherwise trench on the President’s supposed prerogatives.330 A cap, which OLC could adopt as a best practice,331 would limit the number of times in a given period that OLC could invoke the inherent power of the President or invoke the avoidance canon to narrowly construe a statute that limits executive discretion.

A cap on OLC opinions expanding presidential power would work in the following way: in each two-year period, OLC could issue three opinions332 using the substantive test set out above, that either supported inherent presidential power or interpreted statutes narrowly to avoid ostensibly unconstitutional constraints on executive power. If OLC failed to stay within this cap, it could issue more opinions upholding executive power, but only if those opinions met the absolutists’ test of objective interpretation. If OLC could not match the executive’s preferred course with this more rigorous test, it would commit itself to not rendering a favorable opinion. This would not necessarily preclude the President from going forward. The President could overrule OLC’s constitutional interpretation333 or dismiss OLC’s head and find a more pliable individual for the job. However, the cap would supply a bump in the road, and signal to observers both within and outside the Executive Branch that the President was on shaky ground. Although a President could still embrace the “go it alone” option by using White House Counsel, OLC’s implicit finding that the President’s position lacked support would be a marker for other officials and for the public.

A cap would further dialogic equipoise by forcing the President and OLC to carefully budget their most sweeping arguments. This would prompt insight about these arguments’ unintended effects, while still granting the President flexibility to use OLC in exigent circumstances. A president like George W. Bush, who uses power in a profligate fashion, eventually finds himself without credibility with constituencies and stakeholders that matter, including Congress, the courts, and the legal community.334 While profligate exercises of power work for a time, they have serious long-term consequences. They can result over time in a diminution of presidential authority, as actions spark a counterreaction in a never-ending cycle. Sweeping exercises of power can also lock in future presidents to policy initiatives that have outlived their usefulness. For example, Bush’s sweeping exercises of power in short order produced the detention facility of Guantanamo Bay, which became a global metaphor for presidential excess. The symbolism of the facility damaged not only the President’s credibility, but that of the United States.335 However, the alarming speed with which Bush Administration officials built the place336 contrasts with the difficulties encountered in closing it. Guantanamo has been “Humpty-Dumpty in reverse: easy to assemble, but very difficult to take apart.”337 Caps on invocation of presidential authority by OLC would limit the damage, while still allowing invocation of authority in cases where no alternative existed.

#### That balance is key to international cred and foreign policy—that makes leadership effective but still solves the entire aff

**Marguiles 2012** – Professor of Law, Roger Williams University (10/26, Peter, Maryland Law Review, Volume 8, Issue 1, Article 3, “True Believers at Law: National Security Agendas, the Regulation of Lawyers, and the Separation of Powers”, http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3381&context=mlr)

\*NOTE: Marguiles not to be confused with Margolis, who worked in the DOJ after John Yoo

Because the model seeks to reduce the agency costs of executive overreaching, it also preserves the long-term perspective that emergencies can sometimes obscure. Transparency can help prevent the loss of executive power and credibility that can follow in the wake of executive overreaching. Transparency also preserves the legitimacy and international reputation of the United States by displaying the executive’s confidence that it can rally others to its cause and respond to their concerns. This is what the drafters of the Declaration of Independence had in mind when they claimed “a decent Respect [for] the Opinions of Mankind.”313 Maintaining reputation allows the United States to exercise “soft power”314 that will often be more effective than brute force.315 In this fashion, a dialogic equipoise model enhances long-term stability and aids in refining current policies. Moreover, transparency does not necessarily frustrate timely action, including the use of force when that is necessary. In the Cuban Missile Crisis, for example, the Administration engaged in a wide and vigorous internal debate and subsequently consulted with foreign capitals and international organizations.316 The destroyer deal between the United States and Britain featured a robust internal debate.

Most recently, dialog with Congress and the United Nations preceded the decision by the United States to intervene militarily in Afghanistan after September 11. Government attorneys should urge dialog and advise the President of the adverse consequences attending a lack of transparency.

Just as dialog yields results that preserve American leverage, tailoring an executive response will have similar benefits. Courts use tailoring to ensure that extraordinary remedies such as injunctions serve the public interest and respect the rights of the parties.317 Under established principles of equity, a court will take care that an injunction uses the minimum amount of coercion—and, by correlation, the minimum amount of judicial capital—necessary to ensure compliance with the law. Similarly, when lawyers advise the President that a planned action is permissible, they should ensure that both the claim of executive authority and the action authorized intrude to the minimum extent on the interests of other branches, the rights of individuals, and the core principles of international law. In the Cuban Missile Crisis, for example, the Kennedy Administration rejected an all-out attack on Cuba and opted instead for a limited blockade in large part because of concerns about the international reputation of the United States.318

The equipoise contemplated here is fluid, not static, in keeping with events. Just as balancing on a bicycle or a high beam typically requires movement, the President’s authority resists a rigid interpretation.319 To permit the “scope and elasticity”320 necessary in a changing world, a legal advisor can approve bounded, interstitial actions like the blockade during the Cuban Missile Crisis that clash with the most accurate reading of a statute or of international law.321 As long as those actions have been the subject of robust dialog, interstitial movements of this kind enhance democracy. Like attempts in court to challenge the weight of precedent, such interstitial moves can highlight possible discontinuities between current understandings and pressing realities, and further the evolution of the law.322

### 2nc cp = goldilocks

#### OLC reforms solve authority but preserve veto flexibility

**Marguiles 2012** – Professor of Law, Roger Williams University (5/15, Peter, Pepperdine Law Review, Volume 39, Issue 4, Article 1, “Reforming Lawyers into Irrelevance?: Reconciling Crisis and Constraint at the Office of Legal Counsel”, http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1370&context=plr)

\*NOTE: Marguiles not to be confused with Margolis, who worked in the DOJ after John Yoo

In curbing impunity, reformers also have to consider the countervailing risks of procedural injustice, paralysis, and polarization.358 A failure to consider each risk will derail reform efforts. Procedural rights like notice, for example, undermine the case for sanctions.359 Treating these rights as mere annoyances to be tossed aside would surely constitute poetic justice for former officials like John Yoo who show rights similar disdain. However, it would compromise a transition back to the rule of law.360 Grand structural overhauls like Ackerman’s Supreme Executive Tribunal would undermine the separation of powers that ensures democratic accountability.361 The result would be the worst of both worlds: the rigidity of the courts coupled with the strategic behavior that typifies the political branches.

Decisional approaches that modify the substantive standard and deliberative processes of OLC have the most promise. Disclosure is a vital safeguard for responsible deliberation, while stare decisisis often a valuable aid to stability and the rule of law.362 However, these decisional approaches also have perils: an absolutist objective standard, for example, breaks down in practice, given the imperatives that national security lawyers confront in episodes such as the destroyer deal with Britain.363 Mandating the analysis of counterarguments can be either an inadequate constraint, as in the case of advice to commit genocide, or a subjective factor that varies with the evaluator’s opposition to an opinion’s substantive conclusions.364

To address the risks of procedural injustice, paralysis, and polarization, this Article has proposed a model of dialogic equipoise.365 The model recognizes that OLC is an important player in American constitutionalism, which must balance the need to conserve institutional capital with the need to spend that capital in exigent circumstances. OLC must maintain capital with two crucial audiences: the legal community, including the courts, which must believe that OLC can constrain the President, and the President, who can go elsewhere for advice if OLC mistakes risk aversion for the rule of law.366 To facilitate this balance, this Article has proposed a hybrid approach that combines a substantive standard with a deliberative approach.367 OLC may issue opinions that expand executive power and fulfill three criteria: the opinions must address sovereignty- or human rightscentered problems, be reasonably likely to obtain ratification, and respect independent constitutional guarantees.368 The substantive standard assures that opinions expanding executive power will respond to grave exigencies and will be subject to timely disclosure.369 At the same time, a cap will limit issuance of such opinions, encouraging OLC to marshal its institutional capital for those occasions when no alternatives will do the job.370

### solves oversight

#### The President can mandate Congress involvement, even oversight

**Johnsen 2007** – Professor of Law, Indiana University School of Law, former Acting Assistant Attorney General (August, Dawn, UCLA Law Review, “Faithfully Executing the Laws: Internal Legal Constraints on Executive Power”, 54 UCLA L. Rev. 1559, Lexis)

[\*1564] On a daily basis, the President engages in decisionmaking that implicates important questions of constitutionality and legality. Whether to seek congressional authorization before committing the nation to war or other hostilities, what limits, if any, to set (or when set by Congress, to respect) on torture and other coercive interrogation techniques, when to publicly release information regarding the course of war or counterterrorism efforts - all are issues over which the President exercises enormous practical control, and all can profoundly affect individual lives and the course of history. The possibility of after-the-fact external review of questionable executive action is an inadequate check on executive excesses. Presidents also must face effective internal constraints in the form of executive branch processes and advice aimed at ensuring the legality of the multitude of executive decisions.

### solves precedent

#### We solve precedent by invoking constitutional limits

**Atkinson 2013** – JD NYU, National Security Division, Department of Justice (L. Rush, Vanderbilt Law Review, forthcoming issue, “The Fourth Amendment’s National Security Exception”, http://ssrn.com/abstract=2226404)

When identifying constitutional parameters for the executive, it is particularly instructive to look at historical moments when the executive is restrained. When congressional prohibition draws executive power to its “ebb,” for example, one can identify the executive’s core inextinguishable powers.47 Constitutional boundaries are similarly discernible in some cases where the executive branch limits its own conduct. Specifically, the executive’s self-restraint is precedential when it stems from a sense of constitutional obligation.48 Such fealty towards the Constitution might be unprompted by judicial command or legislative action, and there may be no record as obvious as a judicial opinion or legislative bill. Nevertheless, where a discernible opinio juris has shaped executive action, such legal opinion should be considered both for its persuasive power and a historical understanding about what protections the Constitution establishes.49

#### No impact to precedent—it’s not key because of how unique the OLC is. By definition, their dilemmas lack precedent—only OLC can credibly evaluate those

**Marguiles 2012** – Professor of Law, Roger Williams University (5/15, Peter, Pepperdine Law Review, Volume 39, Issue 4, Article 1, “Reforming Lawyers into Irrelevance?: Reconciling Crisis and Constraint at the Office of Legal Counsel”, http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1370&context=plr)

\*NOTE: Marguiles not to be confused with Margolis, who worked in the DOJ after John Yoo

As the critique of Ackerman’s Supreme Executive Tribunal proposal in the previous Part showed, OLC as currently constituted bears only limited resemblance to courts.254 Stare decisis works because courts handle scores or hundreds of cases with similar facts.255 However, OLC does not resolve a comparable volume of disputes. Compared to most courts, OLC considers more one-off questions that have high stakes, but little prospect for recurrence in exactly the same form.256 In this sparser decisional environment, stare decisis is not as useful.257 As a case in point, consider Bybee’s analysis of the torture statute.258 Apparently, OLC had never done such an analysis before, so concrete OLC precedent was unavailable.259 The common law roots of stare decisis may also be an inapposite model in other respects. Common law decision making has limitations.260 Stare decisisis path dependent, so that a precedent established at one point in time will govern others to follow.261 However, that puts a special onus on the variables, many of them randomly generated, contributing to the initial decision.262 While the decision maker at this juncture seeks to anticipate future implications of her ruling, her clairvoyance will of necessity be incomplete.263

As a result, the degree of actual constraint imposed by precedent on a current president becomes a hit-or-miss affair. OLC precedent will constrain a president who might wish to defy a statute he regards as unconstitutional.264 This position, which seems unexceptionable in principle, may raise problems for future presidents regarding statutes that no longer fit evolving conceptions of human and civil rights.265 Consider, for example, the “Don’t Ask, Don’t Tell” (DADT) policy that for a number of years limited the eligibility of openly gay individuals to serve in the military.266 President Obama was right both to seek DADT’s repeal and to modify enforcement of the provision in the run up to the repeal effort.267 However, OLC’s precedent on compliance with unconstitutional statutes may have deterred a president of less fortitude and ingenuity from limiting enforcement of the provision.

In other situations, available precedent from OLC on perennial issues like presidential power may not adequately constrain the President. Judicial precedent, such as Youngstown, 268 gives the President ample wiggle room— for example, by leaving up in the air whether the President can act when Congress is silent.269 The lines between statutory expression, implication, and silence are notoriously blurred.270 This uncertain boundary leaves OLC plenty of room to massage a particular situation into one that justifies the exercise of presidential discretion.

### 2nc theory block

#### The counterplan is a rational policy choice based in topic lit

**Sales 2012** – Assistant Professor of Law, George Mason University School of Law (7/3, Nathan Alexander, Journal of National Security Law & Policy, 6.227, “Self-Restraint and National Security”)

With this framework in mind, we can begin to offer some preliminary ¶ hypotheses about why national security officials sometimes adopt selfrestraints. From a policymaker’s standpoint, the expected benefits of a ¶ national security operation often will be dwarfed by its expected costs ¶ (enemy propaganda, loss of national prestige, individual criminal liability, ¶ and so on). For rational policymakers, the welfare maximizing choice ¶ sometimes will be to avoid bold and aggressive operations. Reviewers ¶ likewise can find inaction to be welfare maximizing. For an influence- and ¶ autonomy-maximizing reviewer, vetoing an operation proposed by a ¶ bureaucratic competitor can redistribute power and turf away from one’s ¶ rival and to oneself. Operators, by contrast, are likely to have a very ¶ different cost-benefit calculus. An operator’s expected benefits typically ¶ will be larger than a policymaker’s or a reviewer’s, because he will account ¶ for the psychic income (such as feelings of exhilaration and satisfaction)¶ that accrues to those who personally participate in a mission. As a result, ¶ rational operators may regard a given operation as welfare-enhancing even ¶ when policymakers and reviewers regard the same mission as welfarereducing. ¶ A few observations are needed about the public choice framework ¶ sketched out above – its possibilities and its limitations – before applying it. ¶ This article emphasizes restraints imposed by elements within the executive ¶ branch. But the framework also might be used to explain why Congress ¶ sometimes adopts restraints for the government as a whole – i.e., why ¶ Congress enacts legislation restricting the executive’s operational authority ¶ more severely than is required by domestic law (in this case the ¶ Constitution) or international law. First, there may be an asymmetry in the ¶ legislators’ expected value calculations. Members of Congress might ¶ conclude, for example, that the expected costs of conducting mildly ¶ coercive interrogations outweigh the expected benefits and thus enact ¶ legislation banning the military from using any technique not listed in the ¶ Army Field Manual, as it did in the Detainee Treatment Act of 2005.33¶ Second, members might engage in a form of empire building, allocating to ¶ themselves a greater portion of the war powers they share with the ¶ President. For example, Congress might assert its primacy over covert ¶ operations by passing a law prohibiting the President from approving ¶ assassinations, as the Church Committee proposed in the late 1970s.34 Still, ¶ the Executive probably is more likely to adopt restraints than Congress is, ¶ because the Executive’s expected costs of an operation gone wrong usually ¶ will be greater.35 Unlike legislators, executive branch officials face the ¶ prospect of personal legal liability for approving or participating in ¶ operations that are alleged to violate domestic or international law.36

### solves executive cred

#### Respecting the OLC makes the executive credible

**Morrison 2011** – Professor of Law, Columbia University (Trevor W., Harvard Law Review, ““Hostilities,” the Office of Legal Counsel, and the Process of Executive Branch Legal Interpretation”, 124 HARV. L. REV.F. 62, http://web.law.columbia.edu/sites/default/files/microsites/constitutional-governance/files/Libya-Hostilities-Office-of-Legal-Counsel.pdf)

In a recent book, Professors Eric Posner and Adrian Vermeule call this sort of thing “executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors.”7 Admittedly, Posner and Vermeule do not appear to recognize that treating OLC’s advice as presumptively binding is a form of executive self-binding. Indeed, as described below, they do not think OLC advice warrants any such treatment. Yet signaling and maintaining a willingness to treat OLC’s legal advice as presumptively binding enhances the credibility of a president’s claims of good faith and respect for the law, which in turn can help generate public support for his actions. That is precisely the point of executive self-binding: to foster credibility in circumstances where, “[f]or presidents, credibility is power.” 8

### solves court modeling

#### The court models DOJ restraint—FISA rules prove

**Sales 2012** – Assistant Professor of Law, George Mason University School of Law (7/3, Nathan Alexander, Journal of National Security Law & Policy, 6.227, “Self-Restraint and National Security”)

A final example of self-restraint concerns information sharing. On its face, the Foreign Intelligence Surveillance Act does not restrict agencies from exchanging data with one another. Yet over the course of several decades, Justice Department officials applied that statute to erect a “wall” between intelligence analysts and criminal investigators. Two related developments were instrumental in the wall’s construction. First, the Justice Department as a whole concluded that FISA’s surveillance tools were unavailable in situations where the government had a hybrid purpose of both collecting foreign intelligence and enforcing federal criminal laws; FISA could only be used if the government’s purpose did not have a significant law enforcement element. Second, the DOJ division responsible for overseeing FISA matters began to police the flow of data between the law enforcement and intelligence worlds. The result was to choke off information sharing and other forms of coordination between cops and spies. The USA PATRIOT Act of 2001 proverbially “tore down the wall,” but the now moribund restrictions remain an illuminating example of how and why officials tie their own hands. Enacted in 1978, FISA established a legal framework for wiretapping foreign national security threats. While the executive branch previously conducted such surveillance unilaterally, FISA required it to receive approval from a special tribunal known as the Foreign Intelligence Surveillance Court. FISA’s standards for electronic surveillance are similar to Title III, the federal law that governs wiretaps in ordinary criminal investigations, but they are looser in several important respects. Perhaps the most important difference is that, while criminal investigators ordinarily must establish probable cause to believe that a crime has been, is being, or is about to be committed, FISA requires only probable cause to believe that the target is a foreign power or an agent of a foreign power.134 To minimize the danger that investigators might use FISA to circumvent Title III’s more rigorous requirements,135 Congress provided that FISA tools would only be available if the government certified to the FISA Court that “the purpose” of the proposed surveillance was foreign intelligence.136 The wall’s first bricks were laid in the 1980s, when the executive branch, along with some courts and members of Congress, began to interpret FISA as requiring that foreign intelligence be “the primary purpose” of proposed surveillance.137 How did one discern purpose? A great deal hinged on that question. If a wiretap’s aim was foreign intelligence, authorities were allowed to use FISA. If not – e.g., if an intelligence-related purpose was diluted by the presence of an ancillary purpose of, say, enforcing federal narcotics laws – then FISA was off the table. Investigators would have to make do with the ordinary Title III authorities. The Justice Department answered the question by measuring the amount of information sharing between law enforcement and intelligence officials. The more sharing, the less likely the primary purpose was to gather foreign intelligence (and the more likely the FISA Court would reject the surveillance application). By contrast, the more rigidly intelligence was cordoned off from law enforcement, the more likely it was that the surveillance would have foreign intelligence as its primary purpose (and the more likely it was to receive the FISA Court’s blessing). This reading of FISA’s purpose requirement was not the only plausible way to parse that statutory language. As the Foreign Intelligence Surveillance Court of Review pointed out in 2002, enforcing criminal laws and pursuing foreign intelligence objectives are not always mutually exclusive.138 Sometimes criminal prosecution will serve the government’s intelligence needs; one way to neutralize a spy is to indict him for espionage. The Justice Department might have adopted a broad interpretation that would permit FISA tools to be used in a wide range of cases – and, derivatively, that would permit extensive information sharing. This is not to say that the court’s aggressive interpretation of FISA is more persuasive than DOJ’s cautious reading. What is significant is that, instead of adopting a (plausible) reading that would have maximized its discretion to coordinate intelligence and criminal investigations, DOJ embraced an (equally plausible) interpretation that limited its discretion. By the mid-1990s, the wall’s foundation was in place. The second development occurred in 1995, when the Justice Department issued a pair of internal information sharing directives. The first, issued by Deputy Attorney General Jamie Gorelick, applied to the parallel criminal and intelligence investigations of the 1993 World Trade Center bombing. The directive’s purpose was to “clearly separate the counterintelligence investigation from the more limited . . . criminal investigations” in order to “prevent any risk of creating an unwarranted appearance that FISA is being used to avoid procedural safeguards which would apply in a criminal investigation.”139 Toward that end, DOJ directed that information uncovered by intelligence officials in the course of their investigation “will not be provided either to the criminal agents, the [U.S. Attorney’s office], or the Criminal Division” except in special circumstances. That “include[ed] all foreign counterintelligence relating to future terrorist activities.”140 DOJ was quite clear that the guidelines were not an interpretation of FISA, but rather “go beyond what is legally required.”141 Though the Gorelick memo imposed severe information sharing limits on agents working the World Trade Center investigations, they weren’t supposed to be insurmountable. The directive expressly contemplated that intelligence and law enforcement officials would share information about their parallel investigations in certain circumstances. In particular, FBI intelligence officials were ordered to notify criminal investigators if, during their investigation of the bombing, “facts or circumstances are developed that reasonably indicate that a significant federal crime has been, is being, or may be committed.”142 The second set of guidelines, issued by Attorney General Janet Reno on July 19, 1995, applied to all DOJ criminal and intelligence investigations. It directed that criminal investigators “shall not . . . instruct the FBI on the operation, continuation, or expansion of FISA electronic surveillance.”143 It further insisted that cops and spies must avoid “either the fact or the appearance of the Criminal Division’s directing or controlling the [foreign intelligence] or [foreign counterintelligence] investigation toward law enforcement objectives.”144 The Reno guidelines did not impose strong information sharing limits. Instead, they were aimed squarely at the one type of coordination likely to raise the FISA Court’s hackles – criminal investigators directing an intelligence operation. Indeed, the Reno guidelines affirmatively directed cops and spies to share information. Echoing the Gorelick memo, the Reno directive provided that if “facts or circumstances are developed that reasonably indicate that a significant federal crime has been, is being, or may be committed,” the FBI was to share the information with the criminal division.145 Despite these escape valves, cops and spies did not in fact exchange information freely,146 and a fair amount of the responsibility can be laid at the feet of the Office of Intelligence Policy and Review. OIPR is the DOJ component charged with overseeing FISA matters. Its lawyers present surveillance applications to the FISA Court and otherwise represent the government in proceedings before that body. They also serve an internal screening function, reviewing proposed applications to ensure compliance with the applicable legal rules, and weeding out the ones they don’t think will pass muster before the court. OIPR took three steps that solidified its role as DOJ’s information sharing watchdog. First, almost immediately after the 1995 directives were issued, OIPR began applying the Gorelick memo’s strict limits to all foreign intelligence investigations, not merely the 1993 World Trade Center investigation. The Gorelick restrictions metastasized. “As a result, there was far less information sharing and coordination between the FBI and the Criminal Division in practice than was allowed under the department’s procedures.”147 Second, OIPR played “gatekeeper,”148 policing whatever information flow did take place. Neither the Gorelick nor Reno directives mentioned any role for OIPR in regulating information exchanges, but OIPR assumed responsibility for doing so, apparently on the basis of a threat. “The Office threatened that if it could not regulate the flow of information to criminal prosecutors, it would no longer present the FBI’s warrant requests to the FISA Court.”149 OIPR used its status as the government’s representative before the FISA Court as leverage to police DOJ’s internal information flow. The office’s third move was the boldest of all. At some point in late 1998, as the Justice Department was ramping up its investigation of the East Africa embassy bombings, a senior OIPR lawyer met with the chief judge of the FISA Court and encouraged him to issue an order adopting the wall restrictions, solidifying them into a firm legal requirement. The judge agreed; “[t]he FISA court simply annexed the attorney general’s guidelines, making the wall a matter of court order.”150 In 2000, the court went even further. Assisted by the same lawyer who had lobbied it to adopt the OIPR restrictions (he had left DOJ and now was serving as the FISA Court’s first clerk in several decades), the court issued a standing order that “every [FBI] agent who had access to FISA-derived intelligence would have to sign a special certification, promising that none of the information would be conveyed to criminal investigators without the FISA court’s permission.”151 In effect, the court had become OIPR’s surrogate; it was enforcing as a matter of law the information sharing limits that OIPR had developed and applied internally within the Justice Department.

### 2nc disclosure solves

#### Disclosure reform solves notification without hampering decisionmaking

**Cluchey 2011** – JD Harvard (7/1, Daniel, The Cornell Policy Review, “Transparency in OLC Statutory Interpretation: Finding a Middle Ground”, http://blogs.cornell.edu/policyreview/2011/07/01/transparency-in-olc-statutory-interpretation-finding-a-middle-ground/)

From a transparency standpoint, the problem with requiring the disclosure of opinions only at the moment of program implementation, of course, is that such a system would leave Congress with no time to question the Executive Branch’s interpretation or intervene in the program before it begins. This can be remedied, however, by making the trigger a retroactive device. Under this system, when the Executive Branch chooses to implement a program that relies on an OLC opinion for its legality, it must disclose the opinion 30 days prior to the commencement of the program for the opinion (and therefore the policy) to be considered lawful by Congress.

The decision to execute a new policy would remain the event that triggers mandatory disclosure, but the policy would not enjoy legal support unless and until the OLC opinion had been available to Congress for 30 days, giving lawmakers an appropriate amount of time to review the legal rationale and react accordingly. In essence, this would change the reporting requirement from a disclosure mandate into a rule prohibiting policy programs that rely on undisclosed opinions. The basic standard would then be that no Executive Branch program, the legality of which rests on an OLC opinion concluding for any reason that the Executive Branch is not bound by a congressional statute, can be implemented until 30 days after the disclosure to Congress of the OLC opinion from which it derives its legal rationale.

A regime that required disclosure of OLC opinions 30 days prior to the implementation of a potentially controversial program would effectively address a number of the concerns raised by both Feingold in the interest of Executive Branch transparency and Mukasey in the interest of protecting OLC candor and Executive communications more generally. Even the most fervent proponent of transparency would recognize that it is the implementation of a legally spurious program, and not the opinion rationalizing it, that is the true malfeasance to be guarded against. An OLC opinion that does not instigate a program, no matter how errant its analysis may be, cannot be said to rise to the level of secret law so long as it remains nothing more than the germ of potential secret law — that is to say, a secret opinion declaring that a law does not apply to the Executive Branch can do little harm until it is actually used to justify a secret policy.22

The D.C. Circuit has spoken to this distinction with regard to the Executive Branch, noting in Sterling Drug, Inc. v. FTC that “to prevent the development of secret law within the [Federal Trade Commission], we must require it to disclose orders and interpretations which it actually applies in cases before it” (emphasis added).23 While a semantic argument could be made that the opinions themselves constitute secret law, insofar as they are indeed interpretations of law that bind the Executive Branch,24 the true danger spoken of when the concept of secret law is invoked is its application in a practice, policy, or program — an unenforced ‘law’ is no threat until and unless the specter of its enforcement emerges.

A reporting trigger tied retroactively to program implementation would protect the institution of OLC even as it increased transparency of the office’s most controversial and consequential opinions. Mukasey’s chief policy concerns with the OLC Reporting Act were that it would deter candid deliberation among Executive Branch lawyers, “chill” the Department of Justice from providing thorough analysis of potentially extralegal policy programs (particularly with regard to the usage of those canons of construction25 specifically contemplated in the bill), discourage actors in charge of decision making from requisitioning OLC when disclosure would be especially unwanted, and, as an overall consequence thereof, “degrade the quality of the resulting legal advice and, thus, the integrity of the government decisionmaking [sic] to which it pertains.” 26

Beginning with the issue of thoroughness, an implementation-triggered reporting regime would not distinguish between rationales employed by OLC personnel — disclosure would occur only if an accompanying program was to be implemented, regardless of whether a conclusion of non-applicability was reached by way of the avenues of constitutional avoidance, commander-in-chief powers, a presumption against the application of a statute to the Executive, etc. By tying the reporting trigger to the policy decisions of those Executive Branch officials charged with implementing programs rather than to the legal decisions of lawyers within OLC, the methodology of those lawyers in preparing opinions would be less apt to become contaminated by political concerns over which species of legal reasoning would or would not mandate disclosure. If a conclusion has been reached that the Executive Branch is not bound by a particular statute, OLC personnel will thus have no reason not to provide a thorough analysis or refrain from the use of appropriate canons of construction under a regime where their legal reasoning has no bearing on the disclosure of their opinions.

## 2NC Pres Powers

### \*2nc perception link

#### The debates over the plan alone weaken the President – kills resolve, collapses the economy, spurs aggression

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 60)

In this way, measures urged by the executive to cope with a crisis of unclear magnitude acquired a kind of self-created momentum. Rejection of those measures would themselves create a political crisis that might, in turn, reduce confidence and thus trigger or exacerbate the underlying financial crisis. A similar process occurred in the debates over the AUMF and the Patriot Act, where proponents of the bills urged that their rejection would send terrorist groups a devastating signal about American political willpower and unity, thereby encouraging more attacks. These political dynamics, in short, create a self-fulfilling crisis of authority that puts legislative institutions under tremendous pressure to accede to executive demands, at least where a crisis is even plausibly alleged.

Critics of executive power contend that the executive exploits its focal role during crises in order to bully and manipulate Congress, defeating Madisonian deliberation when it is most needed. On an alternative account, the legislature rationally submits to executive leadership because a crisis can be addressed only by a leader. Enemies are emboldened by institutional conflict or a divided government; financial markets are spooked by it. A government riven by internal conflict will produce policy that varies as political coalitions rise and fall. Inconsistent policies can be exploited by enemies, and they generate uncertainty at a time that financial markets are especially sensitive to agents’ predictions of future government action. It is a peculiar feature of the 2008 financial crises that a damaged president could not fulfill the necessary leadership role, but that role quickly devolved to the Treasury secretary and Fed chair who, acting in tandem, did not once express disagreement publicly.

#### This causes crisis escalation

**Waxman, 13** ­- Professor of Law, Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations (Matthew, “The Constitutional Power To Threaten War” Yale Law Journal, SSRN)

A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued:

In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the most important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. …

[I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179

#### Collapses heg

**Bolton, 9** – senior fellow at the AEI and former ambassador to the UN (John, “The danger of Obama's dithering,” Los Angeles Times, 10/18, <http://articles.latimes.com/2009/oct/18/opinion/oe-bolton18>)

Weakness in American foreign policy in one region often invites challenges elsewhere, because our adversaries carefully follow diminished American resolve. Similarly, presidential indecisiveness, whether because of uncertainty or internal political struggles, signals that the United States may not respond to international challenges in clear and coherent ways.

Taken together, weakness and indecisiveness have proved historically to be a toxic combination for America's global interests. That is exactly the combination we now see under President Obama. If anything, his receiving the Nobel Peace Prize only underlines the problem. All of Obama's campaign and inaugural talk about "extending an open hand" and "engagement," especially the multilateral variety, isn't exactly unfolding according to plan. Entirely predictably, we see more clearly every day that diplomacy is not a policy but only a technique. Absent presidential leadership, which at a minimum means clear policy direction and persistence in the face of criticism and adversity, engagement simply embodies weakness and indecision.

### AT: Groupthink / decision-making

#### No groupthink—executives are fragmented and pluralistic—Congress links harder

**Posner and Vermeule, 7** – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian, Terror in the Balance: Security, Liberty, and the Courts p. 46-47)

The idea that Congress will, on net, weed out bad policies rests on an institutional comparison. The president is elected by a national constituency on a winner-take-all basis (barring the remote chance that the Electoral College will matter), whereas Congress is a summation of local constituencies and thus affords more voice to political and racial minorities. At the level of political psychology, decisionmaking within the executive is prone to group polarization and other forms of groupthink or irrational panic,51 whereas the internal diversity of legislative deliberation checks these forces. At the level of political structure, Congress contains internal veto gates and chokepoints—consider the committee system and the fi libuster rule—that provide minorities an opportunity to block harmful policies, whereas executive decisionmaking is relatively centralized and unitary.

The contrast is drawn too sharply, because in practice the executive is a they, not an it. Presidential oversight is incapable of fully unifying executive branch policies, which means that disagreement flourishes within the executive as well, dampening panic and groupthink and providing minorities with political redoubts.52 Where a national majority is internally divided, the structure of presidential politics creates chokepoints that can give racial or ideological minorities disproportionate influence, just as the legislative process does. Consider the influence of Arab Americans in Michigan, often a swing state in presidential elections.

It is not obvious, then, that statutory authorization makes any difference at all. One possibility is that a large national majority dominates both Congress and the presidency and enacts panicky policies, oppresses minorities, or increases security in ways that have ratchet effects that are costly to reverse. If this is the case, a requirement of statutory authorization does not help. Another possibility is that there are internal institutional checks, within both the executive branch and Congress, on the adoption of panicky or oppressive policies and that democratic minorities have real infl uence in both arenas. If this is the case, then a requirement of authorization is not necessary and does no good. Authorization only makes a difference in the unlikely case where the executive is thoroughly panicky, or oppressively majoritarian, while Congress resists the stampede toward bad policies and safeguards the interests of oppressed minorities.

Even if that condition obtains, however, the argument for authorization goes wrong by failing to consider both sides of the normative ledger. As for majoritarian oppression, the multiplicity of veto gates within Congress may allow minorities to block harmful discrimination, but it also allows minorities to block policies and laws which, although targeted, are nonetheless good. As for panic and irrationality, if Congress is more deliberative, one result will be to prevent groupthink and slow down stampedes toward bad policies, but another result will be to delay necessary emergency measures and **slow down stampedes toward good policies**. Proponents of the authorization requirement sometimes assume that quick action, even panicky action, **always** produces bad policies. But there is no necessary connection between these two things; expedited action is sometimes good, and panicky crowds can stampede either in the wrong direction or in the right direction. Slowing down the adoption of new policies through congressional oversight retards the adoption not only of bad policies, but also of good policies that need to be adopted quickly if they are to be effective.

#### Informal checks on groupthink are sufficient

Kennedy, 12 [ Copyright (c) 2012 Gould School of Law Southern California Interdisciplinary Law Journal Spring, 2012 Southern California Interdisciplinary Law Journal 21 S. Cal. Interdis. L.J. 633 LENGTH: 23138 words NOTE: THE HIJACKING OF FOREIGN POLICY DECISION MAKING: GROUPTHINK AND PRESIDENTIAL POWER IN THE POST-9/11 WORLD NAME: Brandon Kennedy\* BIO: \* Class of 2012, University of Southern California Gould School of Law; M.A. Regional Studies: Middle East 2009, Harvard Graduate School of Arts and Sciences; B.A. Government 2009, Harvard University.] //Chappell

Neither the president nor the decision-making group members implement "hybrid" checks; the checks do, however, originate in the executive branch and directly affect the president and the group members. Hybrid checks relate to the bureaucratic machine and typically address the structural faults within the executive branch that can affect the core decision-making group. Although the president and his or her advisers constitute the insiders of the decision-making group, they ultimately belong [\*676] to a larger organization - the executive branch - and thereby become part of the bureaucratic machine.

1. Inter-Agency Process

The "inter-agency process" check involves getting approval for, or opinions about, a proposed decision from **other agencies**. n252 The inter-agency process is particularly common for national security and foreign policy decisions. n253 "Occasionally, it will operate at a higher level in principals' committees involving Cabinet-level or sub-Cabinet people and their deputies," thus directly checking the decision-making group members. n254

2. Intra-Agency Process

Another similar check is the "intra-agency process," in which the circulation of proposed decisions **within the agency** empowers dissidents and harnesses a diversity of thinking. n255 If nothing else, the process catches errors, or at least increases the odds of avoiding them, given the number of people who must review or approve a document or decision within the agency. n256

3. Agency or Lawyer Culture

The culture of a particular agency - the institutional self-awareness of its professionalism - provides another check. n257 "Lawyer culture" - which places high **value on competency** and adherence to rules and laws - resides at the core of agency culture; n258 its "nay-saying" objectivity "is especially important in the small inner circle of presidential decision making to counter the tendency towards groupthink and a vulnerability to sycophancy." n259

[\*677]

4. Public Humiliation

A final check in this category is the "public humiliation" check. n260 This check only comes into play when the previous three have failed, and involves the threat to ""go public' by leaking embarrassing information or publicly resigning."

### --XT – flex solves heg

#### Strong presidential power is key to unified and consistent leadership – this is key to effective foreign policy

**O’Donnell, 2 -** J.D. Candidate, 2003, Vanderbilt University Law School (Joshua, “The Anti-Ballistic Missile Treaty Debate: Time for Some Clarification of the President's Authority to Terminate a Treaty” 35 Vand. J. Transnat'l L. 1601, November, lexis)

A functional analysis of this debate reveals that the President should have the power to terminate treaties unilaterally. Therefore, this Note concludes that the Senate's tacit acknowledgment of such power should be formally recognized. Before going further, a cursory look at the political theories behind international relations helps demonstrate the structural advantages the President has in the area of foreign affairs. There are two competing schools of international relations theory - realism and institutionalism. n288 The basic argument behind realism is that "international politics is shaped by states' pursuit of power and by the distribution ... of power among states." n289 According to the realist school of thought, the international political scene is anarchy and states seek to maximize their power in this anarchy. n290 Institutionalism, on the other hand, argues that "states can cooperate in a wide variety of ways that allow them to escape the prisoner's dilemmas created by international anarchy." n291 Both of these schools of thought operate under the presumption that, for the international system to work, states must be headed by rational, unitary actors. n292 These actors "identify threats, develop responses, and evaluate the costs and benefits that arise from different policy options." n293 There are, naturally, limitations to these theories. Political and bureaucratic aspects of the U.S. system will constrain foreign policy, and pressing domestic issues may "overtake national interests" at times. n294 Nevertheless, the ideal of unitary national action on the international front that should guide a state's approach to developing effective foreign policy, whether one is a realist or an institutionalist. n295

In 1961, William Fulbright published an article calling for greater presidential authority in the area of foreign affairs. n296 While [\*1632] he did not explicitly rely on realism or institutionalism to support his arguments, he did agree that there is a need for unified foreign policy. n297 While the world has changed dramatically since his time, much of his theory still has application today. n298 When Fulbright wrote his article, the concerns were "communism, fascism, aggressive nationalism, and the explosive awakening of long quiescent peoples." n299 While the concerns are different today, the need for a unified policy is not. n300 The concerns of the modern world are different because the world is more international, more than two powers hold nuclear weapons, and terrorism may be the largest threat. However, this type of world demands, just as in the past, a consistent, unified foreign policy. n301

Fulbright argued that the President's effectiveness is "principally a function of his own knowledge, wisdom, vision, and authority." n302 It is "not within our powers to confer wisdom or perception on the Presidential person. It is within our power to grant or deny him authority." n303 Excessive limits on the President in the area of foreign affairs limit such authority. n304 In articulating this point, Fulbright said,

It is exceedingly difficult - if not impossible - to devise unified policies oriented to a clear and definite conception of the national interest through a system in which power and responsibility for foreign policy are "shared and overlapping." Policies thus evolved are likely to be ill-co-ordinated, short-ranged, and often unsuccessful, while the responsibility for failure is placed squarely on the President, neither "shared" nor "overlapping." n305

### --XT – flex solves terrorism

#### Speed, secrecy and flexibility are key to effective crisis response and risks WMD use against the U.S.

**Nzelibe and Yoo, 6** – Jide Nzelibe is Assistant Professor of Law, Northwestern University Law School.

John Yoo is Professor of Law, University of California at Berkeley School of Law (Jide Nzelibe and John Yoo, Rational War and Constitutional Design , 115 Yale L.J. 2512 (2005), Available at: <http://scholarship.law.berkeley.edu/facpubs/68>)

The non-cooperative bargaining model of international conflict assumes that the actors of concern are rational, self-interested nation-states. Recent developments in the international system may require that we relax this assumption. Taking rogue states or international terrorist organizations such as al Qaeda into account may distinguish cases in which the benefits of signaling do not outweigh the benefits of executive speed, secrecy, and flexibility. Threats to American national security now come not only from the hostile intentions of other nation-states, but from three other sources: the easy availability of the knowledge and technology to create weapons of mass destruction; the emergence of rogue nations; and the rise of international terrorism of the kind practiced by the al Qaeda terrorist organization."5 The al Qaeda terrorist network and similar organizations may pose a threat that does not lend itself to resolution through bargaining. 6 In particular, signaling may prove ineffective when applied against these nations or groups because they are unlikely to have the proper incentives to respond to the information conveyed by such signals.

Significantly, the informational value of the signaling mechanism among democracies depends heavily on the existence of transparency and domestic political accountability, both of which are usually lacking in terrorist organizations and rogue states. In a sense, the very logic of the signaling mechanism assumes that because democracies are aware that other democracies are less likely to back down in an escalating international crisis, democracies will be less reluctant to get involved in wars against each other in the first place. 7

On the other hand, because rogue states and terrorist organizations face little or no political accountability for their foreign policy failures, they can afford to ignore their domestic audiences and take more aggressive stances in initiating international conflicts.58 Conversely, once they enter into an escalating international crisis, rogue states can more easily afford to back out of the crisis without paying a political price for seeming inconsistent or weak. In sum, the crisis bargaining model suggests that rogue states are neither likely to signal credible commitments of their resolve in an international crisis, nor likely to appreciate costly signals made by other states.

The existing empirical evidence largely supports the view that rogue or autocratic states are much more willing to discount the risks of military failure than democracies. For instance, Bruce Bueno de Mesquita and Randolph Siverson have shown that democratic regimes tend to initiate conflicts of lower risk than nondemocracies, s9 and other studies have shown that they also tend to suffer fewer battle deaths and fight much shorter wars.6 In sum, these studies strongly suggest that democracies tend to be much more cautious in the kinds of wars they fight; an obvious corollary is that democracies are more likely to be sensitive to signals that relay information about the willingness of a foreign adversary to engage in a high-risk conflict.

A related argument is that because democracies tend to benefit from a more robust marketplace of ideas and information than nondemocracies, 6 ' they are better able to understand the institutional context in which the President and Congress interact on war powers issues. Even if terrorist organizations or rogue states did understand the meaning of legislative signals, however, common ground that could produce a bargain might still be absent. Al Qaeda demanded, for example, that the United States withdraw from the Middle East and cease its support of moderate Arab regimes and of Israel, and that a fundamentalist Islamic caliphate replace those regimes.6 Assuming that the United States will not alter its foreign policy in such a dramatic fashion, there is no possibility of a bargain.

The declining value of costly signals is counterbalanced by the benefit of using preemptive force against terrorists and rogue states. As September 11 showed, terrorist attacks can occur without warning because their unconventional nature allows their preparation to be concealed within the normal activities of civilian life. Terrorists have no territory or regular armed forces from which to detect signs of an impending attack. To defend itself from such an enemy, the United States might need to use force earlier and more often than was the norm during a time when nation-states generated the primary threats to American national security. 63

As with terrorism, the threat posed by rogue nations may again require the United States to use force earlier and more often than it would like.64 Rogue nations may very well be immune to pressure short of force designed to stop their quest for WMD or their threat to the United States. Rogue nations, for example, have isolated themselves from the international system, are less integrated into the international political economy, and repress their own populations. This makes them less susceptible to diplomatic or other means of resolving disputes short of force, such as economic sanctions. Lack of concern for their own civilian populations renders the dictatorships that often govern rogue nations more resistant to deterrence. North Korea, for example, appears to have continued its development of nuclear weapons despite years of diplomatic measures to change its course.6

These new threats to American national security change the way we think about the relationship between the process and substance of the warmaking system. The international system as it existed at the end of the Cold War allowed the United States to choose a warmaking system that could have placed a premium on deliberation and the approval of multiple institutions, whether for purposes of political consensus (and hence institutional constraints that lower the expected value of war) or for purposes of signaling private information in the interests of reaching a peaceful bargain. If, however, the nature of threats has changed and the level of threats has increased, and military force is the most effective means for responding to those threats, then it may make more sense for the United States to use force preemptively. Given the threats posed by WMD proliferation, rogue nations, and international terrorism, at the very least it seems clear that we should not adopt a warmaking process that contains a built-in presumption against using force abroad or that requires long and deliberate procedures.

Thes developments in the international system may demand that the United States have the ability to use force earlier and more quickly than in the past. In order to forestall a WMD attack, or to take advantage of a window of opportunity to strike at a terrorist cell, the executive branch needs the flexibility to act quickly, possibly in situations in which congressional consent cannot be obtained in time to act on the intelligence.

### Flexibility key

#### New statutory restrictions on executive authority invite Congressional micromanagement that encourages new global crises that prevents flexible response

**Nichols, 11** - professor of National Security Affairs at the U.S. Naval War College and a fellow of the International Security Program and the Project on Managing the Atom at the John F. Kennedy School of Government at Harvard University (Thomas, “Repeal the War Powers Resolution” World Politics Review, 5/25, <http://www.worldpoliticsreview.com/articles/8959/repeal-the-war-powers-resolution>

The debate over whether President Barack Obama violated the 1973 War Powers Resolution by committing U.S. forces to Operation Odyssey Dawn, including the drama of outraged legislators condemning yet another president for disregarding this curious law, was predictable. This most recent effort, like others before it, will probably come to nothing. But the legislation itself is dangerous, and the attempts to invoke it should stop. Republicans and Democrats now have an opportunity to remove the War Powers Resolution from our national life, and they should seize it.

There is an unavoidable tension in the Constitution between the president's role as commander in chief (Article II, section two) and the power of Congress to declare war (Article I, section eight). Although Congress controls defense funding and the Senate must approve treaties, the legislature has little power over the actual execution of military operations. In the wake of Vietnam, an angry Congress tried to settle the matter by legislative fiat with the War Powers Resolution, passed over then-President Richard Nixon's veto in 1973. The important clauses of the resolution allow Congress to direct the withdrawal of U.S. forces from action no later than 60 days after the outbreak of hostilities, unless Congress declares war, extends the 60-day period or is unable to meet due to enemy action, such as a nuclear attack.

This constitutes a "legislative veto" over executive authority, a concept ruled unconstitutional by the Supreme Court nearly 30 years ago. The War Powers Resolution itself has never been adjudicated by the Supreme Court, and from the 1983 invasion of Grenada to the 2011 NATO attack on Libya, presidents have traditionally ignored its requirements while eventually submitting reports that are "consistent with," but not in response to, the resolution. In the meantime, a familiar dance takes place, in which the president continues military action while any legislative opposition, otherwise powerless, briefly roils Washington for a week or two by threatening to invoke the resolution. It is a bipartisan game that is always ill-advised, even with the best of intentions.

More than 20 years ago, for example, President George H.W. Bush was convinced that Saddam Hussein's invasion of Kuwait had to be reversed or else his entire project of building a stable post-Cold War order would collapse. Republican Sen. John Heinz conferred at the time with a group of his GOP colleagues, who considered invoking the resolution. It was the law of the land, Heinz reasoned, even if his intention was to use it as a show of support for presidential action rather than as a legal roadblock. However, after considering the many constitutional and military risks involved, Heinz discarded the idea. Bush and the country would be spared the spectacle of a national debate over the president's powers, and Operation Desert Storm took place without further political complications.

As the aide who wrote the memo that Heinz studied, outlining the dangers posed to U.S. national security by the War Powers Resolution, I am intimately familiar with this particular historical "what if" moment.

The War Powers Resolution was a bad idea then, and it is a bad idea now. As satisfying as it might be in the short term to hobble the president, both parties would come to regret the consequences of such political combat, not least because it would shift greater responsibility for military action onto a Congress that in the long run may not want it -- a point raised by then-Rep. Lee Hamilton and others during a failed 1995 effort to repeal the resolution.

Worse, the War Powers Act is dangerous to our troops and to our national security. Imagine if it were ever taken seriously as an ongoing restriction on military action: A crisis arises, and the president responds by deploying U.S. forces, perhaps to support an ally or to enforce a United Nations resolution. The clock begins ticking, and after 60 days -- or sooner, if Congress so directs -- the president must recall U.S. troops. Thus, the resolution in effect tells any enemy that the best strategy against U.S. military force is to hunker down and wait out the 60-day period, in hopes that the resulting political fight in Washington will be messy enough to tear apart the nation and undermine Americans' will to fight.

It is folly to tell any potential enemy that he has 60 days to play one branch of the United States government off against another. Presidents answer to the American people and, in the most extreme instance, to the Senate during impeachment. These mechanisms do not need to be superseded by a contested law that invites the micromanagement of U.S. military operations by 535 additional commanders-in-chief.

Legislators from both parties now have a rare opportunity to exercise statesmanship. They can declare that their differences might be deep and principled, but that our political system cannot be shaken during a military conflict. A bipartisan move to repeal the War Powers Resolution -- and to protect the necessary ability of presidents to engage in military action now and in the future -- would send a powerful message to dictators and terrorists who have always placed their hopes, however vainly, in a mistaken belief that democracies are too divided and too weak to stop them. The War Powers Resolution should be shelved, once and for all, as a danger not to any one president or party, but to the security of the United States.

## 1NR Politics

### 2nc impacts

**Destroys the global economy.**

**Milstead 9-12** [David, Writer for the Globe and Mail, “The under-the-radar threat to U.S. stocks” Factiva]

Conventional wisdom holds that the chief risk to the high-flying U.S. stock market is “tapering,” the potential cutback of the Federal Reserve's bond-buying program. It's an understandable view, given how the Fed's monetary policy has propped up the country's economy for years by helping to keep long-term interest rates at ultra-low levels. But it's also wrong. The greatest immediate hazard to stocks isn't the direction the six governors of the Federal Reserve will take. It's what the 535 members of Congress will do in the coming weeks when faced with two budgetary issues that ought to be routine – but will likely be anything but. The first issue is approving a federal budget for the fiscal year that begins Oct. 1, or at least a resolution that will keep the government open in its absence. The second is authorizing a new, higher number for the U.S. government's borrowing before Washington hits its debt ceiling, once again, possibly by mid-October. In the absence of such a vote, the U.S. must simply stop spending – and, in essence, default on its debt. If this sounds familiar, it's because we went through a similar showdown two years ago, in the summer of 2011. Yet it's easy to forget now how that fiscal gridlock roiled the markets. In the first day of trading after Standard & Poor's downgraded U.S. debt in early August, the S&P 500 fell nearly 7 per cent. The day after, the index was nearly 19 per cent below the level of early July. The rhetoric suggests this fiscal showdown could inflict similar damage. Eighty House Republicans recently signed a letter urging their leadership to use any new government-funding bill to cut all necessary money for President Barack Obama's signature accomplishment, the Affordable Care Act, more popularly known as Obamacare. The Republican House leadership, it is said, does not support such a move. That's apparently because they prefer to make it part of the showdown over the debt ceiling. (The National Review, one of the U.S.'s leading conservative publications, reported Tuesday that Eric Cantor, the House Majority Leader, told Republicans they will be demanding a one-year delay of Obamacare in exchange for an increase in the debt ceiling.) Failing to raise the debt ceiling doesn't mean default, its opponents argue. The Treasury can just do a better job of “prioritizing,” paying the creditors while axing other expenses. In the absence of a higher debt ceiling, the U.S. could pay the interest on Treasury securities, and keep on footing the tab for Medicare and Medicaid, Social Security, national defence and a handful of aid programs, according to the Bipartisan Policy Centre. But, starting Oct. 15, it won't be able to afford the salaries of other federal workers, or perform functions like road construction and air traffic control, or run the federal court system. Ted Yoho, the improbably named Republican representative from Florida, said this about a failure to raise the debt ceiling, according to a recording of one of his summertime town hall meetings leaked to the Huffington Post: “So they say that would rock the market, capital would leave, the stock market would crash … I think our credit rating would do better.” Better, I think, to take the U.S. Treasury's position that the markets will view the U.S. picking and choosing which bills to pay as an admission it simply can't pay them all. Deputy secretary Neil Wolin said during the last debt-ceiling showdown, in 2011, that it “would merely be default by another name.” That, however, is the view from the reality-based community, rather than the deeply irrational, anti-intellectual element that has hijacked the Republican Party and turned ordinary budgetary procedure into a partisan brawl. The liberal economic writer Jonathan Chait recently wrote “the chaos and dysfunction have set in so deeply that Washington now lurches from crisis to crisis, and once-dull, keep-the-lights-on rituals of government procedure are transformed into white-knuckle dramas that threaten national or even global catastrophe.” And yet stocks seem to be priced as if Democrats, Republicans and President Obama will come together to work something out. There is great faith that the United States will overcome its challenges and take the right path in the end. Investors could suffer double-digit losses in the coming weeks if that faith is misplaced.

#### T-bond crisis causes food price spikes

**Min 10** – Associate Director for Financial Markets Policy, Center for American Progress (David, "The Big Freeze", 10/28, <http://www.americanprogress.org/issues/2010/10/big_freeze.html)>

A freeze on the debt ceiling could erode confidence in U.S. Treasury bonds in a number of ways, creating further and wider panic in financial markets. First, by causing a disruption in the issuance of Treasury debt, as happened in 1995-96, a freeze would cause investors to seek alternative financial investments, even perhaps causing a run on Treasurys. Such a run would cause the cost of U.S. debt to soar, putting even more stress on our budget, and the resulting enormous capital flows would likely be highly destabilizing to global financial markets, potentially creating more asset bubbles and busts throughout the world.

Second, the massive withdrawal of public spending that would occur would cause significant concern among institutional investors worldwide that the U.S. would swiftly enter a second, very deep, recession, raising concerns about the ability of the United States to repay its debt. Finally, the sheer recklessness of a debt freeze during these tenuous times would signal to already nervous investors that there was a significant amount of political risk, which could cause them to shy away from investing in the United States generally.

Taken together, these factors would almost certainly result in a significant increase in the interest rates we currently pay on our national debt, currently just above 2.5 percent for a 10-year Treasury note. If in the near term these rates moved even to 5.9 percent, the long-term rate predicted by the Congressional Budget Office, then our interest payments would increase by more than double, to nearly $600 billion a year. These rates could climb even higher, if investors began to price in a “default risk” into Treasurys—something that reckless actions by Congress could potentially spark—thus greatly exacerbating our budget problems.

The U.S. dollar, of course, is the world’s reserve currency in large part because of the depth and liquidity of the U.S. Treasury bond market. If this market is severely disrupted, and investors lost confidence in U.S. Treasurys, then it is unclear where nervous investors might go next. A sharp and swift move by investors out of U.S. Treasury bonds could be highly destabilizing, straining the already delicate global economy.

Imagine, for example, if investors moved from sovereign debt into commodities, most of which are priced and traded in dollars. This could have the catastrophic impact of weakening the world’s largest economies while also raising the prices of the basic inputs (such as metals or food) that are necessary for economic growth.

In short, a freeze on the debt ceiling would cause our interest payments to spike, making our budget situation even more problematic, while potentially triggering greater global instability—

perhaps even a global economic depression.

#### Quickly turns intervention and multilat

Harl, 10 al Harl, professor economics, Iowa State Univ. 11.20.10

[http://www.desmoinesregister.com/article/20101120/OPINION01/11200313/-1/SPORTS12/Guestcolumn-A-perfect-fiscal-storm-may-be-brewing]

Another way to begin is to refuse to raise the federal debt limit, as some key Republicans propose. The consequences of that could be breathtakingly tragic. If the government is unable to pay interest on the debt and to refinance expiring issues, the obvious result is default. The consequences of a default would do untold damage to the standing of the United States as a debtor nation and would raise the specter of another Greece. But the impact would be several times greater, with any meaningful rescue beyond the financial ability of any nation - or group of nations. And it could happen fast.

### 2nc uniqueness wall

#### It will pass – Obama’s PC is low but sufficient to give him the upper hand in the debt ceiling fight – 1nc Garrett evidence says Obama will win because he can exploit GOP divisions on the debt ceiling

#### He’s winning because he’s using capital to unify Democrats and exploit GOP divisions

**Allen, 9/19/13** (Jonathan, Politico, “GOP battles boost Obama” <http://www.politico.com/story/2013/09/republicans-budget-obama-97093.html>)

There’s a simple reason President Barack Obama is using his bully pulpit to focus the nation’s attention on the battle over the budget: In this fight, he’s watching Republicans take swings at each other.

And that GOP fight is a lifeline for an administration that had been scrambling to gain control its message after battling congressional Democrats on the potential use of military force in Syria and the possible nomination of Larry Summers to run the Federal Reserve.

If House Republicans and Obama can’t cut even a short-term deal for a continuing resolution, the government’s authority to spend money will run out on Oct. 1. Within weeks, the nation will default on its debt if an agreement isn’t reached to raise the federal debt limit.

For some Republicans, those deadlines represent a leverage point that can be used to force Obama to slash his health care law. For others, they’re a zero hour at which the party will implode if it doesn’t cut a deal.

Meanwhile, “on the looming fiscal issues, Democrats — both liberal and conservative, executive and congressional — are virtually 100 percent united,” said Sen. Charles Schumer (D-N.Y.).

Just a few days ago, all that Obama and his aides could talk about were Syria and Summers. Now, they’re bringing their party together and shining a white hot light on Republican disunity over whether to shut down the government and plunge the nation into default in a vain effort to stop Obamacare from going into effect.

The squabbling among Republicans has gotten so vicious that a Twitter hashtag — #GOPvsGOPugliness — has become a thick virtual data file for tracking the intraparty insults. Moderates, and even some conservatives, are slamming Texas Sen. Ted Cruz, a tea party favorite, for ramping up grassroots expectations that the GOP will shut down the government if it can’t win concessions from the president to “defund” his signature health care law.

“I didn’t go to Harvard or Princeton, but I can count,” Sen. Bob Corker (R-Tenn.) tweeted, subtly mocking Cruz’s Ivy League education. “The defunding box canyon is a tactic that will fail and weaken our position.”

While it is well-timed for the White House to interrupt a bad slide, Obama’s singular focus on the budget battle is hardly a last-minute shift. Instead, it is a return to the narrative arc that the White House was working to build before the Syria crisis intervened.

#### He just needs to stay the course

**Robinson, 9/20**/13 – Washington Post columnist (Eugene, “Obama Needs to Stand His Ground” <http://www.realclearpolitics.com/articles/2013/09/20/obama_needs_to_stand_his_ground_120003.html>)

Obama is by nature a reasonable and flexible man, but this time he must not yield. Even if you leave aside what delaying or defunding Obamacare would mean for his legacy -- erasing his most significant domestic accomplishment -- it would be irresponsible for him to bow to the GOP zealots' demands.

The practical impact of acquiescing would be huge. Individuals who have been uninsured are anticipating access to adequate care. State governments, insurance companies and health care providers have spent vast amounts of time and money preparing for the law to take effect. To suddenly say "never mind" would be unbelievably reckless.

The political implication of compromising with blackmailers would be an unthinkable surrender of presidential authority. The next time he said "I will do this" or "I will not do that," why should Congress or the American people take him seriously? How could that possibly enhance Obama's image on the world stage?

Obama has said he will not accept a budget deal that cripples Obamacare and will never negotiate on the debt ceiling. Even if the Republicans carry through with their threats -- and this may happen -- the president has no option but to stand his ground.

You don't deal with bullies by making a deal to keep the peace. That only rewards and encourages them. You have to push back.

The thing is, this showdown is a sure political loser for the GOP -- and smart Republicans know it. Boehner doesn't want this fight, and in fact should be grateful if Obama hangs tough and shows the crazies the limits of their power. Republicans in the Senate don't want this fight. It's doubtful that even a majority of House Republicans really, truly want this fight, no matter what they say publicly.

But irresponsible demagogues -- I mean you, Sen. Ted Cruz, R-Texas -- have whipped the GOP base into a frenzy of unrealistic expectations. House members who balk at jumping off the cliff risk being labeled "moderate," which is the very worst thing you can call a Republican -- and the most likely thing to shorten his or her political career.

The way to end this madness is by firmly saying no. If Boehner won't do it, Obama must.

#### Business pressure will change minds – but Obama’s capital is key to mobilizing it

**Sink, 9/18/13** (Justin, The Hill, “Amid fiscal fights, Obama courting business leaders”

<http://thehill.com/homenews/administration/322883-amid-fiscal-fights-obama-courting-business-leaders>)

President Obama will address the Business Roundtable (BRT) on Wednesday as he works to get corporate leaders on his side during this fall’s fiscal showdowns with the GOP.

The White House is hoping that Obama can rally the influential organization, made up of conservative chief executives from the nation’s largest corporations, to help build pressure on congressional Republicans.

According to a White House official, the president will ask business leaders "to help send the message to Congress that a default would be disastrous for our economy and for businesses across the country."

"Some Republicans in Congress are playing a reckless political game by threatening to leave the economy hanging in the balance for an ideological agenda that has no chance of becoming law—a game that last time had real consequences, hurting growth and business confidence," the official said.

Obama is expected to note that during debt ceiling negotiations in the summer of 2011, the stock market decreased 17 percent, the nation's credit rating was downgraded, and consumer confidence dropped to its lowest level since the financial crisis. He'll argue to the assembled corporate executives that failure to strike a deal would again endanger the economy — and their bottom lines.

“The president’s focus, as is always the case when he meets with this group, is what we can do together to keep the American economy growing,” White House press secretary Jay Carney said on Tuesday.

But the sell will not be an easy one — the association’s officials have been critical of the president, and members of the group are wary of the administration’s aggressive regulatory push on labor and environmental issues.

And congressional Republicans are accusing the president of employing "scare tactics" to gain leverage.

"No one is threatening to default," said Brendan Buck, a spokesman for House Speaker John Boehner (R-Ohio). "The president only uses these scare tactics to avoid having to show the courage needed to deal with our debt crisis. Every major deficit deal in the last 30 years has been tied to a debt limit increase, and this time should be no different."

Obama has leaned on the organization in the past. Shortly after the president’s last visit in December for a speech and closed-door discussion, the CEOs sent a letter to congressional leaders arguing all options — including tax increases — should be on the table as negotiators sought a “fiscal-cliff” deal.

That gesture, a reversal from the group’s stance just five months earlier, ratcheted up pressure on congressional Republicans. The GOP subsequently stumbled, and Obama struck a deal that many Democrats embraced.

### AT: No PC\

specific ev tying obama’s negotiation directly to the debt ceiling – cant get republicans and democrats to work together without it

#### Low PC is not no PC – Obama is prioritizing the fiscal issues and deferring other controversial issues to save PC

**Cassidy, 9/16/13** (John, “SUMMERS AND OBAMA ACCEPT THE INEVITABLE” The New Yorker, <http://www.newyorker.com/online/blogs/johncassidy/2013/09/summers-and-obama-accept-the-inevitable.html>)

In recent weeks, numerous stories appeared that quoted White House and Treasury Department insiders saying how much the President respected Summers, who served as his senior economic advisor from the start of 2009 to the end of 2010, and how much he valued his advice. But we already knew that. The key question was never how much Obama admired Summers, but how much political capital he would be willing to invest in landing him at the Fed. If you looked at the issue in terms of cold political calculus, which is how Presidential aides look at most things, it was pretty clear which way the cost-benefit analysis would come out.

If Obama had been flying high, with a tight grip on Congress, it’s conceivable that he would have decided to nominate Summers and be damned. But he was hardly reaching a determination about the Fed job from a position of strength. His approval ratings are sagging, and he is about to enter another season of squabbling with Congressional Republicans over the budget, funding Obamacare, and the debt ceiling. In such circumstances, the last thing that the President needed was a bitter nomination fight in the Senate, especially one in which the liberal wing of his party, which is virtually united against a Summers nomination, was on the opposing side.

#### Their argument is exaggerated bad press

**Purdum, 9/18/13** – reporter for Politico (Todd, “And what’s right with President Obama?”, Politico, <http://www.politico.com/story/2013/09/whats-right-with-barack-obama-96971.html>)

The British have a saying about the twin rules of journalism: first simplify, then exaggerate.

Perhaps Barack Obama can comfort himself with the reality that his current travails are both more complicated in their causes and less dire in their consequences than they are being portrayed in the Washington echo chamber.

There is a useful cautionary note for everyone who is prone to withering judgments about Obama’s stumbling performances in recent weeks: No institution in American life is more resilient than the modern presidency, and no politician talented enough to capture the office should ever be underestimated.

Bill Clinton, of course, is the supreme example. He was counted out after a clumsy start in 1993, after losing the House in 1994, after a sex scandal in 1998, and, as a new ex-president, after a pardon scandal in 2001.

Barack Obama is a man of different talents, instincts and interests than Clinton. But now that Washington is in pile-on mode — including us — it’s not a bad time to remember that there are some reasons why he is among the most talented politicians of his generation.

Recent bad headlines have not diluted his enduring personal and political assets, and, so long as he occupies the White House, there is no other person with more power to set the national agenda.

### AT: Obama won’t negotiate

#### Obama will still pressure Congress directly even if he won’t negotiate

**Garcia, 9/20/13** (Jon, “Obama Rips GOP Over House Vote to Defund Obamacare” ABC News, <http://abcnews.go.com/blogs/politics/2013/09/obama-rips-gop-over-house-vote-to-cut-obamacare-funds/>)

Obama has laid out his own non-negotiable red lines, both over the health law and the need to increase the nation’s debt ceiling with no strings attached. Congress must increase the debt limit by mid-October in order for the government to continue paying its bills or the U.S. will default.¶ “This is the United States of America. We’re not some banana republic. This is not a deadbeat nation. We don’t run out on our tab. We’re the world’s bedrock investment,” Obama told the crowd. “The entire world looks to us to make sure the world economy is stable. We can’t just not pay our bills. And even threatening something like that is the height of irresponsibility.”¶ Obama placed all the blame on congressional Republicans, telling the crowd “they’re not focused on you. They’re focused on politics. …They’re focused on trying to mess with me.”¶ The White House said today that Obama would be having “conversations” with congressional leaders in the days ahead. But so far, there are no negotiations underway from either side.

#### Obama will negotiate – insiders clarified his statement

**Hughes, 9/18/13** (Siobhan, “Lew Meets Lawmakers, But No One Budges on Debt” Wall Street Journal,

<http://blogs.wsj.com/washwire/2013/09/18/lew-meets-lawmakers-but-no-one-budges-on-debt/?KEYWORDS=debt+ceiling>)

But Mr. Lew said the dynamics changed after 2011, when talks broke down and the government came close to falling behind on its obligations. He said the White House wasn’t going to negotiate on the debt ceiling, saying this was Congress’s responsibility.

Mr. Lew’s comments did leave a window open for budget negotiations, however, people familiar with the briefing said.

For example, he did not say the White House would not accept a deficit-reduction package that included an increase in the debt ceiling, people familiar with the meeting said. Rather, he said the White House would not engage in negotiations with Republicans if they use the option of refusing to raise the debt ceiling as leverage.

### Top of the docket

#### Top of the docket – the vote is next week

**Associated Press, 9/19/13** (“Vote in Congress on Friday aimed at averting US government shutdown” <http://www.nanaimodailynews.com/news/vote-in-congress-on-friday-aimed-at-averting-us-government-shutdown-1.631432>)

Far from giving up the effort to kill the health care law, Republican leaders are looking to shift the fight over to even more important legislation required to prevent the government from defaulting on its financial obligations.

A debt-limit measure, required to allow the government to pay all of its bills on time, could be brought to the House floor as early as next week and would allow the Treasury to borrow freely for one year.

Republicans vow to load that bill with a wish list, including another assault on the health care bill and a provision to force the construction of the Keystone XL pipeline from Canada to Texas Gulf Coast refineries, a project that environmentalists oppose and that the Obama administration so far has refused to approve.

### AT: Thumpers

0 ev tying this to Obama, doesn’t say the words Obama or polcap, no thumper

#### Our uniqueness accounts for Syria – 1nc Washington Post says that the Syria deferral freed up capital for the debt ceiling – even if Congress is still pissed about Syria, our 1nc fully accounts for it

#### they’re only House GOP posturing – no chance it passes the Senate

**Condon, 9/19/13** (Stephanie, “House Republicans pushing for major food stamp cuts” CBS News <http://www.cbsnews.com/8301-250_162-57603571/house-republicans-pushing-for-major-food-stamp-cuts/>)

After watching the cost of food stamp assistance soar during the recession, the Republican-led House of Representatives on Thursday plans to vote on a bill to cut the food stamp program by a whopping $40 billion over 10 years.

The major cuts were designed to satisfy House conservatives who rejected more moderate reductions to the Supplemental Nutrition Assistance Program (SNAP) earlier this year, but with millions of Americans still struggling to recover from the recession, Democrats are balking at the GOP bill.

"What the House Republicans are saying is this: get a good paying job or your family will just have to go hungry," Sen. Debbie Stabenow, D-Mich., chairwoman of the Senate Agriculture Committee, said on the Senate floor Wednesday. "But there aren't enough good paying jobs, as you can see... The Republican approach is like saying we're tired of spending so much on wildfires, so we'll just cut the budget of the fire service. That isn't going to work."

Stabenow said the House bill -- called the Nutrition Reform and Work Opportunity Act -- "will never see the light of day in the Senate."

Even if it did pass in the Democratic-led Senate, President Obama has promised to veto the legislation. "These cuts would affect a broad array of Americans who are struggling to make ends meet, including working families with children, senior citizens, veterans, and adults who are still looking for work," the White House said in a statement on the bill.

### 2nc link

#### Constraints on presidential authority generate partisan splits, flips bipart and ideology args

Nzelibe 11 Jide Nzelibe (Bigelow Teaching Fellow and Lecturer in Law at the University of Chicago before joining Northwestern Law. In addition to his JD from Yale Law School, he also holds an MPA in international relations from Princeton University, where he was awarded a fellowship from the Woodrow Wilson Foundation and a pre-doctoral fellowship from the Ford Foundation.) “Partisan Conflicts Over Presidential Authority.” 53 William & Mary Law Review 389 (2011) NORTHWESTERN UNIVERSITY SCHOOL OF LAW PUBLIC LAW AND LEGAL THEORY SERIES • NO. 12-02 Pg. 16 //Chappell

In such a framework of political competition, partisan groups may be able to stake out preferences for presidential authority that increase the opportunities to carry out their issues and minimize opportunities to carry out those issues owned by the opposition However, certain conditions make it more likely that political parties will be able to successfully link visions of presidential authority with distributive partisan objectives. Specifically, if presidential authority can be unbundled across distinct issues in which parties have conflicting preferences, politicians may be able to predict how specific constraints on presidential authority may affect their favored issues.48 Hypothetically, if the presidential authority to enforce social welfare policies can be unbundled from the criminal enforcement authority, then parties can stake out preferences for enlarging or contracting presidential authority depending on whether they own the underlying issue being unbundled. Thus, in this example, Democrats might seek to expand the President’s social welfare enforcement authority while weakening the criminal enforcement authority, whereas Republicans might have the opposite set of institutional preferences.49 All else equal, we should expect partisans who stand to lose if a specific issue dominates the electoral agenda to have an incentive to push for multiple veto points or more constraints on presidential authority over that issue, whereas proponents will push for more presidential discretion.

#### **Fighting to defend the war power derails the rest of the agenda**

Kriner 10 Douglas L. Kriner (assistant professor of political science at Boston University) “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69.

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.59 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. 60 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 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 proprieties, such as Social Security and immigration reform, failed perhaps 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.61 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.