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#### Obama’s pressuring the GOP with a strong display of Presidential strength and staying on message – the GOP will blink

**Dovere, 10/1/13** (Edward, Politico, “Government shutdown: President Obama holds the line”

<http://www.politico.com/story/2013/10/government-shutdown-president-obama-holds-the-line-97646.html?hp=f3>)

President Barack Obama started September in an agonizing, extended display of how little sway he had in Congress. He ended the month with a display of resolve and strength that could redefine his presidency.

All it took was a government shutdown.

This was less a White House strategy than simply staying in the corner the House GOP had painted them into — to the White House’s surprise, Obama was forced to do what he so rarely has as president: he said no, and he didn’t stop saying no.

For two weeks ahead of Monday night’s deadline, Obama and aides rebuffed the efforts to kill Obamacare with the kind of firm, narrow sales pitch they struggled with in three years of trying to convince people the law should exist in the first place. There was no litany of doomsday scenarios that didn’t quite come true, like in the run-up to the fiscal cliff and the sequester. No leaked plans or musings in front of the cameras about Democratic priorities he might sacrifice to score a deal.

After five years of what’s often seen as Obama’s desperation to negotiate — to the fury of his liberal base and the frustration of party leaders who argue that he negotiates against himself. Even his signature health care law came with significant compromises in Congress.

Instead, over and over and over again, Obama delivered the simple line: Republicans want to repeal a law that was passed and upheld by the Supreme Court — to give people health insurance — or they’ll do something that everyone outside the GOP caucus meetings, including Wall Street bankers, seems to agree would be a ridiculous risk.

“If we lock these Americans out of affordable health care for one more year,” Obama said Monday afternoon as he listed examples of people who would enjoy better treatment under Obamacare, “if we sacrifice the health care of millions of Americans — then they’ll fund the government for a couple more months. Does anybody truly believe that we won’t have this fight again in a couple more months? Even at Christmas?”

The president and his advisers weren’t expecting this level of Republican melee, a White House official said. Only during Sen. Ted Cruz’s (R-Texas) 21-hour floor speech last week did the realization roll through the West Wing that they wouldn’t be negotiating because they couldn’t figure out anymore whom to negotiate with. And even then, they didn’t believe the shutdown was really going to happen until Saturday night, when the House voted again to strip Obamacare funding.

This wasn’t a credible position, Obama said again Monday afternoon, but rather, bowing to “extraneous and controversial demands” which are “all to save face after making some impossible promises to the extreme right wing of their political party.”

Obama and aides have said repeatedly that they’re not thinking about the shutdown in terms of political gain, but the situation’s is taking shape for them. Congress’s approval on dealing with the shutdown was at 10 percent even before the shutters started coming down on Monday according to a new CNN/ORC poll, with 69 percent of people saying the House Republicans are acting like “spoiled children.”

“The Republicans are making themselves so radioactive that the president and Democrats can win this debate in the court of public opinion” by waiting them out, said Jim Manley, a Democratic strategist and former aide to Senate Majority Leader Harry Reid who has previously been critical of Obama’s tactics.

Democratic pollster Stan Greenberg said the Obama White House learned from the 2011 debt ceiling standoff, when it demoralized fellow Democrats, deflated Obama’s approval ratings and got nothing substantive from the negotiations.

“They didn’t gain anything from that approach,” Greenberg said. “I think that there’s a lot they learned from what happened the last time they ran up against the debt ceiling.”

While the Republicans have been at war with each other, the White House has proceeded calmly — a breakthrough phone call with Iranian President Hassan Rouhani Friday that showed him getting things done (with the conveniently implied juxtaposition that Tehran is easier to negotiate with than the GOP conference), his regular golf game Saturday and a cordial meeting Monday with his old sparring partner Israeli Prime Minister Benjamin Netanyahu.

White House press secretary Jay Carney said Monday that the shutdown wasn’t really affecting much of anything.

“It’s busy, but it’s always busy here,” Carney said. “It’s busy for most of you covering this White House, any White House. We’re very much focused on making sure that the implementation of the Affordable Care Act continues.”

Obama called all four congressional leaders Monday evening — including Boehner, whose staff spent Friday needling reporters to point out that the president hadn’t called for a week. According to both the White House and Boehner’s office, the call was an exchange of well-worn talking points, and changed nothing.

Manley advised Obama to make sure people continue to see Boehner and the House Republicans as the problem and not rush into any more negotiations until public outrage forces them to bend.

“He may want to do a little outreach, but not until the House drives the country over the cliff,” Manley said Monday, before the shutdown. “Once the House has driven the country over the cliff and failed to fund the government, then it might be time to make a move.”

The White House believes Obama will take less than half the blame for a shutdown – with the rest heaped on congressional Republicans.

The divide is clear in a Gallup poll also out Monday: over 70 percent of self-identifying Republicans and Democrats each say their guys are the ones acting responsibly, while just 9 percent for both say the other side is.

If Obama is able to turn public opinion against Republicans, the GOP won’t be able to turn the blame back on Obama, Greenberg said. “Things only get worse once things begin to move in a particular direction,” he said. “They don’t suddenly start going the other way as people rethink this.”

#### **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.

#### That takes Obama off-message – it undermines his strategy of constant pressure on the GOP

**Milbank, 9/27/13** – Washington Post Opinion Writer (Dana, “Obama should pivot to Dubya’s playbook” Washington Post, <http://www.washingtonpost.com/opinions/dana-milbank-obama-should-try-pivoting-to-george-bushs-playbook/2013/09/27/c72469f0-278a-11e3-ad0d-b7c8d2a594b9_story.html>)

If President Obama can stick to his guns, he will win his October standoff with Republicans.

That’s an awfully big “if.”

This president has been consistently inconsistent, predictably unpredictable and reliably erratic. Consider the events of Thursday morning:

Obama gave a rousing speech in suburban Washington, in defense of Obamacare, on the eve of its implementation. “We’re now only five days away from finishing the job,” he told the crowd.

But before he had even left the room, his administration let slip that it was delaying by a month the sign-up for the health-care exchanges for small businesses. It wasn’t a huge deal, but it was enough to trample on the message the president had just delivered.

Throughout his presidency, Obama has had great difficulty delivering a consistent message. Supporters plead for him to take a position — any position — and stick with it. His shifting policy on confronting Syria was the most prominent of his vacillations, but his allies have seen a similar approach to the Guantanamo Bay prison, counterterrorism and climate change. Even on issues such as gun control and immigration where his views have been consistent, Obama has been inconsistent in promoting his message. Allies are reluctant to take risky stands, because they fear that Obama will change his mind and leave them standing alone.

Now come the budget showdowns, which could define the rest of his presidency. Republican leaders are trying to shift the party’s emphasis from the fight over a government shutdown to the fight over the debt-limit increase, where they have more support. A new Bloomberg poll found that Americans, by a 2-to-1 margin, disagree with Obama’s view that Congress should raise the debt limit without any conditions.

But Obama has a path to victory. That poll also found that Americans think lawmakers should stop trying to repeal Obamacare. And that was before House Republicans dramatically overplayed their hand by suggesting that they’ll allow the nation to default if Obama doesn’t agree to their laundry list of demands, including suspending Obamacare, repealing banking reforms, building a new oil pipeline, easing environmental regulations, limiting malpractice lawsuits and restricting access to Medicare.

To beat the Republicans, Obama might follow the example of a Republican, George W. Bush. Whatever you think of what he did, he knew how to get it done: by simplifying his message and repeating it, ad nauseam, until he got the result he was after.

Obama instead tends to give a speech and move along to the next topic. This is why he is forever making “pivots” back to the economy, or to health care. But the way to pressure Congress is to be President One Note.

In the debt-limit fight, Obama already has his note: He will not negotiate over the full faith and credit of the United States. That’s as good a theme as any; it matters less what the message is than that he delivers it consistently.

The idea, White House officials explained to me, is to avoid getting into a back-and-forth over taxes, spending and entitlement programs. “We’re right on the merits, but I don’t think we want to argue on the merits,” one said. “Our argument is not that our argument is better than theirs; it’s that theirs is stupid.”

This is a clean message: Republicans are threatening to tank the economy — through a shutdown or, more likely, through a default on the debt — and Obama isn’t going to negotiate with these hostage-takers.

Happily for Obama, Republicans are helping him to make the case by being publicly belligerent. After this week’s 21-hour speech on the Senate floor by Sen. Ted Cruz (R-Tex.), the publicity-seeking Texan and Sen. Mike Lee (R-Utah) objected to a bipartisan request to move a vote from Friday to Thursday to give House Republicans more time to craft legislation avoiding a shutdown. On the Senate floor, Sen. Bob Corker (R-Tenn.) accused them of objecting because they had sent out e-mails encouraging their supporters to tune in to the vote on Friday. The Post’s Ed O’Keefe caught Cruz “appearing to snicker” as his colleague spoke — more smug teenager than legislator.

Even if his opponents are making things easier for him, Obama still needs to stick to his message. As in Syria, the president has drawn a “red line” by saying he won’t negotiate with those who would put the United States into default. If he retreats, he will embolden his opponents and demoralize his supporters.

#### It consumes his capital, undermines Democratic unity and prevents passing the debt ceiling

**Lillis, 9/7/13** (Mike, The Hill, “Fears of wounding Obama weigh heavily on Democrats ahead of vote”

Read more: http://thehill.com/homenews/house/320829-fears-of-wounding-obama-weigh-heavily-on-democrats#ixzz2gWiT9H8u

The prospect of wounding President Obama is weighing heavily on Democratic lawmakers as they decide their votes on Syria.

Obama needs all the political capital he can muster heading into bruising battles with the GOP over fiscal spending and the debt ceiling.

Democrats want Obama to use his popularity to reverse automatic spending cuts already in effect and pay for new economic stimulus measures through higher taxes on the wealthy and on multinational companies.

But if the request for authorization for Syria military strikes is rebuffed, some fear it could limit Obama's power in those high-stakes fights.

That has left Democrats with an agonizing decision: vote "no" on Syria and possibly encourage more chemical attacks while weakening their president, or vote "yes" and risk another war in the Middle East.

“I’m sure a lot of people are focused on the political ramifications,” a House Democratic aide said.

Rep. Jim Moran (D-Va.), a veteran appropriator, said the failure of the Syria resolution would diminish Obama's leverage in the fiscal battles.

"It doesn't help him," Moran said Friday by phone. "We need a maximally strong president to get us through this fiscal thicket. These are going to be very difficult votes."

#### That causes default and will destroy the U.S. and global economy

**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.

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#### COUNTERPLAN: 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 requirements for drone strikes in the area of targeted killing. The Department of Justice officials involved should counsel that the president should publicize and clarify relevant executive documents outlining the legal basis and justifications for drone strikes. 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.

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#### 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

#### Secrecy and expertise are crucial features of executive

Posner 12 ERIC A. POSNER ( Kirkland and Ellis Professor of Law at the University of Chicago Law School. An editor of The Journal of Legal Studies, he has also published numerous articles and books on issues in international law) “DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER SEPTEMBER 11: CONGRESS, THE COURTS, AND THE OFFICE OF LEGAL COUNSEL” Harvard Journal of Law & Public Policy. 2012. <http://ericposner.com/DEFERENCE%20TO%20THE%20EXECUTIVE.pdf>

The debate is best understood in the context of the U.S. government's post-September 11 policies. Defenders of these policies frequently invoked the deference thesis—not so much as a way of justifying any particular policy, but as a way of insisting that the executive should be given the benefit of the doubt, at least in the short term.'^ The deference thesis rests on basic intuitions about institutional competence: that the executive can act more decisively and with greater secrecy than Congress or the courts because it is a hierarchical body and commands forces that are trained and experienced in countering security threats. The other branches lack expertise. Although they may have good ideas from time to time, and are free to volunteer them, the ability of the executive to respond to security threats **would be unacceptably hampered** if Congress and the courts had the power to block it to any significant degree.

Secrecy is an important part of the argument. Policymaking depends on information, and information during emergencies often must be kept secret. Congress and the courts are by nature and tradition open bodies; if they were to act in secret, their value would be diminished. Meanwhile, the argument continues, the fear of an out-of-control executive who would engage in abuses unless it was constrained by the other branches is exaggerated. The President has strong electoral and other political incentives to act in the public interest (at least, in the United States). Even if the executive can conceal various "inputs" into counterterrorism policy, it cannot conceal the "output"—the existence, or not, of terrorist attacks that kill civilians.

#### 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.

#### Targeted killing’s vital to counterterrorism---disrupts leadership and makes carrying out attacks impossible

Kenneth Anderson 13, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities -- but much of the drone's contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties.

Nonetheless, in conjunction with high-quality intelligence, drone warfare offers an unparalleled means to strike directly at terrorist organizations without needing a conventional or counterinsurgency approach to reach terrorist groups in their safe havens. It offers an offensive capability, rather than simply defensive measures, such as homeland security alone. Drone warfare offers a raiding strategy directly against the terrorists and their leadership.

If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive -- including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law -- then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration -- and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counter-insurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature.

Drone warfare today is integrated with a much larger strategic counterterrorism target -- one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

#### Constraining targeted killing’s role in the war on terror causes extinction

Louis Rene Beres 11, Professor of Political Science and International Law at Purdue, 2011, “After Osama bin Laden: Assassination, Terrorism, War, and International Law,” Case Western Reserve Journal of International Law, 44 Case W. Res. J. Int'l L. 93

Even after the U.S. assassination of Osama bin Laden, we are still left with the problem of demonstrating that assassination can be construed, at least under certain very limited circumstances, as an appropriate instance of anticipatory self-defense. Arguably, the enhanced permissibility of anticipatory self-defense that follows generally from the growing destructiveness of current weapons technologies in rogue hands may be paralleled by the enhanced permissibility of assassination as a particular strategy of preemption. Indeed, where assassination as anticipatory self-defense may actually prevent a nuclear or other highly destructive form of warfare, reasonableness dictates that it could represent distinctly, even especially, law-enforcing behavior.

For this to be the case, a number of particular conditions would need to be satisfied. First, the assassination itself would have to be limited to the greatest extent possible to those authoritative persons in the prospective attacking state. Second, the assassination would have to conform to all of the settled rules of warfare as they concern discrimination, proportionality, and military necessity. Third, the assassination would need to follow intelligence assessments that point, beyond a reasonable doubt, to preparations for unconventional or other forms of highly destructive warfare within the intended victim's state. Fourth, the assassination would need to be founded upon carefully calculated judgments that it would, in fact, prevent the intended aggression, and that it would do so with substantially less harm [\*114] to civilian populations than would all of the alternative forms of anticipatory self-defense.

Such an argument may appear manipulative and dangerous; permitting states to engage in what is normally illegal behavior under the convenient pretext of anticipatory self-defense. Yet, any blanket prohibition of assassination under international law could produce even greater harm, compelling threatened states to resort to large-scale warfare that could otherwise be avoided. Although it would surely be the best of all possible worlds if international legal norms could always be upheld without resort to assassination as anticipatory self-defense, the persisting dynamics of a decentralized system of international law may sometimes still require extraordinary methods of law-enforcement. n71

Let us suppose, for example, that a particular state determines that another state is planning a nuclear or chemical surprise attack upon its population centers. We may suppose, also, that carefully constructed intelligence assessments reveal that the assassination of selected key figures (or, perhaps, just one leadership figure) could prevent such an attack altogether. Balancing the expected harms of the principal alternative courses of action (assassination/no surprise attack v. no assassination/surprise attack), the selection of preemptive assassination could prove reasonable, life-saving, and cost-effective.

What of another, more common form of anticipatory self-defense? Might a conventional military strike against the prospective attacker's nuclear, biological or chemical weapons launchers and/or storage sites prove even more reasonable and cost-effective? A persuasive answer inevitably depends upon the particular tactical and strategic circumstances of the moment, and on the precise way in which these particular circumstances are configured.

But it is entirely conceivable that conventional military forms of preemption would generate tangibly greater harms than assassination, and possibly with no greater defensive benefit. This suggests that assassination should not be dismissed out of hand in all circumstances as a permissible form of anticipatory self-defense under international law. [\*115]

What of those circumstances in which the threat to particular states would not involve higher-order (WMD) n72 military attacks? Could assassination also represent a permissible form of anticipatory self-defense under these circumstances? Subject to the above-stated conditions, the answer might still be "yes." The threat of chemical, biological or nuclear attack may surely enhance the legality of assassination as preemption, but it is by no means an essential precondition. A conventional military attack might still, after all, be enormously, even existentially, destructive. n73 Moreover, it could be followed, in certain circumstances, by unconventional attacks.

#### Risk of nuclear terrorism is high, causes extinction

**Costello, 12** – Ryan, coordinator of the Fissile Materials Working Group at the Connect U.S. Fund (“Involuntary response,” Bulletin of the Atomic Scientists, 1/26/12, http://thebulletin.org/involuntary-response //Red

Earlier this month, widespread inaction on the increasing dangers posed by nuclear proliferation and climate change forced the Bulletin's Doomsday Clock to move one minute closer to midnight, indicating the **mounting perils confronting humanity's survival**. One factor pushing the clock forward to five minutes to midnight was the failure to ensure strict security and comprehensive international oversight for nuclear weapons and materials, which continue to accumulate in a few nations. Despite several ongoing initiatives to strengthen global defenses against nuclear terrorism, it is clear that **much more needs to be done to ensure that the nightmare doesn't become reality.** In April 2010, 47 heads of state met in Washington, DC, for the first Nuclear Security Summit in order to find ways to address the largely overlooked threat of nuclear terrorism. The summit was the largest meeting of heads of state called by an American president since 1945, when leaders gathered in San Francisco in the effort that launched the United Nations. Major obstacles confronted planners for the first Nuclear Security Summit, including a lack of consensus on the dangers of nuclear terrorism and how best to enhance global nuclear security (problems that still persist). By gathering world leaders -- rather than bureaucrats -- to address the issue head on, the first summit made some important steps in helping to raise global awareness about the threat of nuclear terrorism. The 47 heads of state, representing countries from all corners of the globe, concluded in a nonbinding communiqué that "nuclear terrorism is one of the greatest threats to global security" and that "strong nuclear security measures" are the best means to prevent the threat from becoming reality. Additionally, the leaders joined President Obama's goal to secure all vulnerable nuclear material within four years. In addition to the strong normative support generated for preventing nuclear terrorism, the 2010 Nuclear Security Summit resulted in approximately 50 concrete national commitments to strengthen global nuclear security -- many of which have already been fulfilled heading into the second summit this March in Seoul, South Korea. Of particular note are the pledges to eliminate nuclear bombmaking materials. Since April 2010, nearly 400 kilograms of highly enriched uranium (HEU) has been removed from 10 countries. Russia, meanwhile, has destroyed more than 48 metric tons of HEU, with the United States eliminating seven additional metric tons of HEU. Such measures reduce the amount of material that could slip onto the black market and into the wrong hands. Other states, meanwhile, helped to bolster the international legal framework for nuclear security, with 13 additional countries ratifying the amendment to the Convention on the Physical Protection of Nuclear Materials and 12 ratifying the International Convention for the Suppression of Acts of Nuclear Terrorism. Several states made additional contributions to the Office of Nuclear Security of the International Atomic Energy Agency (IAEA), thus increasing the resources of an organization that provides vital guidance on how nations can best enhance their nuclear security. Yet, while the first Nuclear Security Summit greatly enhanced international attention on the threat of nuclear terrorism and gained tangible commitments, it is evident that **much more work remains to ensure that all nuclear materials are secure.** In 2009, the Fissile Materials Working Group (FMWG), a coalition of nongovernmental organizations dedicated to preventing nuclear terrorism, released a set of five consensus policy recommendations: • Launch a new "Next Generation Nuclear Security Initiative." • Accelerate efforts to consolidate and eliminate global HEU, plutonium, and nuclear weapons stockpiles. • Minimize all forms of HEU use and set a timetable for a ban on the civil use of HEU. • Request and aggressively pursue sufficient funding for removing and securing all vulnerable nuclear materials around the world in four years. • Extend and expand the G-8 Global Partnership Against the Spread of Weapons of Mass Destruction for another 10 years. Despite strong international expert consensus on the nature of the threat, the FMWG's original policy recommendations still remain largely applicable two years after they were released. Unfortunately, **governments and citizens don't seem to recognize the urgency of the problem**, and a detailed plan for securing all vulnerable nuclear materials has yet to be created. And, while significant progress has been made to secure fissile materials around the globe, there is enough military and civilian HEU in the world to produce another 60,000 nuclear weapons -- without considering stockpiles of plutonium -- according to the International Panel on Fissile Materials. Plus, the future budget outlook for the United States and Europe is grim, potentially jeopardizing funding for vital programs that secure nuclear materials around the globe. The current nuclear security regime, meanwhile, may **not** be **adequate to prevent potential terrorists from** acquiring nuclear material and **constructing a** crude **nuclear device.** Kenneth Brill, former US ambassador to the IAEA, argues that the "existing global architecture for nuclear security is more like a shantytown than a coherent structure." Nuclear security remains a national responsibility, with very little international oversight, peer review, or enforcement measures. According to Brill: "The existing pastiche of niche treaties, like-minded initiatives, and IAEA recommendations give the appearance of dealing effectively with nuclear security, while the reality is the 'best efforts' and voluntary nature of virtually all international action on nuclear security leave **loopholes through which a determined terrorist group could drive one or more improvised nuclear devices.**" Given the international ramifications of a nuclear terrorist attack, it seems that a regime relying on voluntary national commitments is inadequate, particularly when governmental consensus on the nature of the threat can be uneven and fleeting.

### Prolif Advantage

#### No cascading drone prolif – tech and diplomacy check

**Singh 12** [Joseph, researcher at the Center for a New American Security, Time Magazine, “Betting Against a Drone Arms Race,” Aug 13, 2012, <http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/>]

Bold predictions of a coming drones arms race are all the rage since the uptake in their deployment under the Obama Administration. Noel Sharkey, for example, argues in an August 3 op-ed for the Guardian that rapidly developing drone technology — coupled with minimal military risk — portends an era in which states will become increasingly aggressive in their use of drones.¶ As drones develop the ability to fly completely autonomously, Sharkey predicts a proliferation of their use that will set dangerous precedents, seemingly inviting hostile nations to use drones against one another. Yet, the narrow applications of current drone technology coupled with what we know about state behavior in the international system lend no credence to these ominous warnings.¶ Indeed, critics seem overly-focused on the domestic implications of drone use.¶ In a June piece for the Financial Times, Michael Ignatieff writes that “virtual technologies make it easier for democracies to wage war because they eliminate the risk of blood sacrifice that once forced democratic peoples to be prudent.”¶ Significant public support for the Obama Administration’s increasing deployment of drones would also seem to legitimate this claim. Yet, there remain equally serious diplomatic and political costs that emanate from beyond a fickle electorate, which will prevent the likes of the increased drone aggression predicted by both Ignatieff and Sharkey.¶ Most recently, the serious diplomatic scuffle instigated by Syria’s downing a Turkish reconnaissance plane in June illustrated the very serious risks of operating any aircraft in foreign territory.¶ States launching drones must still weigh the diplomatic and political costs of their actions, which make the calculation surrounding their use no fundamentally different to any other aerial engagement.¶ This recent bout also illustrated a salient point regarding drone technology: most states maintain at least minimal air defenses that can quickly detect and take down drones, as the U.S. discovered when it employed drones at the onset of the Iraq invasion, while Saddam Hussein’s surface-to-air missiles were still active.

#### Even if there’s drone prolif, American actions can’t influence it

**Anderson 11** [Kenneth, 10/9/2011, “What Kind of Drones Arms Race Is Coming?” http://opiniojuris.org/2011/10/09/what-kind-of-drones-arms-race-is-coming/]

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it — and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit.¶ It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be.¶ Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project), will eventually have an important place in ordinary ground transport. UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable — and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this — the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so.¶ But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it.¶ Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do — but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

#### No global drone war – no state has the motivation

**Boyle, 12** (Ashley, “The US and its UAVs: Addressing Legality and Overblown Scenarios,” American Security Project, 7/13/12, http://americansecurityproject.org/blog/2012/the-us-and-its-uavs-addressing-legality-and-overblown-scenarios/ //Red)

One of the touchstones in the current US drones dialogue is the the legality of lethal drone strikes. Despite claiming the strikes are legally permissible, Administration officials have not yet cited any legal statute in justifying the use of drones in extraterritorial targeted killings. Critics argue that this failure to provide legal justification implicates the US in violating international legal frameworks on interstate force and national sovereignty. Furthermore, critics claim that US drone programs in Pakistan, Somalia, and Yemen set a dangerous precedent that could lead to any nation with strike-capable drones employing similar tactics in a “global drone war.” While the international community has the right to demand that the US provide a legal foundation for drone strikes, it should be understood that the US has a strategic interest in not providing any such justification. Similarly, the argument that US drone strikes are establishing a dangerous precedent is reasonable. However, extrapolating this assertion to a scenario of global drone warfare is not only **alarmist and distracting**, **but has no factual basis** at present. The matter of legal justification for US drone strikes is straightforward. Critics have long claimed that US drone strikes violate laws on interstate force and sovereignty in that strikes are conducted extraterritorially in non-combat zones. While laws governing the use of interstate force bar the use of force in another nation’s territory at times of peace, under Article 51 of the United Nations Charter, a nation has “the inherent right of individual or collective self-defence [sic]” until the UN Security Council takes action. Article 51 applies if either the targeted state agrees to the use of force in its territory by another nation or the targeted state, or a group operating within its territory, was responsible for an act of aggression against the targeting state. These conditions are mutually exclusive; only one must be satisfied to justify a unilateral extraterritorial use of force by a UN Member. In the cases of Pakistan, Somalia, and Yemen, both conditions are satisfied: all three countries have consented, explicitly or otherwise, to the US operating drones within their territories, and all three are “safe havens” for groups that have launched violent attacks against the US and US interests. If the US is well within its right to conduct drone strikes within these nations, why, then, does it not simply invoke Article 51 as a means of justification and end the legality debate? It is of strategic value for the US to refrain from providing justification because to acknowledge any legal framework is to implicitly agree to be bound by its terms. By remaining formally unaccountable to international frameworks, the US can operate unimpeded by the red tape of the international legal community. From any angle, such a strategy is in the best interest of US national security. It is also important to note that a lack of public justification does not mean the US is not acting in accordance with international legal frameworks. While there is no question that the US has used drones, it is hardly alone in wielding the technology. Approximately fifty nations possess and use drones. However, Wikipedia informs us that of these nations, only twelve have lethal drones of which only three nations – China, Iran, and Russia – may be of concern. Possessing the technology is only one part of the picture. Nations must also have the capabilities to maintain and operate these aircraft, as well as an intelligence network that informs their surveillance or strike activities. The supporting systems required to operate drones is greatly underestimated, and it is **difficult to see China, Iran, or Russia having the resources or desire to launch expansive drone programs** in the short- to mid-term. While the long-term picture always requires discussion, alarmist messages about impending drone wars are just that: alarming and **unfounded.** The US has a legitimate reason and legal right to conduct operations using drones in Pakistan, Somalia and Yemen. While the lack of an explicit justification may not garner credibility, the US has a national security imperative to act in its best interests. Remaining disassociated from specific legal frameworks ensures a strategic flexibility that could otherwise be constrained. Finally, **the international community must be realistic about the threat of a global drone war.** Such a scenario requires that nations possess the technology, the resources, and the motives to mire themselves in international conflict. Not only is this unlikely in the short- to mid-term and **factually unsubstantiated**, the argument distracts from a debate that should aim to design a more intelligent strategy for US drone programs. It is better that efforts be directed toward constructive efforts than at strangulating any hope for an informed dialogue.

#### No war

**Stepanian, 10** [6/28, Ruzanna, “Another Karabakh War Unlikely, Says UK Envoy,” http://www.azatutyun.am/content/article/2085150.html]

The Armenian-Azerbaijani war is unlikely to resume any time soon despite the latest upsurge in ceasefire violations around Nagorno-Karabakh, Britain’s ambassador to Armenia said on Monday. “I wouldn’t want to speculate about the possibility of war in Karabakh,” Charles Lonsdale told a news conference in Yerevan. “Recent incidents raise concern, but I think we are a long way from a resumption of real hostilities.” Lonsdale said at the same time that the status quo in the Karabakh conflict may not be sustainable in the long term and that both sides should pursue a peaceful settlement based on mutual compromise.

### Heg Advantage

**Threats to heg are inflated and wrong – its inevitable**

**Zenko and Cohen, 12** - \*Micah, Fellow in the Center for Preventive Action at the Council on Foreign Relations, and \*\*Michael A., Fellow at the Century Foundation (“Clear and Present Safety: The United States Is More Secure Than Washington Thinks,” Foreign Affairs, March/April 2012)**Red**

Within the foreign policy elite, there exists a pervasive belief that the post–Cold War world is a treacherous place, full of great uncertainty and grave risks. A 2009 survey conducted by the Pew Research Center for the People and the Press found that 69 percent of members of the Council on Foreign Relations believed that for the United States at that moment, the world was either as dangerous as or more dangerous than it was during the Cold War. Similarly, in 2008, the Center for American Progress surveyed more than 100 foreign policy experts and found that 70 percent of them believed that the world was becoming more dangerous. Perhaps more than any other idea, this belief shapes debates on U.S. foreign policy and frames the public’s understanding of international affairs. **There is just one problem. It is simply wrong.** The world that the United States inhabits today is a **remarkably safe and secure** place. It is a world with fewer violent conflicts and greater political freedom than at virtually any other point in human history. All over the world, people enjoy longer life expectancy and greater economic opportunity than ever before. The United States faces **no plausible existential threats**, **no great-power rival, and no near-term competition for the role of global hegemon.** The U.S. military is the world’s most powerful, and even in the middle of a sustained downturn, the U.S. economy remains among one of the world’s most vibrant and adaptive. Although the United States faces a host of international challenges, they pose little risk to the overwhelming majority of American citizens and can be managed with existing diplomatic, economic, and, to a much lesser extent, military tools. This reality is barely reflected in U.S. national security strategy or in American foreign policy debates. President Barack Obama’s most recent National Security Strategy aspires to “a world in which America is stronger, more secure, and is able to overcome our challenges while appealing to the aspirations of people around the world.” Yet that is basically the world that exists today. The United States is the world’s most powerful nation, unchallenged and secure. But the country’s political and policy elite seems unwilling to recognize this fact, much less integrate it into foreign policy and national security decision-making. The disparity between foreign threats and domestic threat-mongering results from a confluence of factors. The most obvious and important is electoral politics. Hyping dangers serves the interests of both political parties. For Republicans, who have long benefited from attacking Democrats for their alleged weakness in the face of foreign threats, there is little incentive to tone down the rhetoric; the notion of a dangerous world plays to perhaps their greatest political advantage. For Democrats, who are fearful of being cast as feckless, acting and sounding tough is a shield against GOP attacks and an insurance policy in case a challenge to the United States materializes into a genuine threat. Warnings about a dangerous world also benefit powerful bureaucratic interests. The specter of looming dangers sustains and justifies the massive budgets of the military and the intelligence agencies, along with the national security infrastructure that exists outside government -- defense contractors, lobbying groups, think tanks, and academic departments. There is also a pernicious feedback loop at work. Because of the chronic exaggeration of the threats facing the United States, Washington overemphasizes military approaches to problems (including many that could best be solved by nonmilitary means). The militarization of foreign policy leads, in turn, to further dark warnings about the potentially harmful effects of any effort to rebalance U.S. national security spending or trim the massive military budget -- warnings that are inevitably bolstered by more threat exaggeration. Last fall, General Norton Schwartz, the U.S. Air Force chief of staff, said that defense cuts that would return military spending to its 2007 level would undermine the military’s “ability to protect the nation” and could create “dire consequences.” Along the same lines, Panetta warned that the same reductions would “invite aggression” from enemies. These are a puzzling statements given that the U.S. defense budget is larger than the **next 14 countries’ defense budgets combined** and that the United States still maintains weapons systems designed to fight an enemy that disappeared 20 years ago. Of course, threat inflation is not new. During the Cold War, although the United States faced genuine existential threats, American political leaders nevertheless hyped smaller threats or conflated them with larger ones. Today, there are no dangers to the United States **remotely resembling** those of **the Cold War** era, yet policymakers routinely talk in the alarmist terms once used to describe superpower conflict. Indeed, the mindset of the United States in the post-9/11 world was best (albeit crudely) captured by former Vice President Dick Cheney. While in office, Cheney promoted the idea that the United States must prepare for even the most remote threat as though it were certain to occur. The journalist Ron Suskind termed this belief “the one percent doctrine,” a reference to what Cheney called the “one percent chance that Pakistani scientists are helping al Qaeda build or develop a nuclear weapon.” According to Suskind, Cheney insisted that the United States must treat such a remote potential threat “as a certainty in terms of our response.” Such hair-trigger responsiveness is rarely replicated outside the realm of national security, even when the government confronts problems that cause Americans far more harm than any foreign threat. According to an analysis by the budget expert Linda Bilmes and the economist Joseph Stiglitz, in the ten years since 9/11, the combined direct and indirect costs of the U.S. response to the murder of almost 3,000 of its citizens have totaled more than $3 trillion. A study by the Urban Institute, a nonpartisan think tank, estimated that during an overlapping period, from 2000 to 2006, 137,000 Americans died prematurely because they lacked health insurance. Although the federal government maintains robust health insurance programs for older and poor Americans, its response to a national crisis in health care during that time paled in comparison to its response to the far less deadly terrorist attacks. Rather than Cheney’s one percent doctrine, what the United States actually needs is a 99 percent doctrine: a national security strategy based on the fact that the United States is a safe and well-protected country and grounded in the reality that the opportunities for furthering U.S. interests far exceed the threats to them. Fully comprehending the world as it is today is the best way to keep the United States secure and resistant to the **overreactions** that **have defined its foreign policy for far too long.** BETTER THAN EVER The United States, along with the rest of the world, currently faces a period of economic and political uncertainty. But consider four long-term global trends that underscore just how misguided the constant fear-mongering in U.S. politics is: the falling prevalence of violent conflict, the declining incidence of terrorism, the spread of political freedom and prosperity, and the global improvement in public health. In 1992, there were 53 armed conflicts raging in 39 countries around the world; in 2010, there were 30 armed conflicts in 25 countries. Of the latter, only four have resulted in at least 1,000 battle-related deaths and can therefore be classified as wars, according to the Uppsala Conflict Data Program: the conflicts in Afghanistan, Iraq, Pakistan, and Somalia, two of which were started by the United States. Today, wars tend to be low-intensity conflicts that, on average, kill about 90 percent fewer people than did violent struggles in the 1950s. Indeed, the first decade of this century witnessed fewer deaths from war than any decade in the last century. Meanwhile, the world’s great powers have not fought a direct conflict in more than 60 years -- “the longest period of major power peace in centuries,” as the Human Security Report Project puts it. Nor is there much reason for the United States to fear such a war in the near future: **no state currently has the capabilities or the inclination to confront the U**nited **S**tates **militarily**.

**Cant solve – they have different interests**

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However, this conclusion raises a critical question -- what does the Iranian regime see as costly, and what does it see as beneficial?

This leads to the second criterion for rationality: a rational actor makes the best decision given the choices available. But "best" according to whose interests, and whose values? Whether an action is costly or beneficial, and thus whether a decision is best, depends vitally on the answers to these questions. Our own domestic political experience -- witness the Democrat-Republican divide over the national debt -- demonstrates that two rational actors, faced with the same sets of facts and circumstances but holding different interests, philosophies, or values, can reach very different conclusions about what to do.

So for a conclusion that the Iranian regime is rational to be useful in predicting its behavior -- not to mention making and judging our own policy -- we must assess how the regime perceives its interests. Otherwise the "costs" we impose may not be viewed as costly by the regime, and the "benefits" we offer may not be seen as beneficial.

All indications are that the regime values its own survival above all. This likely fuels its drive to obtain a nuclear weapon, which it may see as a guarantee against external foes. To the extent the regime defines its interests parochially rather than as national interests, it may also discount the economic suffering of the Iranian people except to the extent it leads to political turmoil. Thus, to be perceived as truly "costly" by the regime, any sanctions or other measures imposed or threatened by the U.S. and our allies must place at risk the regime's interests, including its prospects for survival. What's more, they must threaten those interests so much that the regime is willing to sacrifice something it apparently values greatly -- a nuclear weapon.

Likewise, any benefit offered by the U.S. and our allies, if it is to affect the regime's calculus, must be seen by the regime as advancing its interests. Many things the U.S. sees as "carrots" -- for example, free trade or normal diplomatic relations -- may in fact be seen as threatening to an authoritarian regime which is leery of the West. Conversely, what the regime would see as beneficial -- for example, assurances that the U.S. would cease its support for human rights or democracy in Iran -- we are unlikely to be willing to offer.

There are two other important points to consider about how the regime decides which option facing it is best. First, we must be aware that there are other costs and benefits at play than simply the ones we generate through sanctions or diplomatic appeals. Individuals in the regime face their own incentives -- for example personal wealth generated in the black markets that sanctions give rise to -- as well as disincentives -- for example the possibility of ending up imprisoned or worse for too vocally bucking the regime's line.

Second, we must also be aware that the regime likely lacks complete information or anything close to it. This is where the assumption that Iran acts rationally runs into the most trouble. Decisions in Iran are made by one man -- Ali Khamenei. By all accounts, he has not traveled outside Iran since becoming Supreme Leader in 1989, is likely insulated by his aides from bad news or criticism, and depends on an increasingly narrow and homogenous power base which may not expose him to alternative opinions. One is unlikely to make a good decision if ill-informed or unaware of all the options. Nor can the regime make accurate judgments about U.S. intentions if we do not clearly communicate our policies or red lines.

# 2nc

### 2nc 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

### 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

### precedent—congress module

#### Comparative solvency advocate

**Metzger 2009** – Professor of Law, Columbia Law School (Gillian E., Emory Law Journal, 59.2, “THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS”, http://www.law.emory.edu/fileadmin/journals/elj/59/59.2/Metzger.pdf)

A separate question about internal separation of powers mechanisms concerns their effectiveness, particularly as measures aimed at constraining Executive Branch aggrandizement. Are they actually able to constrain excessive presidential assertions of authority and other abuses? Or are they, in the end, little more than “parchment barriers”61 that are largely ineffective and, worse, may obscure the extent of accumulated presidential power? The case in favor of internal mechanisms is in part comparative. Real limitations exist on the ability of traditional external constraints, specifically Congress and the courts, to check the power of the Executive Branch. The fundamental impediments for Congress are internal ones, in particular its need to proceed via the arduous process of bicameralism and presentment and the additional obstacles created by the operation of congressional committees and rules.62 The ordinary burdens of the legislative process are intensified in contexts involving efforts to check presidential authority given the frequent need to overcome a presidential veto.63 Congress does wield important investigatory and oversight powers and has other tools that may give it leverage over the President, such as control over spending or the ability to add contentious measures to must-pass legislation.64 But the political reality of party allegiance dominating institutional interests, along with greater ideological cohesion among political parties in Congress, undermines these techniques and makes rigorous congressional constraints on presidential actions unlikely except in the context of divided government.65 Moreover, even if Congress is willing to actually engage in oversight, its ability to do so may be significantly hampered by the Executive Branch’s non-cooperation or intransigence, often in the form of assertion of executive privilege or failure to inform Congress of contentious activities.66

#### Executive restraint sends a clearer signal—legislation is always fuzzy and confusing because of how Congress passes bills

**OMB Watch 2007 – most recent date mentioned** (Regulatory Resource Center, “Background on the Rulemaking Process”, http://www.foreffectivegov.org/files/regs/rcenter/backgroundpdfs/I.-V..pdf)

The blurring of functions that takes place when an executive branch agency exercises quasi-legislative ¶ rulemaking authority is accepted as a necessity. However, it is rationalized on the grounds that the agency ¶ is acting within limits prescribed by Congress. This is the origin of the notion that agencies only exercise ¶ discretion delegated to them by Congress. ¶ Unfortunately, the limits are not always easy to find. Congress has directed agencies simply to "promote ¶ the common defense and security," to "protect the public health," and to regulate in a "just" and ¶ "reasonable" manner "in the public interest." This kind of language has allowed federal agencies wide ¶ latitude to set policies and promulgate regulations.¶ In passing the Clean Air Act in 1970, for example, Congress authorized the administrator of the ¶ Environmental Protection Agency (EPA) to "prescribe such regulations as are necessary to carry out his ¶ functions under [the Act]." ¶ But when agencies try to implement such broad mandates, they sometimes find themselves accused by ¶ members of Congress, the White House, or people outside the government of trying to set independent ¶ policy. If they proceed cautiously because they are not sure what Congress intended or are concerned ¶ about possible political ramifications, they face the charge that they are procrastinating or being ¶ obstructive. ¶ As Senator Patrick J. Leahy (D-VT) once said: "We pass such **fuzzy legislation**. Then we pass it on to ¶ administrative agencies and say: 'You work it out.' Then members and the president go out and campaign ¶ against those 'crazy bureaucrats.'" ¶ Occasionally, Congress turns in the other direction-over-prescription. Legislation may require an agency ¶ to follow particular procedures, make specific findings, and take final action with a certain time period. ¶ Sometimes Congress may even pass a bill that contains equally precise and vague provisions. ¶ There is no clear rule or set pattern. Congress acts as the representative body it is, responding to people's ¶ concerns with varying degrees of forethought, debate, and agreement. Not surprisingly, this process is ¶ reflected in our laws and their delegations of authority to administrative agencies.

### solves targeted killing

#### We solve targeted killing—our consultation and transparency requirements create a vested interest in accountability—but keeping the authority under Obama is key to effective decision-making

**McNeal 2013** – Associate Professor of Law, Pepperdine University School of Law (Gregory, Georgetown Law Journal, “Targeted Killing and Accountability”, to appear in forthcoming issue as of 9/10/2013 access date, available via SSRN)

Despite this lack of interest, some evidence exists to suggest that presidents do care about how their activities may be viewed by the public. For example, during the war in Kosovo, the possibility of civilian casualties from any given airstrike was seen as both a legal and political constraint.463 Due to this fact, some individual target decisions were deemed to have strategic policy implications that only the president could resolve. 464 Moreover, even in the absence of effective legal constraints of the type described in Section B, and even without evidence of public concern over matters of foreign policy, the president is still constrained by politics and public opinion. 465 The president needs “both popularity, in order to obtain political support for his policies, and credibility, in order to persuade others that his factual and causal assertions are true and his intentions are benevolent.” 466

As mentioned above, as precision has increased, so too has the expectation that civilian casualties will be low or nonexistent.467 Some have even advanced a legal and policy view that the law of armed conflict prohibits collateral civilian casualties.468 Given these expectations, presidents have oftentimes felt compelled to involve themselves to a greater degree in targeting decisions. This involvement brings with it enhanced political accountability. It allows for greater public awareness of military operations and creates direct responsibility for results tied to the commander in chief’s immediate involvement in the decision-making process.469 Successes and failures are imputed directly to the president.

Moreover, there are also functional reasons that may support greater presidential involvement. As Baker observed:

Presidential command is the fastest method I have observed for fusing interagency information and views into an analytic process of decision. This is particularly important in a war on terror where pop-up targets will emerge for moments and strike decisions must be taken in difficult geopolitical contexts with imperfect information. The President is best situated to rapidly gather facts, obtain cabinet-level views, and decide.470

Presidential decision-making brings to light public recognition that the military and intelligence community are implementing rather than making policy. Moreover, when the president chooses to nominate people to assist him in making targeted killing decisions, the nomination process provides a mechanism of political accountability over the executive branch. This was aptly demonstrated by President Obama’s nomination of John Brennan to head the CIA.471 Given Brennan’s outsized role as an adviser to the president in the supervision of targeted killings, his nomination provided an opportunity to hold the president politically accountable by allowing senators to openly question him about the targeted killing process,472 and by allowing interest groups and other commentators to suggest questions that should be asked of him.473

However, none of the examples described answer the question of secrecy and how it can stifle political accountability. Just as secrecy has the potential to hinder accountability, it may also undermine executive power by damaging executive branch credibility. While some arguments can be made to suggest that the executive branch has too great an ability to hide relevant information from courts or the legislature, few have recognized the credibility costs associated with such decisions. 474 One scholarly attempt to describe the credibility problem is the agency approach adopted by Posner and Vermeule, they write:

The president is the agent and the public is the principal. The public cares about national security but also cares about civil liberties and the well-being of potential targets of the war on terror; its optimal policy trades off these factors. However, the public cannot directly choose the policy; instead, it delegates that power to the government and, in particular, the president. The president knows the range of options available, their likely effects, their expected costs and benefits—thanks to the resources and expertise of the executive branch—and so, if he is well-motivated, he will choose the best measures available.475

Understanding the political accountability challenge in this way has a lot of explanatory purchase. It demonstrates that the president requires credibility to act, and to signal his commitment to what the public is interested in, he will need to choose the best measures available to maintain their support. Stated differently, no “president can accomplish his goals if the public does not trust him. This concern with reputation may put a far greater check on the president’s actions than do the reactions of the other branches.” 476 Therefore, choosing the best targeted killing measures is a form of self- binding,477 and exposing information about those measures may come through selective leaks about the targeted killing process,478 greater transparency through speeches,479 or demonstrated successes.480

#### Oversight not key—law-like rules can guide bureaucracy

**McNeal 2013** – Associate Professor of Law, Pepperdine University School of Law (Gregory, Georgetown Law Journal, “Targeted Killing and Accountability”, to appear in forthcoming issue as of 9/10/2013 access date, available via SSRN)

As made clear in the parts above, the targeted killing process involves countless bureaucrats making incremental decisions that ultimately lead to the killing of individuals on a target list. Critics contend that these bureaucrats and their political superiors are unaccountable. I argue that these critiques are misplaced and that critics fail to give credit to the extensive forms of bureaucratic, legal, political, and professional accountability that exist within the targeted killing process. This section explores each of these accountability mechanisms, defining and applying them to the targeted killing process.

When assessing accountability measures, it is important to analyze the source from which a particular form of accountability can exercise control over a bureaucracy’s actions, as well as the degree of control each form of accountability can have over bureaucratic action.384 Drawing on theories of accountability and governance from the public administration literature, I contend that the source of control over bureaucrats involved in the targeted killing process can be defined as internal (endogenous) or external (exogenous), and the degree of control can be loosely characterized as high or low.385 These variables can be applied to four general mechanisms of accountability: (1) legal; (2) bureaucratic; (3) professional; and, (4) political accountability. Taken together, these mechanisms of accountability amount to “law-like” institutional procedures that can discipline the discretion of bureaucrats involved in the targeted killing process—even if the shadow of judicial oversight over the process is relatively slight.386

### obama good

#### PC is a net benefit

**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”)

The utility functions of government officials famously include a wide range of values.15 As relevant here, senior policymakers in the executive branch will seek to maximize at least three things. Above all, they will want to maximize their chances of keeping their jobs. First-term Presidents want to be reelected; members of the cabinet and the White House staff want their boss to stay in office and they want to retain his confidence.16 Second, policymakers will want to maximize their political capital, which they can use to promote their domestic and international policy agendas. A President who wants Congress to enact desired legislation is more likely to attain that goal if he has high public approval ratings and is able to call in favors on Capitol Hill than if he is unpopular with voters and lacks congressional allies.17 Third, taking a longer view, policymakers will want to burnish their legacies. Presidents want to be on the “right side of history”; they want future generations to approve of the policy choices they make while in power.18

This quest for job security, political capital, and legacy will lead policymakers to pursue two specific goods in the national security context. First, operational success. Policymakers will want a given military or intelligence operation to accomplish the objective that it is meant to achieve. If a President leads a war that quickly topples the enemy, he is likely to enjoy improved public approval ratings, weaker resistance from political opponents, and the prospect of favorable treatment in the history books.19 A President who leads the nation into a quagmire can expect the opposite outcomes. Second, policymakers seek legal compliance. They will want a given operation to accomplish its goals in a way that does not offend any applicable principle of domestic or international law. This is so because the costs of such violations can be significant.20 All things being equal, a wartime President would prefer to vanquish an enemy by complying with the law of war than to gain victory by, say, deliberately bombing protected civilians. Policymakers commission two different sets of agents to pursue these goals. Operators are responsible for the first – mission success. Reviewers are responsible for the second – legal compliance. Neither agent receives a comprehensive commission to act as the principals’ surrogate. Instead, responsibility for achieving policymakers’ twin objectives is divided.

#### OLC shields blame—and fear of backlash from ignoring them super-charges solvency

**Posner 2011** – Kirkland & Ellis Professor, University of Chicago Law School (9/22, Eric A., University of Chicago Law School, Public Law And Legal Theory Working Paper No. 363, “Deference To The Executive In The United States After 9/11: Congress, The Courts And The Office Of Legal Counsel”, http://www.law.uchicago.edu/files/file/363-eap-deference.pdf)

However, there is an important twist that complicates the analysis. The president may choose to publicize OLC’s opinions. Naturally, the president will be tempted to publicize only favorable opinions. When Congress**22** claims that a policy is illegal, the president can respond that his lawyers advised him that the policy is legal. This response at least partially deflects blame from the president. There are two reasons for this. First, the Senate consented to the appointment of these lawyers; thus, if the lawyers gave bad advice, the Senate is partly to blame, and so the blame must be shared. Second, OLC lawyers likely care about their future prospects in the legal profession, which will turn in part on their ability to avoid scandals and to render plausible legal advice; they may also seek to maintain the office’s reputation. When OLC’s opinions are not merely private advice, but are used to justify actions, then OLC takes on a quasi-judicial function. Presidents are not obliged to publicize OLC’s opinions, but clearly they see an advantage to doing so, and they have in this way given OLC quasi-judicial status.

But if the president publicizes OLC opinions, he takes a risk. The risk is that OLC will publicly advise him that an action is illegal. If OLC approval helps deflect blame from the president, then OLC disapproval will tend to concentrate blame on the president who ignores its advice. Congress and the public will note that after all the president is ignoring the advice of lawyers that he appointed and thus presumably he trusts, and this can only make the president look bad. To avoid such blame, the president may refrain from engaging in a politically advantageous action. In this way, OLC may be able to prevent the president from taking an action that he would otherwise prefer. At a minimum, OLC raises the political cost of the action.

[FOOTNOTE 22]

**22** And other relevant audiences, including courts, the press, and the public; for simplicity, I will generally refer to Congress.

### Heg

**Their evidence overstates drone’s impact on public opinion – surveys are biased and removing drones wouldn’t solve anything**

**Byman, 13** – Daniel, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution (“Why Drones Work,” Foreign Policy, July/August 2013, http://www.foreignaffairs.com/articles/139453/daniel-byman/why-drones-work?page=show //Red)

A 2012 poll found that 74 percent of Pakistanis viewed the United States as their enemy, likely in part because of the ongoing drone campaign. Similarly, in Yemen, as the scholar Gregory Johnsen has pointed out, drone strikes can win the enmity of entire tribes. This has led critics to argue that the drone program is shortsighted: that it kills today’s enemies but creates tomorrow’s in the process. Such concerns are valid, but the level of local anger over drones is often lower than commonly portrayed. Many surveys of public opinion related to drones are conducted by anti-drone organizations, which results in **biased samples.** Other surveys exclude those who are unaware of the drone program and thus **overstate the importance of those who are angered by it.** In addition, many Pakistanis do not realize that the drones often target the very militants who are wreaking havoc on their country. And for most Pakistanis and Yemenis, the most important problems they struggle with are corruption, weak representative institutions, and poor economic growth; the drone program is **only a small part of their overall anger**, most of which is directed toward their own governments. A poll conducted in 2007, well before the drone campaign had expanded to its current scope, found that only 15 percent of Pakistanis had a favorable opinion of the United States. It is hard to imagine that alternatives to drone strikes, such as SEAL team raids or cruise missile strikes, would make the United States more popular.

#### Allied terror coop is high now, despite frictions

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, http://www.fas.org/sgp/crs/row/RS22030.pdf

As part of the EU’s efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. Such growing U.S.-EU cooperation was in line with the 9/11 Commission’s recommendations that the United States should develop a “comprehensive coalition strategy” against Islamist terrorism, “exchange terrorist information with trusted allies,” and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive. Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the areas of counterterrorism, border controls, and transport security. At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a new “Declaration on Counterterrorism” aimed at deepening the already close U.S.-EU counterterrorism relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 2011, President Obama’s National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, “the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights.”

**Capability outweighs credibility — US actions appear irrational, so countries don’t interpret our signals**

Steve **Chapman 9/5**/13, columnist and editorial writer for the Chicago Tribune, “War in Syria: The Endless Quest for Credibility,” http://reason.com/archives/2013/09/05/war-in-syria-the-endless-quest-for-credi

The United States boasts the most powerful military on Earth. We have 1.4 million active-duty personnel, thousands of tanks, ships and planes, and 5,000 nuclear warheads. We spend more on defense than the next 13 countries combined. Yet we are told we have to bomb Syria to preserve our credibility in world affairs.¶ Really? You'd think it would be every other country that would need to confirm its seriousness. Since 1991, notes University of Chicago security scholar John Mearsheimer, the U.S. has been at war in two out of every three years. **If we haven't secured our reputation by now, it's hard to imagine we ever could.**¶On the surface, American credibility resembles a mammoth fortress, impervious to anything an enemy could inflict. But to crusading internationalists, both liberal and conservative, it's a house of cards: The tiniest wrong move, and it collapses.¶ In a sense, though, they're right. The U.S. government doesn't have to impress the rest of the world with its willingness to defend against actual attacks or direct threats. But it does have to continually persuade everyone that we will lavish blood and treasure for purposes that are irrelevant to our security.¶ Syria illustrates the problem. Most governments don't fight unless they are attacked or have dreams of conquest and expansion. War is often expensive and debilitating even for the winners, and it's usually catastrophic for losers. Most leaders do their best to avoid it.¶ So even though the Syrian government is a vicious, repressive dictatorship with a serious grudge against Israel, it has mostly steered clear of military conflict. Not since 1982 has it dared to challenge Israel on the battlefield. When Israeli warplanes vaporized a Syrian nuclear reactor in 2007, Bashar al-Assad did nothing. The risks of responding were too dire.¶ But the U.S. never faces such sobering considerations. We are more secure than any country in the history of the world. What almost all of our recent military interventions have in common is that they involved countries that had not attacked us: Libya, Iraq, Serbia, Haiti, Somalia, Panama, Grenada and North Vietnam.¶ With the notable exception of the Afghanistan invasion, we don't fight wars of necessity. We fight wars of choice.¶ That's why we have such an insatiable hunger for credibility. In our case, it connotes an undisputed commitment to go into harm's way even when -- especially when -- we have no compelling need to do so. But it's a sale we can never quite close.¶ Using force in Iraq or Libya provides no guarantee we'll do the same in Syria or Iran or Lower Slobbovia. **Because we always have the option of staying out, there's no way to make everyone totally believe we'll jump into the next crisis.**¶The parallel claim of Washington hawks is that we have to punish Assad for using nerve gas, because otherwise Iran will conclude it can acquire nuclear weapons. Again, our credibility is at stake. But how could the Tehran regime draw any certain conclusions based on what happens in Syria?¶ Two American presidents let a troublesome Saddam Hussein stay in power, but a third one decided to take him out. George W. Bush tolerated Moammar Gadhafi, but Barack Obama didn't. Ronald Reagan let us be chased out of Lebanon, only to turn around and invade Grenada. **If you've seen one U.S. intervention, you've seen one.**¶What should be plain to Iran is that Washington sees nuclear proliferation as a unique threat to its security, which Syria's chemical weapons are not. Just because we might let Assad get away with gassing his people doesn't mean we will let Iran acquire weapons of mass destruction that would be used only against other countries. Heck, we not only let Saddam get away with using chemical weapons against Iran -- we took his side.¶ Figuring out the U.S. government's future impulses is hard even for Americans. There's no real rhyme or reason. But because we're so powerful, **other governments can ill afford to be wrong**. What foreigners have to keep in the front of their minds is not our inclination to act but our capacity to act -- **which remains unparalleled whatever we do in Syria.**¶Credibility is overrated. Sure, it's possible for hostile governments to watch us squabble over Syria and conclude that they can safely do things we regard as dangerous. **But there are graveyards full of people who made that bet.**

### Drones

#### No escalation - deterrence

**Valvo, 12** – Giovanni, an independent geopolitical analyst specializing in Eurasian affairs (“Nagorno-Karabakh: the trigger of World War III?,” Window on Heartland, 6/14/12, <http://www.windowonheartland.net/2012/06/nagorno-karabakh-trigger-of-world-war.html> //Red)

Nagorno-Karabakh: the trigger of World War III? On February 23, 2012, the controversial leader of Russia’s Liberal Democratic Party Vladimir Zhirinovsky predicted the possible outbreak of World War III this summer. According to the former Russian army colonel, as soon as Syria is annihilated, a blow will be struck against Iran. At that point, “Azerbaijan might take advantage of that state to re-seize Nagorno-Karabakh. The Republic of Armenia will act in opposition to it, while Turkey will support Azerbaijan. That’s how we’ll in summer be caught in a war,” Zhirinovsky explained. Although the Russian politician is not new to this kind of interventions, the risk that the Caucasus might indeed be the trigger of a new world war is all but unlikely. Earlier this year, Azerbaijan’s president Ilham Aliyev said Baku is buying up modern weaponry to be able to regain control of the breakaway Nagorno-Karabakh region quickly and with few losses should peace talks with neighbouring Armenia fail. Negotiations to end the conflict have been held under the auspices of the so-called Minsk Group since 1992, but so far results have been inconclusive. Azerbaijan is a natural ally of Turkey and an adversary of Iran. NATO partner since 1994 through its participation to the Alliance’s Partnership for Peace program, Baku is also one of the most geo-strategically important allies of the West in the pipelines war against Russia, being both a supporter and a potential supplier of the Washington-backed Nabucco gas pipeline project. On the other side, Armenia is a close ally of Russia and Iran, both interested in countering Turkish and US influence over the Caspian region. Given this geopolitical context, to which are added NATO-Russia tensions over US missile defense plans in Europe and Azerbaijani-Russian disagreements over the renewal of the Gabala radar station lease, a spike in violence in the Caucasus might indeed trigger a major conflict between a US-led coalition consisting of Azerbaijan, Turkey and Israel on one side, and a Sino-Russian bloc including Armenia and Iran on the other side. Nevertheless, although five of the eight countries involved are de facto nuclear powers, a World War III between them **would not necessarily imply the use of nuclear weapons.** In fact, a conflict originating from tensions in the Caucasus-Caspian region would be **local in scope**, but global in extent and consequences, being thus able to be considered a world war. Such a confrontation would have some of the characteristics of the Cold War, being the result of at least three proxy conflicts (Azerbaijan against Armenia, Iran against Azerbaijan, Turkey against Iran); nevertheless, given the nuclear potential of the countries diplomatically involved, it **could not last more than a few days**, being decided by both compellence and deterrence strategies fielded by the United States, Russia and China.

#### Drone prolif is slow and the impact is small

**Zenko ’13** [Micah, Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department’s Office of Policy Planning, “Reforming U.S. Drone Strike Policies,” January, Council Special Report No. 65, online]

Based on current trends, it is unlikely that most states will have, within ten years, the complete system architecture required to carry out¶ distant drone strikes that would be harmful to U.S. national interests.¶ However, those candidates able to obtain this technology will most¶ likely be states with the financial resources to purchase or the industrial¶ base to manufacture tactical short-range armed drones with limited¶ firepower that lack the precision of U.S. laser-guided munitions; the¶ intelligence collection and military command-and-control capabilities needed to deploy drones via line-of-sight communications; and crossborder¶ adversaries who currently face attacks or the threat of attacks¶ by manned aircraft, such as Israel into Lebanon, Egypt, or Syria; Russia¶ into Georgia or Azerbaijan; Turkey into Iraq; and Saudi Arabia into¶ Yemen. When compared to distant U.S. drone strikes, these contingencies¶ do not require system-wide infrastructure and host-state support.¶ Given the costs to conduct manned-aircraft strikes with minimal threat¶ to pilots, it is questionable whether states will undertake the significant¶ investment required for armed drones in the near term.

# 1nc

### uniqueness wall

#### Democratic unity and GOP cracks mean Obama will prevail

**Cohn, 10/1/13** – former Whitman debater who was better than everyone, including you (Nate, “The Failed Republican Moderate Revolt is Good News”

<http://www.newrepublic.com/article/114935/shutdown-2013-failed-moderate-revolt-bodes-well-debt-ceiling>

As predicted, the government has shutdown after congress failed to pass a new funding bill. But for a few brief hours, it looked like a gang of Republican moderates might bolt from the GOP and avert a shutdown. In the end, the moderate revolt failed to materialize—but not without possible consequences for the resolution of the shutdown and upcoming fight over the debt ceiling.

Around 6PM last night, just about every well-connected reporter with ties to the GOP was catching wind of a brewing moderate revolt. The National Review’s Jonathan Strong reported that 25 relative moderates, led by Peter King, were going to side with Democrats over a continuing resolution. Pennsylvania Republican Charlie Dent also said he would support a clean continuing resolution. And apparently, the moderates were not alone. Byron York reported that the preponderance of House Republicans—perhaps as many as three-quarters of the GOP caucus—supported a clean continuing resolution.

But the moderate revolt evaporated when the time came to vote “no” on a bill that could have brought down the newest GOP volley to the Senate. In the end, only two moderates voted “no”—Peter King and Charlie Dent.

It’s not surprising that King and Dent are at odds with the tea party. Both hail from competitive districts in the northeast. Dent’s district, which stretches west from the Lehigh Valley, voted for Romney by just 3 points. President Obama actually won Peter King’s district, which includes parts of Long Island. Both voted for the fiscal cliff compromise—unlike most House Republicans. But although both districts are far more competitive than the average House Republican, both won reelection by comfortable margins last November. So neither is so vulnerable that one should assume they’re simply responding to electoral pressures.

And it seems hard to imagine that those reports about a moderate revolt were completely unfounded. Indeed, a follow-up article by Strong suggested that the revolt fizzled when Boehner reassured dissenters. Exactly how isn’t clear, but Strong reports that Boehner told the moderates that he would make the best out of a dire situation and understood their concerns.

Obviously, discontent wasn’t enough to avoid a government shutdown. But the mere existence of 20 to 30 Republicans willing to consider bolting from the party line over a budget shutdown bodes well for the country’s odds of avoiding a debt limit debacle, which would do far more harm than a government shutdown. And depending on how Boehner reassured antsy moderates, he may well have a relatively painless vision of how to proceed. Perhaps as importantly, Boehner's weak left flank has been exposed. It's now all but impossible to imagine Democrats backing down--even ahead of a debt ceiling showdown.

#### Messaging matters – party concerns with reputation mean a deal is highly likely, although not guaranteed – our evidence is substantially more qualified

**Binder, 9/25/13 -** professor of political science at George Washington University and a senior fellow at the Brookings Institution(Sarah, “Why the debt limit doomsayers might be wrong” Washington Post,

http://www.washingtonpost.com/blogs/monkey-cage/wp/2013/09/25/why-the-debt-limit-doomsayers-might-be-wrong/

Brian Beutler at Salon has taken the “debt limit freakout caucus” to task. But I think there’s more to be said about “zones of agreement” and whether they are necessary for making legislative deals. Klein is of course correct about the wide gulf between the parties: Keith Poole and Howard Rosenthal’s standard measures of partisan polarization (which capture lawmakers’ policy views and partisan strategy) show no overlap between the political parties. Still, I think we risk overestimating the odds of breaching the debt ceiling if we focus on zones of policy agreement. An alternative view of deal-making does not eliminate uncertainty about whether the parties will reach an agreement to raise the debt limit. But it does suggest that the prospects for a deal might be stronger than we might otherwise expect based on policy grounds alone.

Some thoughts, culled from ongoing project with Frances Lee:

First, policy and politics are always intertwined. This means that deal making is not merely a matter of finding the ideological sweet spot between competing coalitions. Instead, common ground is typically a joint function of policy views and political calculation. Such calculations are multifaceted. Lawmakers must justify any deals to active supporters back home, knowing that their constituents are unlikely to know what is possible or not in Congress. Lawmakers also worry about their reputations: They will not necessarily vote for a deal that they support on policy grounds if the vote could harm their public image. And vice versa: Lawmakers might support a deal that they object to on policy grounds if their support would be helpful to their image. Party reputations also influence the chances of a deal, particularly if individual lawmakers stand to benefit electorally from a favorable party image that might result from reaching agreement. With policy and politics so tightly intertwined, parties can reach a deal even without an overlapping set of policy views. A zone of agreement might be neither necessary nor sufficient for generating a legislative agreement.

Second, I think it’s important to keep in mind that the jurisdiction of Congress is essentially universal. As former Rep. Barney Frank has said, “anything can be the basis for a deal.” If competing coalitions have different priorities, adding each element to a deal provides different lawmakers with alternative reasons to support a deal. Granted, the White House’s stated unwillingness to negotiate over the debt limit complicates a strategy that capitalizes on crafting a deal from parties’ divergent priorities. Even so, the March deal on raising the debt limit is suggestive: Republicans agreed to suspend the debt limit so long as the Senate passed a budget. Coupling different priorities became the basis for a deal– even in the absence of shared policy ground.

Third, even a party’s decision about whether to negotiate is driven by politics. Party leaders inevitably ask: Which party will suffer more politically if a deal is not done? Anticipation of losing the public blame game can drive partisans to the table, even when they disagree about policy. Senate GOP disagreement over whether to risk shutting down the government over funding for Obamacare is a good example. Deals become possible even in the absence of a zone of agreement if the political costs of saying no are too steep. Whether House GOP leaders can convince sufficient numbers of their rank and file to support a clean CR on those grounds remains to be seen, but is likely.

#### Their evidence is a snapshot of current politics – it doesn’t take into account the tactics of reputational pressure

**Binder, 9/25/13 -** professor of political science at George Washington University and a senior fellow at the Brookings Institution(Sarah, “Why the debt limit doomsayers might be wrong” Washington Post,

http://www.washingtonpost.com/blogs/monkey-cage/wp/2013/09/25/why-the-debt-limit-doomsayers-might-be-wrong/

Finally, I think it’s helpful to keep in mind that deal-making in Congress is inherently dynamic. Spatial models in political science typically offer a snapshot of legislative decision making, in part because we assume that lawmakers’ policy preferences are fixed. But once we focus on both policy and political bases for a deal, the process seems remarkably fluid. How party leaders and their rank and file come to judge the political costs of failure (here, shutting down government or defaulting on the nation’s debt) ultimately shapes the chances for a deal. To be sure, such calculations do not inexorably lead to legislative deals, as the uncertain fate of immigration reform suggests. Still, the politics of blame might prove more important than shared policy ground in guiding the parties to a debt ceiling agreement this fall.

### 2nc PC/Focus internal link

#### And capital is key to that effort – capital’s not just about bargaining – it’s about focus – the plan’s expenditure of capital prevents Obama from maintaining a consistent message on the debt ceiling – it means he’ll lose the ability to ask for favors

**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.

#### The plan disrupts Obama’s attempt to prioritize the debt ceiling by consuming political capital

**Frumin, 9/21/13 –** reporter for MSNBC (Aliyah, “Bright prospects on foreign agenda; domestic in chaos” <http://tv.msnbc.com/2013/09/21/bright-prospects-for-obama-on-foreign-agenda-domestic-in-chaos/>)

Conservative strategist Keith Appell said having a full plate is just part of being president and his legacy is at risk because his number one priority of improving the economy has not been significantly addressed.

Fixing the economy, he said, could arguable be pegged to how much political capital he has on the issues Obama is currently facing (Syria, Iran, debt ceiling, gun control). “But certainly, if you’re talking about legacy, unless there is an overwhelming foreign policy situation like the Cold War, then it’s all about the economy.”

But Jeanne Zaino, a professor of political science at Iona College and of political campaign management at New York University said “Every time Obama tries to refocus on the economy, there’s these enormous crises that break out. You can just imagine how frustrating that can be and how it’s been difficult for him to prioritize.”

“It’s not only the amount he has on his plate. It’s that he doesn’t’ have the ability to get anything done without Congress,” she added.

### 2nc Democratic unity internal link

#### Limits on war powers authority split Congressional Democrats

**Hughes, 13** (Brian, “Obama's base increasingly wary of drone program” Washington Examiner, <http://washingtonexaminer.com/obamas-base-increasingly-wary-of-drone-program/article/2520787>)

"You watch and see -- the left wing of the party will start targeting Obama over this," said Larry Sabato, a political scientist at the University of Virginia. "It's inevitable. The drumbeat will increase as time goes on, especially with each passing drone strike."

Obama late Wednesday decided to share with Congress' intelligence committees the government's legal reasoning for conducting drones strikes against suspected American terrorists abroad, the Associated Press reported. Lawmakers have long demanded to see the full document, accusing the Obama administration of stonewalling oversight efforts.

Earlier in the day, one Democrat even hinted at a possible filibuster of Brennan if given unsatisfactory answers about the drone program.

"I am going to pull out all the stops to get the actual legal analysis, because with out it, in effect, the administration is practicing secret law," said Sen. Ron Wyden, D-Ore., a member of the Senate Select Intelligence Committee. "This position is no different [than] that the Bush administration adhered to in this area, which is largely 'Trust us, we'll make the right judgments.' "

In a Justice Department memo released this week, the administration argued it could order the killing of a suspected American terrorist even with no imminent threat to the homeland.

White House press secretary Jay Carney insisted on Wednesday that the administration had provided an "unprecedented level of information to the public" about the drone operations. Yet, questions remain about who exactly orders the killings, or even how many operations have been conducted.

"There's been more noise from senators expressing increased discomfort [with the drone program]," said Joshua Foust, a fellow at the American Security Project. "For Brennan, there's going to be more opposition from Democrats than Republicans. It's not just drones but the issue of torture."

Facing concerns from liberals, Brennan had to withdraw his name from the running for the top CIA post in 2008 over his connections to waterboarding during the Bush administration.

Since becoming president, Obama has championed and expanded most of the Bush-era terror practices that he decried while running for the White House in 2008.

It's estimated that roughly 2,500 people have died in drone strikes conducted by the Obama administration.

However, most voters have embraced the president's expanded use of drone strikes. A recent Pew survey found 62 percent of Americans approved of the U.S. government's drone campaign against extremist leaders. And some analysts doubted whether Democratic lawmakers would challenged Obama and risk undermining his second-term agenda.

"Democrats, they're going to want the president to succeed on domestic priorities and don't want to do anything to erode his political capital," said Christopher Preble, vice president for defense and foreign policy studies at the Cato Institute. "It's just so partisan right now. An awful lot of [lawmakers] think the president should be able to do whatever he wants."

#### The President has institutional incentives to resist encroachments on authority even if he agrees with the policy

**Posner and Vermeule, 8 -** \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, “Constitutional Showdowns” 156 U. Pa. L. Rev. 991, lexis)

In many historical cases, Congress and the President agree about the policy outcome but disagree about lines of authority. For example, suppose that the executive branch has made a controversial decision, and a suspicious Congress wants the relevant executive officials to testify about their role in that decision. The President believes that Congress has no right to compel the officials to testify, whereas Congress believes that it has such a right. However, the President, in fact, does not mind if the officials testify because he believes that their testimony will reveal that the decision was made in good faith and for good reasons.

[\*1016] The President's problem is that, if he allows the officials to testify, Congress and the public might interpret his acquiescence as recognition that Congress has the power to force executive officials to testify. If he refuses to allow the officials to testify, then he preserves his claim of executive privilege but loses the opportunity to show that the decision was made in good faith. In addition, he risks provoking a constitutional impasse in which Congress could eventually prevail - if, as we have discussed, public constitutional sentiment turns out to reject executive privilege in these circumstances. Congress faces similar dilemmas, for example, when it approves of officials nominated by the President for an agency or commission but wants to assert the power in general to impose restrictions on appointments.

Political agents have long relied on a middle way to avoid the two extremes of acquiescence, on the one hand, and impasse, on the other. They acquiesce in the decision made by the other agent while claiming that their acquiescence does not establish a precedent. Or, equivalently, they argue that their acquiescence was a matter of comity rather than submission to authority. Are such claims credible? Can one avoid the precedential effect of an action by declaring that it does not establish a precedent - in effect, engaging in "ambiguous acquiescence"?

The answer to this question is affirmative as long as the alternative explanation for the action is in fact credible. If, for example, observers agree that the President benefits from the testimony of executive officials, then his acquiescence to a congressional subpoena has two equally plausible explanations: that he independently benefits from the testimony, or that he believes that public constitutional sentiment rejects executive privilege. The response is thus ambiguous, and Congress may be no wiser about what will happen in the future when the President does not wish to permit officials to testify because their testimony would harm him or executive branch processes. If so, the ambiguous nature of the action does not establish a focal point that avoids an impasse in the future.

On the other hand, if the President's claim that he benefits from the testimony is obviously false, then his authority will be accordingly diminished. This is why ambiguous acquiescence is not a credible strategy when the President and Congress disagree about the policy outcome. If the President thinks the war should continue, Congress thinks the war should end, and the President acquiesces to a statute that terminates the war, then he can hardly argue that he is acting out of comity. He could only be acting because he lacks power. But an agent can lack authority in more complicated settings where no serious [\*1017] policy conflict exists. If the President makes officials available for testimony every time Congress asks for such testimony, and if the testimony usually or always damages the President, then his claim to be acting out of comity rather than lack of authority eventually loses its credibility. Repeated ambiguous acquiescence to repeated claims over time will eventually be taken as unambiguous acquiescence and hence a loss of authority. For this reason, a President who cares about maintaining his constitutional powers will need to refuse to allow people to testify even when testimony would be in his short-term interest.

### Drones – congressional oversight links

#### **The plan sparks Congressional turf battles over oversight**

**Munoz 13** (Carlo, The Hill, “Turf battle builds quietly in Congress over control of armed drone program”, 04/09/13, <http://thehill.com/homenews/administration/292501-turf-battle-builds-quietly-over-control-of-armed-drone-program->, ZBurdette)

A turf war is quietly building between congressional defense and intelligence committees over who will oversee the Obama administration’s controversial armed drone program.

Lawmakers are scrambling to make their case for or against a White House proposal that would hand control of the drones to the Pentagon.

Gordon Adams, a senior defense analyst at the Stimson Center, called the looming battle a “turf fight in the [disguise] of a policy debate.”

The Pentagon and CIA operate their own armed drone programs, which are both geared toward eliminating senior al Qaeda leaders and other high-level terror targets around the world. Under the Obama administration’s proposal, the CIA would continue to supply intelligence on possible targets, but actual control over the drone strikes would fall to the Pentagon.

Senate Intelligence Committee Chairwoman Dianne Feinstein (D-Calif.) publicly questioned whether the Defense Department (DOD) would be able to shoulder the program alone.

“We’ve watched the intelligence aspect of the drone program, how they function, the quality of the intelligence, watching the agency exercise patience and discretion,” Feinstein told reporters in March. “The military [armed drone] program has not done that nearly as well.”

Sen. John McCain and other defense lawmakers say the drone program would be better off being run by the Pentagon.

“It’s not the job of the Central Intelligence Agency. ... It’s the military’s job,” the Arizona Republican said in March.

The fight is a typical battle over who on Capitol Hill will retain power over the program, according to several analysts, who described it as predictable.

**“There is** always going to be a turf battle**” when dealing with congressional oversight**, said Lawrence Korb, a former DOD official and defense analyst at the liberal-leaning Center for American Progress.

But that battle could become particularly heated, given the high-profile nature of the drone program, which since the Sept. 11, 2001, attacks has become a huge factor in shaping counterterrorism policy, given its success, Korb said.

### 2nc at: winners win

#### Uniquely true of second term presidents

**Hoover 13**

Margaret Hoover (Republican strategist and CNN contributor), Piers Morgan (Host of Piers Morgan Tonight) and Ryan Lizza (CNN Contributor) January 19, 2013 “Obama's Second Term” http://transcripts.cnn.com/TRANSCRIPTS/1301/19/pmt.01.html

HOOVER: I absolutely am. You can try to caricature me into a terrible Republican, but there are plenty of us that are perfectly patriotic. What - look, he has a very big plate. **He has a huge agenda that he wants to get through. And he still has the reality of a divided Congress**. I think Republicans in the House of Representatives have realized they are one half of one third of the federal government, and they're trying to get their expectations in check in terms of what they can do, specifically on the debt ceiling, for example. And we've just heard that the House Republicans are going to try to negotiate a short-term debt ceiling deal so they can then try to go for a grand bargain.¶ **Second-term presidencies have been just spent and filled with misspent political capital** **that has just overreached** in terms of presidents looking for a legacy, **and trying to go for a legacy and then overspending their political capital.** So I think that's the risk that President Obama --¶ MORGAN: Ryan, it's interesting in the CNN poll of polls that has just come out, how is President **Obama** handling his job as president, approve 53 percent, disapprove 42 percent. So that's a plus for him. But when they are asked how is the country headed they say in the right direction 35 percent and the wrong direction 57 percent. So they approve of the president, but they think he's going completely in the wrong direction.¶ RYAN LIZZA, CNN CONTRIBUTOR: Yes.¶ MORGAN: And he's a lucky boy many would argue that he's gotten a second term given the state of the economy, and given the fact that most Americans believe the country is going in the wrong direction. But he's been given that lucky second chance. And he campaigned well. You have to acknowledge that. What are the big challenges for him in the second term?¶ LIZZA: Well the first thing every president **has to be careful of** in a second term is, as Margaret alluded to, is **overreach, misinterpreting your mandates. There's always a period after you win, and especially after you win a reelection where you** -- it seems like your first-term policies have been validated that you look at those results and **you think you're all powerful.¶** The famous example in recent history is George W. **Bush**. In 2005, remember he **came out** **and** did that press conference and **said he had political capital and he meant to spend it.** And **the first thing he did was try to pass a plan to reform Social Security that was just destroyed by the Democrats.¶** And then Katrina happened and his presidency was over by the end of 2005, at least the second term. So, **I spent a lot of time reporting on this the last year, talking to White House people, and they were very acutely aware of the dangers hidden in a second term**. And I think the -- I think **what they'll be looking for is not over interpreting that mandate, putting out an agenda one that he campaigned on,** right, **not doing things he didn't talk about in the campaign,** but two, **trying to find some kind of bipartisan compromise in a Congress that is very polarized.**

### impact

**Nuclear war.**

Cesare **Merlini 11**, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? Survival, 53:2, 117 – 130

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails **the premature crumbling of the post-Westphalian system**. One or more of the acute tensions apparent today **evolves into** an open and traditional conflict between **states**, perhaps even **involving** ***the use of nuclear weapons***

. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.