# octos neg v. wake hs

Plan text:

The United States Congress should revise Public Law 107-40 to set forth criteria that prohibits the Executive use of drone strikes against new terrorist threats where the Executive has not undergone administrative review to identify particular groups covered.

## 1nc

### DA

#### Legal restrictions are temporary and unenforceable in the long term

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

Liberal legalists, following Madison, describe Congress as the deliberative institution par excellence. On this view, Congress is a summation of local majorities, bringing local information and diverse perspectives to national issues. The bicameral structure of Congress aids deliberation; the House shifts rapidly in response to changing conditions and national moods, while the Senate provides a long-term perspective, and cools off overheated or panicky legislation. The Madisonian emphasis on the cooling-off function of the Senate functions as a check on executive claims that an emergency is at hand. The application of the Madisonian view to crises or emergencies is the default position among legal academics. On this view, even in crisis situations the executive may act only on the basis of clear congressional authorization that follows public deliberation, and the executive’s actions must presumptively be subject to judicial review. A proviso to the Madisonian view is that if immediate action is literally necessary, the executive may act, but only until Congress can convene to deliberate; if the executive’s interim actions were illegal, it must seek ratification from Congress and the public after the fact.53 In the Schmittian view, by contrast, the Madisonian vision of Congress seems hopelessly optimistic. Even in normal times, Schmitt believed, the deliberative aspirations of classical parliamentary democracy have become a transparent sham under modern conditions of party discipline, interest-group conflict, and a rapidly changing economic and technical environment. Rather than deliberate, legislators bargain, largely along partisan lines. Discussion on the legislative floor, if it even occurs, is carefully orchestrated posturing for public consumption, while the real work goes on behind closed doors, in party caucuses. How does this picture relate to Schmitt’s point that legislatures invariably “come too late” to a crisis? Crises expose legislative debility to view, but do not create it. Indeed, legislative failure during crises is in part a consequence of legislative failure during the normal times that precede crises. The basic dilemma for legislators, is that before a crisis, they lack the motivation and information to provide for it in advance, while after the crisis has begun, they lack the capacity to manage it themselves. We will describe each horn of the dilemma in detail. BEFORE THE CRISIS In the precrisis state, legislatures mired in partisan conflict about ordinary politics lack the motivation to address long-term problems. Legislators at this point act from behind a veil of uncertainty about the future, and may thus prove relatively impartial; at least high uncertainty obscures the distributive effects of legislation for the future, and thus reduces partisan opposition. However, by virtue of these very facts, there is no strong partisan support for legislation, and no bloc of legislators has powerful incentives to push legislation onto the crowded agenda. The very impartiality that makes ex ante legislation relatively attractive, from a Madisonian perspective, also reduces the motivation to enact it. This point is related to, but distinct from, Schmitt’s more famous claim about the “norm” and the “exception.” In a modern rendition, that claim holds that ex ante legal rules cannot regulate crises in advance, because unanticipated events will invariably arise. Legislatures therefore either decline to regulate in advance or enact emergency statutes with vague standards that defy judicial enforcement ex post. Here, however, a different point is at issue: even if ex ante legal rules could perfectly anticipate all future events, legislatures will often lack the incentive to adopt them in advance. Occasionally, when a high-water mark of public outrage against the executive is reached, legislatures do adopt framework statutes that attempt to regulate executive behavior ex ante; several statutes of this kind were adopted after Watergate. The problem is that new presidents arrive, the political coalitions that produced the framework statute come apart as new issues emerge, and public outrage against executive abuses cools. Congress soon relapses into passivity and cannot sustain the will to enforce, ex post, the rules set out in the framework statutes. As we will discuss more fully in chapter 3, the post-Watergate framework statutes have thus, for the most part, proven to impose little constraint on executive action in crisis, in large part because Congress lacks the motivation to enforce them. DURING THE CRISIS The other horn of the dilemma arises after the crisis has begun to unfold. Because of their numerous memberships, elaborate procedures, and internal structures, such as bicameralism and the committee system, and internal problems of collective action, legislatures can rarely act swiftly and decisively as events unfold. The very complexity and diversity that make legislatures the best deliberators, from a Madisonian perspective, also raise the opportunity costs of deliberation during crises and disable legislatures from decisively managing rapidly changing conditions. After 9/11, everyone realized that another attack might be imminent; only an immediate, massive response could forestall it. In September 2008, the financial markets needed immediate reassurance: only credible announcements from government agencies that they would provide massive liquidity could supply such reassurance. Indeed, though commentators unanimously urged Congress to take its time, within weeks the Bush administration was being criticized for not acting quickly enough. In such circumstances, legislatures are constrained to a reactive role, at most modifying the executive’s response at the margins, but not themselves making basic policy choices. Liberal legalists sometimes urge that the executive, too, is large and unwieldy; we pointed out in the introduction that the scale of executive institutions dwarfs that of legislative and judicial institutions. On this view, the executive has no systematic advantages in speed and decisiveness. Yet this is fatally noncomparative. The executive is internally complex, but it is structured in a far more hierarchical fashion than is Congress, especially the Senate, where standard procedure requires the unanimous consent of a hundred barons, each of whom must be cosseted and appeased. In all the main cases we consider here, the executive proved capable of acting with dispatch and power, while Congress fretted, fumed, and delayed. The main implication of this contrast is that crises in the administrative state tend to follow a similar pattern. In the first stage, there is an unanticipated event requiring immediate action. Executive and administrative officials will necessarily take responsibility for the front-line response; typically, when asked to cite their legal authority for doing so, they will either resort to vague claims of inherent power or will offer creative readings of old statutes. Because legislatures come too late to the scene, old statutes enacted in different circumstances, and for different reasons, are typically all that administrators have to work with in the initial stages of a crisis. “Over time, the size and complexity of the economy will outgrow the sophistication of static financial safety buffers”54—a comment that can also be made about static security safety buffers, which the advance of weapons technology renders obsolete. In this sense, administrators also “come too late”—they are forced to “base decisions about the complex, ever-changing dynamics of contemporary economic [and, we add, security] conditions on legal relics from an oftentimes distant past.”55 Thus Franklin Roosevelt regulated banks, in 1933, by offering a creative reading of the Trading with the Enemy Act of 1917, a statute that needless to say was enacted with different problems in mind. Likewise, when in 2008 it became apparent on short notice that the insurance giant AIG had to be bailed out, lest a systemwide meltdown occur, the Treasury and Federal Reserve had to proceed through a strained reading of a hoary 1932 statute. While the statute authorized “loans,” it did not authorize government to purchase private firms; administrators structured a transaction that in effect accomplished a purchase in the form of a loan. Ad hoc “regulation by deal,”56 especially in the first phase of the financial crisis, was accomplished under the vague authority of old statutes. The pattern holds for security matters as well as economic issues, and for issues at the intersection of the two domains. Thus after 9/11, the Bush administration’s attempts to choke off Al Qaeda’s funding initially proceeded in part under provisions of the International Emergency Economic Powers Act, a 1977 statute whose purpose, when enacted, was actually to restrict the president’s power to seize property in times of crisis.57

#### But even temporary restraints undermine speed and flexibility

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

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

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

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

### K

#### Framing targeted killing as a juridical problem fails to deal with the militarized relationship between the law and politics—the correct response cannot be to respond to legal discourse, but to disrupt it

Krasmann 12. Susanne Krasmann, prof. Dr, Institute for Criminological Research, University of Hamburg, “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” Leiden Journal of International Law (2012), 25, pg. 678

The legal debate on targeted killing, particularly that referring to the US practice, has increased immensely during the last decade and even more so very recently, obviously due to a ‘compulsion of legality’.87 Once this state practice of resorting to the use of lethal force has been recognized as systematically taking place, it needs to be dealt with in legal terms. Whether this is done in supportive or critical terms, the assertion of targeted killing as a legal practice commences at this point. This is due to the fact that the law, once invoked, launches its own claims.

To insist on disclosing ‘the full legal basis for targeted killings’; on criteria, legal procedures, and ‘access to reliable information’ in order to render governmental action controllable; or on legal principles to be applied in order to estimate the necessity and proportionality of a concrete intervention at stake,88 not only involves accepting targeted killing as a legitimate subject of debate in the first place. It requires distinctions to be made between, for example, a legitimate and an illegitimate target. It invokes the production of knowledge and the establishment of pertinent rules. Indeterminate categories are to be determined and thus established as a new reading of positive law. The introduction of international human rights standards into the debate, for example, clearly allows limits to be set in employing the pre-emptive tactic. As Wouter Werner has shown with regard to the Israeli High Court of Justice’s decision on the legality of targeted killing operations,89 this may well lead, for example, to recognizing the enemy as being not ‘outlaws’ but, instead, combatants who are to be granted basic human rights. Subsequently, procedural rules may be established that restrict the practice and provide criteria for assessing the legality of concrete operations.90 At the same time, however, targeted killing is recognized as a legitimate tactic in the fight against terrorism and is being determined and implemented legally.91

When framed within the ‘theatre of war’, targeted killing categorically seems to be justifiable under the legal principles of necessity, proportionality, discrimination, and the avoidance of unnecessary suffering. This is true as long as one presupposes in general terms, as the juridical discourse usually does, both a well-considered pro- ceeding along those principles92 and, accordingly, that targeted killing, by its very nature, is a ‘calculated, precise use of lethal force’.93 Procedural rules, like the ‘pro- portionality test’, that are essentially concerned with determination, namely with specifying criteria of intervention for the concrete case or constellation, certainly provide reliability by systematically inciting and provoking justifications. Their application therefore, we may say, contributes to clarifying a controversial norm- ative interpretation, but it will never predict or determine how deliberation and justification translate into operational action. The application of procedural rules does not only notoriously remain ‘indeterminate’,94 but also produces its own truth effects. The question of proportionality, for example, is intrinsically a relational one. The damage that targeting causes is to be related to the anticipated military ad- vantage and to the expected casualties of non-targeted operations. Even if there are ‘substantial grounds to believe’ that such an operation will ‘encounter significant armed resistance’,95 this is a presumption that, above all, entails a virtual dimension: the alternate option will never be realized. According to a Foucauldian perspective, decisions always articulate within an epistemic regime and thus ‘eventualize’ on the political stage.96 There is, in this sense, no mere decision and no mere meaning; and, conversely, there is no content of a norm, and no norm, independent of its enforcement.97 To relate this observation to our problem at hand means that, rather than the legal principles’ guiding a decision, it is the decision on how to proceed that constitutes the meaning of the legal principle in question. The legal reasoning, in turn, produces a normative reality of its own, as we are now able to imagine, comprehend, and assess a procedure and couch it in legal terms.

This is also noticeable in the case of the Osama bin Laden killing. As regards the initial strategy of justification, the question of resistance typically is difficult to establish ex post in legal terms. Such situations are fraught with so many possible instances of ambiguous behaviour and risk, and the identification of actual behav- iour as probably dangerous and suspicious may change the whole outcome of the event.98 But, once the public found itself with little alternative but to assume that the prospect of capturing the subject formed part of the initial order, it also had to assume that the intention was to use lethal force as a last resort. And, once the public accepts the general presumption that the United States is at war with the terrorist organization, legal reasoning about the operation itself follows and constitutes a rationale shaping the perception of similar future actions and the exercise of governmental force in general.99 Part of this rationale is the assumption, as the president immediately pointed out in his speech, that the threat of al Qaeda has not been extinguished with bin Laden. The identification of a threat that emanates from a network may give rise to the question of whether the killing of one particular target, forming part of a Hydra, makes any sense at all.100 Yet, it equally nourishes the idea that the fight against terrorism, precisely because of its elusiveness, is an enduring one, which is exactly the position the United States takes while considering itself in an armed conflict with the terrorist organization. Targeting and destroying parts of a network, then, do not destroy the entire network, but rather verify that it exists and is at work. The target, in this sense, is constituted by being targeted.101 Within the rationale of the security dispositif, there continue to be threats and new targets. Hence, at work is a transformation of laws through practice, rather than their amendment.

Giorgio Agamben maintains that a legal norm, because abstract, does not stipulate its application.102 ‘Just as between language and world . . . there is no internal nexus’ between them. The norm, in this sense, exists independent of ‘reality’. This, according to Agamben, allows for the norm in the ‘state of exception’ both to be applied with the effect of ‘ceasing to apply’103 – ‘the rule, suspending itself, gives rise to the exception’104 – and to be suspended without being abolished. Although forming part of and, in fact, being the effect of applying the law, the state of exception, in Agamben’s view, disconnects from the norm. Within a perspective on law as practice, by contrast, there is no such difference between norm and reality. Even to ignore a pertinent norm constitutes an act that has a meaning, namely that the norm is not being enforced. It affects the norm. Targeted killing operations, in this sense, can never be extra-legal.105 On the contrary, provided that illegal practices come up systematically, they eventually will effectuate the transformation of the law. Equally, the exception from the norm not only suspends the norm, transforming it, momentarily or permanently, into a mere symbol without meaning and force, but at the same time also impinges upon the validity of that norm. Moreover, focus on the exception within the present context falls short of capturing a rather gradual transitional process that both resists a binary deciphering of either legal or illegal and is not a matter of suspending a norm. As practices deploying particular forms of knowledge, targeted killing and its law mutually constitute each other, thus re-enforcing a new security dispositif. The appropriate research question therefore is how positive law changes its framework of reference. Targeted killing, once perceived as illegal, now appears to be a legal practice on the grounds of a new understanding of international law’s own elementary concepts. The crux of the ‘compulsion of legality’ is that legality itself is a shifting reference.

Seen this way, the United States does not establish targeted killing as a legal practice on the grounds of its internationally ‘possessing’ exceptional power. Rather the reverse; it is able to employ targeted killing as a military tactic, precisely because this is accepted by the legal discourse. As a practice, targeted killing, in turn, reshapes our understanding of basic concepts of international law. Any dissenting voice will now be heard with more difficulty, since targeted killing is a no longer an isolated practice but, within the now establishing security dispositif, appears to be appropriate and rational. To counter the legal discourse, then, would require to interrupt it, rather than to respond to it, and to move on to its political implications that are rather tacitly involved in the talk about threats and security, and in the dispute about targeted killing operations’ legality.

#### Refuse attempts to reform the legal system – the impact is nihilist destruction – refusal is the only option

Prozorov 10. Sergei Prozorov, professor of political and economic studies at the University of Helsinki, “Why Giorgio Agamben is an optimist,” Philosophy Social Criticism 2010 36: pg. 1065

In a later work, Agamben generalizes this logic and transforms it into a basic ethical imperative of his work: ‘[There] is often nothing reprehensible about the individual behavior in itself, and it can, indeed, express a liberatory intent. What is disgraceful – both politically and morally – are the apparatuses which have diverted it from their possible use. We must always wrest from the apparatuses – from all apparatuses – the possibility of use that they have captured.’32 As we shall discuss in the following section, this is to be achieved by a subtraction of ourselves from these apparatuses, which leaves them in a jammed, inoperative state. What is crucial at this point is that the apparatuses of nihilism themselves prepare their demise by emptying out all positive content of the forms-of-life they govern and increasingly running on ‘empty’, capable only of (inflict- ing) Death or (doing) Nothing.

On the other hand, this degradation of the apparatuses illuminates the ‘inoperosity’ (worklessness) of the human condition, whose originary status Agamben has affirmed from his earliest works onwards.33 By rendering void all historical forms-of-life, nihi- lism brings to light the absence of work that characterizes human existence, which, as irreducibly potential, logically presupposes the lack of any destiny, vocation, or task that it must be subjected to: ‘Politics is that which corresponds to the essential inoperability of humankind, to the radical being-without-work of human communities. There is pol- itics because human beings are argos-beings that cannot be defined by any proper oper- ation, that is, beings of pure potentiality that no identity or vocation can possibly exhaust.’34

Having been concealed for centuries by religion or ideology, this originary inoperos- ity is fully unveiled in the contemporary crisis, in which it is manifest in the inoperative character of the biopolitical apparatuses themselves, which succeed only in capturing the sheer existence of their subjects without being capable of transforming it into a positive form-of-life:

[T]oday, it is clear for anyone who is not in absolutely bad faith that there are no longer historical tasks that can be taken on by, or even simply assigned to, men. It was evident start- ing with the end of the First World War that the European nation-states were no longer capa- ble of taking on historical tasks and that peoples themselves were bound to disappear.35

Agamben’s metaphor for this condition is bankruptcy: ‘One of the few things that can be

declared with certainty is that all the peoples of Europe (and, perhaps, all the peoples of the Earth) have gone bankrupt’.36 Thus, the destructive nihilistic drive of the biopolitical machine and the capitalist spectacle has itself done all the work of emptying out positive forms-of-life, identities and vocations, leaving humanity in the state of destitution that Agamben famously terms ‘bare life’. Yet, this bare life, whose essence is entirely con- tained in its existence, is precisely what conditions the emergence of the subject of the coming politics: ‘this biopolitical body that is bare life must itself be transformed into the site for the constitution and installation of a form-of-life that is wholly exhausted in bare life and a bios that is only its own zoe.’37

The ‘happy’ form-of-life, a ‘life that cannot be segregated from its form’, is nothing but bare life that has reappropriated itself as its own form and for this reason is no longer separated between the (degraded) bios of the apparatuses and the (endangered) zoe that functions as their foundation.38 Thus, what the nihilistic self-destruction of the appara- tuses of biopolitics leaves as its residue turns out to be the entire content of a new form-of-life. Bare life, which is, as we recall, ‘nothing reprehensible’ aside from its con- finement within the apparatuses, is reappropriated as a ‘whatever singularity’, a being that is only its manner of being, its own ‘thus’.39 It is the dwelling of humanity in this irreducibly potential ‘whatever being’ that makes possible the emergence of a generic non-exclusive community without presuppositions, in which Agamben finds the possibility of a happy life.

[If] instead of continuing to search for a proper identity in the already improper and sense- less form of individuality, humans were to succeed in belonging to this impropriety as such, in making of the proper being-thus not an identity and individual property but a singularity without identity, a common and absolutely exposed singularity, then they would for the first time enter into a community without presuppositions and without subjects.40

Thus, rather than seek to reform the apparatuses, we should simply leave them to their self-destruction and only try to reclaim the bare life that they feed on. This is to be achieved by the practice of subtraction that we address in the following section.

#### The impact is global biopolitical war -- the ballot should side with the global countermovement against violence

Gulli 13. Bruno Gulli, professor of history, philosophy, and political science at Kingsborough College in New York, “For the critique of sovereignty and violence,” <http://academia.edu/2527260/For_the_Critique_of_Sovereignty_and_Violence>, pg. 1

We live in an unprecedented time of crisis. The violence that characterized the twentieth century, and virtually all known human history before that, seems to have entered the twenty-first century with exceptional force and singularity. True, this century opened with the terrible events of September 11. However, September 11 is not the beginning of history. Nor are the histories of more forgotten places and people, the events that shape those histories, less terrible and violent – though they may often be less spectacular. The singularity of this violence, this paradigm of terror, does not even simply lie in its globality, for that is something that our century shares with the whole history of capitalism and empire, of which it is a part. Rather, it must be seen in the fact that terror as a global phenomenon has now become self-conscious. Today, the struggle is for global dominance in a singularly new way, and war –regardless of where it happens—is also always global. Moreover, in its self-awareness, terror has become, more than it has ever been, an instrument of racism. Indeed, what is new in the singularity of this violent struggle, this racist and terrifying war, is that in the usual attempt to neutralize the enemy, there is a cleansing of immense proportion going on. To use a word which has become popular since Michel Foucault, it is a biopolitical cleansing. This is not the traditional ethnic cleansing, where one ethnic group is targeted by a state power – though that is also part of the general paradigm of racism and violence. It is rather a global cleansing, where the sovereign elites, the global sovereigns in the political and financial arenas (capital and the political institutions), in all kinds of ways target those who do not belong with them on account of their race, class, gender, and so on, but above all, on account of their way of life and way of thinking. These are the multitudes of people who, for one reason or the other, are liable for scrutiny and surveillance, extortion (typically, in the form of over- taxation and fines) and arrest, brutality, torture, and violent death. The sovereigns target anyone who, as Giorgio Agamben (1998) shows with the figure of homo sacer, can be killed without being sacrificed – anyone who can be reduced to the paradoxical and ultimately impossible condition of bare life, whose only horizon is death itself. In this sense, the biopolitical cleansing is also immediately a thanatopolitical instrument.

The biopolitical struggle for dominance is a fight to the death. Those who wage the struggle to begin with, those who want to dominate, will not rest until they have prevailed. Their fanatical and self-serving drive is also very much the source of the crisis investing all others. The point of this essay is to show that the present crisis, which is systemic and permanent and thus something more than a mere crisis, cannot be solved unless the struggle for dominance is eliminated. The elimination of such struggle implies the demise of the global sovereigns, the global elites – and this will not happen without a global revolution, a “restructuring of the world” (Fanon 1967: 82). This must be a revolution against the paradigm of violence and terror typical of the global sovereigns. It is not a movement that uses violence and terror, but rather one that counters the primordial terror and violence of the sovereign elites by living up to the vision of a new world already worked out and cherished by multitudes of people. This is the nature of counter-violence: not to use violence in one’s own turn, but to deactivate and destroy its mechanism. At the beginning of the modern era, Niccolò Machiavelli saw the main distinction is society in terms of dominance, the will to dominate, or the lack thereof. Freedom, Machiavelli says, is obviously on the side of those who reject the paradigm of domination:

[A]nd doubtless, if we consider the objects of the nobles and of the people, we must see that the first have a great desire to dominate, whilst the latter have only the wish not to be dominated, and consequently a greater desire to live in the enjoyment of liberty (Discourses, I, V).

Who can resist applying this amazing insight to the many situations of resistance and revolt that have been happening in the world for the last two years? From Tahrir Square to Bahrain, from Syntagma Square and Plaza Mayor to the streets of New York and Oakland, ‘the people’ speak with one voice against ‘the nobles;’ the 99% all face the same enemy: the same 1%; courage and freedom face the same police and military machine of cowardice and deceit, brutality and repression. Those who do not want to be dominated, and do not need to be governed, are ontologically on the terrain of freedom, always-already turned toward a poetic desire for the common good, the ethics of a just world. The point here is not to distinguish between good and evil, but rather to understand the twofold nature of power – as domination or as care.

The biopolitical (and thanatopolitical) struggle for dominance is unilateral, for there is only one side that wants to dominate. The other side –ontologically, if not circumstantially, free and certainly wiser—does not want to dominate; rather, it wants not to be dominated. This means that it rejects domination as such. The rejection of domination also implies the rejection of violence, and I have already spoken above of the meaning of counter-violence in this sense. To put it another way, with Melville’s (2012) Bartleby, this other side “would prefer not to” be dominated, and it “would prefer not to” be forced into the paradigm of violence. Yet, for this preference, this desire, to pass from potentiality into actuality, action must be taken – an action which is a return and a going under, an uprising and a hurricane. Revolution is to turn oneself away from the terror and violence of the sovereign elites toward the horizon of freedom and care, which is the pre- existing ontological ground of the difference mentioned by Machiavelli between the nobles and the people, the 1% (to use a terminology different from Machiavelli’s) and the 99%. What is important is that the sovereign elite and its war machine, its police apparatuses, its false sense of the law, be done with. It is important that the sovereigns be shown, as Agamben says, in “their original proximity to the criminal” (2000: 107) and that they be dealt with accordingly. For this to happen, a true sense of the law must be recuperated, one whereby the law is also immediately ethics. The sovereigns will be brought to justice. The process is long, but it is in many ways already underway. The recent news that a human rights lawyer will lead a UN investigation into the question of drone strikes and other forms of targeted killing (The New York Times, January 24, 2013) is an indication of the fact that the movement of those who do not want to be dominated is not without effect. An initiative such as this is perhaps necessarily timid at the outset and it may be sidetracked in many ways by powerful interests in its course. Yet, even positing, at that institutional level, the possibility that drone strikes be a form of unlawful killing and war crime is a clear indication of what common reason (one is tempted to say, the General Intellect) already understands and knows. The hope of those who “would prefer not to” be involved in a violent practice such as this, is that those responsible for it be held accountable and that the horizon of terror be canceled and overcome. Indeed, the earth needs care. And when instead of caring for it, resources are dangerously wasted and abused, it is imperative that those who know and understand revolt –and what they must revolt against is the squandering and irresponsible elites, the sovereign discourse, whose authority, beyond all nice rhetoric, ultimately rests on the threat of military violence and police brutality

#### Accepting the plan as a legitimate subject of debate eviscerates sovereignty—instead we should enter into study to deactivate the sovereign myths about the law that justify its perversion

McLoughlin 13. Daniel McLoughlin, professor of law at the University of South Wales, “The Fiction of Sovereignty and the Real State of Exception: Giorgio Agamben’s Critique of Carl Schmitt,” Law, Culture and the Humanities 0(0) pg. 17

According to Agamben, “Before the Law” is usually read as a tale of “irremediable defeat,”91 a story of the impossibility of surpassing the structure of sovereignty. Agamben, by contrast, argues that the man from the country is engaged in a patient and ultimately successful attempt to deactivate the law’s “being in force without sig- nificance.” At the end of the story, despite the risk to his life entailed by his struggle with the law, the man remains alive and the door to the Law is shut. In his essay “K,” Agamben elaborates on this reading with a subtle yet important shift of emphasis: the lesson of the man from the country is, he argues, that the deactivation of the law does not require the study of law itself, but rather, the “long study of its doorkeepers.”92 While the law is absent in Kafka’s world, what keeps it at work is the fact that the guardians of the law claim to act on its behalf. If one wants to deactivate the law, then the decisive politi- cal struggle is not with law itself, which is already inoperative, but with those who cover over this fact with the claim that they represent the law. In the same essay, Agamben makes a similar point about The Castle: the land surveyor who tries to gain access to the castle does not engage in a struggle “against God or supreme sovereignty ... but against the angels, the messengers and functionaries who appear to represent it ... (it is) a conflict with the fabrications of men (or of angels) regarding the divine.”93

This helps to illuminate the sense in which the real state of exception can simultane- ously be a situation to which we are subject; a situation that has been exposed as such by Benjamin; and also a crucial political task to undertake that will “help in the struggle against Fascism.” In Agamben’s account of Paul, the coming of the messiah has deacti- vated the law and yet the law remains at work; in his analyses of the state of exception the law is suspended yet remains in force; in his reading of Kafka, the Law is absent yet still present. In each instance, then, there is a messianic tension between an “already” existing lawlessness that is “not yet” fully experienced as such, because it is being covered over by authority: the katechon in Paul, the guardians of the law in Kafka, and those trying to control the state in his account of the exception. To produce a real state of exception is to deactivate the law, which requires undermining the claims of the representatives of the law and the political divisions that they maintain on this basis. While the lawlessness of the real state of exception is at work, it can only come to light in and through a “conflict with the fabrications of men” about the continued existence of law.94

Agamben sees the politics of deactivating the law as the only appropriate (and indeed conceptually viable) response to the state of emergency as rule. As we have observed, Schmitt’s analysis of sovereignty closed down the idea of pure violence and the possi- bility of a radically revolutionary act through the idea of the force-of-law, which placed the power to suspend the law into the hands of the state and those who seek to control it. However, Benjamin’s eighth thesis turns the tables on Schmitt, as the idea of sover- eignty becomes utterly implausible when the state of emergency is the rule. Within the contemporary political horizon, then, it is conceptually impossible to claim legal author- ity and legitimacy: as Agamben asserts in The Church and the Kingdom “nowhere on earth today is a legitimate power to be found.”95 What is conceptually possible, how- ever, is a politics that seeks to deactivate the law by neutralizing the claims to legality made by those who present themselves as its guardians. It is only through such a politics that the lawlessness of the ‘‘real state of exception’’ is experienced as such, as any poli- tics that makes claims to legal authority rests upon the fiction of sovereignty and hence continues to conceal the deactivation of the law.

What is at stake in this account of the real state of exception is an attempt to break with the sense of political stagnation that characterizes contemporary politics. In a frag- ment from The Coming Community entitled “Halos,” Agamben recounts a version of a parable about the Kingdom of the Messiah told to Ernst Bloch by Walter Benjamin: “The Hassidim tell a story about the world to come that says everything there will be just as it is here. Just as our room is now, so will it be in the world to come; where our baby sleeps now, there too it will sleep in the other world. And the clothes we wear in this world, so too we will wear there. Everything will be as it is now, just a little bit different.”96 After recounting Benjamin’s version of the parable, Agamben goes on to say that “the tiny displacement does not refer to things, but to their sense and their limits ... the parable introduces a possibility there where everything is perfect, an ‘otherwise’ where every- thing is finished forever.”97 For Agamben, then, the sense of “inversion” that is charac- teristic of Benjamin’s messianism brings to light a possibility to be otherwise. Similarly, Agamben’s messianic inversion of sovereignty responds to a sense of political closure by trying to introduce a sense that it is possible for things to be otherwise.

Throughout his political work, he asserts that the political tradition has reached its end due to the increasing indistinction of the fundamental oppositions (law/anomie, politics/ life) that have historically delimited the political and thereby made it possible. The conceptual and institutional structures that framed and helped to make sense of our political experience have collapsed and it is not possible to return to their shelter.98 Despite this crisis, we do not seem capable of conceiving of political experience beyond the terms offered by the political tradition, and the theory of sovereignty plays a key role in this sense of political closure, anchoring all political experience to the law, and foreclosing the idea of a political action that breaks with the order of legal violence.

By undermining the idea of sovereignty, Benjamin’s eighth thesis re-opens the con- ceptual possibility of a politics of pure violence. Pure violence is, Agamben writes, mani- fest in the purification of violence: that is, in the “exposure and deposition”99 of the nexus between violence and law. This is precisely what Benjamin achieves in his philo- sophical combat with Schmitt, meaning that the eighth thesis is a manifestation of the politics of pure violence at the level of theory.100 But while Benjamin may have disabled the apparatus of sovereignty at a philosophical level, the force-of-law is consistently invoked by the messengers and guardians of the law to justify the anomic violence that is leading us towards catastrophe.101 Benjamin’s eighth thesis then grounds Agamben’s call for, and attempt to theorize the conditions of, a messianic politics dedicated to bringing to light the inoperativity of the law that is already at work in the politics of our time. For Agamben, to live messianically means to take the illegitimacy of state power as the premise of one’s politics: to act on the basis that the law is already inoperative, that the claims to authority of its representatives are a fiction, and that their power needs to be deactivated.

### Politics

#### Obama will win on debt ceiling if he maintains his position of strength

**Liasson, 9/21/13** (Mara, “Have Obama's Troubles Weakened Him For Fall's Fiscal Fights?” NPR, <http://www.npr.org/blogs/itsallpolitics/2013/09/21/224494760/have-obamas-troubles-weakened-him-for-falls-fiscal-fights>)

"[Obama] had some missteps within the caucus," Manley says, but "now that he has those situations behind him ... he can turn his attention to the debt limit and the spending issues." Manley says the president will be well-positioned to take on Republicans in those fiscal fights, "if only because ... their policies are so out of the mainstream that they won't enjoy any support on the Hill and/or with the American people." The plan to bomb Syria was extremely unpopular. But on budget issues, the president is on firmer footing with the public, who may not like Obamacare but don't want it repealed or defunded. So, in the House at least, Republicans are making demands the president cannot and will not meet. "You have never seen, in the history of the United States, the debt ceiling or the threat of not raising the debt ceiling being used to extort a president or a governing party, and trying to force issues that have nothing to do with the budget and have nothing to do with the debt," Obama has said. White House officials say Democrats will always have internal divisions, but right now they are nothing compared with the fights inside the GOP. "There is essentially a civil war brimming in the Republican Party right now," says Dan Pfeiffer, the president's senior adviser. Pfeiffer points to open warfare between Tea Party conservatives and moderates, and even between House and Senate conservatives, as Republicans struggle to settle on a viable budget strategy. "The important thing is, as we head into these budget battles this fall, Democrats ... are in lock-step about the way to approach this," he says, "which is that we are not going to negotiate on the debt ceiling — we're not going to allow the full faith and credit of the United States to be held hostage by the Republicans, who want to ... deny health insurance to millions of Americans. We're in lock-step and they're divided, so I feel pretty good about that." Despite the setbacks of the spring and summer, the Obama team is counting on the latent power of the presidency — one of the most resilient institutions in American life. Unlike on Syria, Obama seems to have a budget strategy. He's hanging tough on his two red lines: no negotiations on the debt ceiling and no changes to Obamacare. The president is willing for now to let the Republicans flirt with the unpopular and dangerous possibilities of a government shutdown and a debt default. It's a high-stakes game of chicken, and one where the White House feels confident it has the upper hand.

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

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

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

After a week in which President Obama narrowly averted a bruising defeat on Capitol Hill over a military strike on Syria, the decision had the feeling of a much-needed timeout. The messy debate over a resolution to authorize military force put a harsh light on the president's already rocky relationship with Congress. Despite a charm offensive earlier this year, complete with intimate dinners and phone calls, Obama faced contrary lawmakers in both parties, a climate that is certain to persist through the next round of legislative fights, if not to the end of his second term. In deciding to seek approval for military action, Obama banked on the long-standing deference to the commander in chief on matters of national defense. But by the time he pressed "pause" on the intense White House lobbying effort, he was finding as much defiance as deference. Although the White House cast the issue as a matter of national security and a crucial test of U.S. power, dozens of lawmakers from both parties were set to deliver a rare rebuke to a president on foreign policy. Even Democratic loyalists seemed unswayed by appeals to preserve the prestige of the presidency — and this president. Hawkish Republicans offering to reach across the aisle to support the president said they found the White House distant and uninterested. The canceled picnic punctuated a week of aggravated feelings. "We obviously have divided government. We have sometimes contentious, sometimes very effective relations with Congress. But we keep at it," said White House spokesman Jay Carney, who denied the picnic cancellation had anything to do with the state of relations between the two branches of government. On Capitol Hill, the week's episode strained Obama's traditional alliance with his fellow Democrats, many of whom were wary of another military involvement, unclear about the president's plans for a missile strike and surprised by his decision to ask them to vote on it. "Not only was it a hard ask, but it was not a well-prepared ask," said Sen. Sheldon Whitehouse (D-R.I.). "His willingness to back away from the ultimatum and pursue the disarmament proposal was extremely welcome, and I think that helped all of us in our relationship with him." Obama's relationship with his Republican critics was not helped. As lawmakers look ahead to the rest of the fall agenda, including the coming budget battles, the administration's performance this week will not be easy to forget, some said. "It's just more lack of confidence that they know what they're doing," said Sen. Tom Coburn (R-Okla.). "There's only so much political capital," said Sen. Rob Portman (R-Ohio). Democrats defended the president, blaming Republicans for a "knee-jerk" opposition to any initiative tied to this White House, a phenomenon that Obama aides regularly cite but that the president appears to have disregarded in his decision to put a use-of-force resolution before Congress. "Historically, when it comes to military force, Republicans and conservatives have led that. Now they're opposed to it," said Sen. Richard J. Durbin (D-Ill.). In a private meeting this week, Durbin said, Obama himself joked that "a lot of Republicans on Capitol Hill are discovering their inner doves on Syria." The next set of negotiations will be far more predictable and on familiar territory. By the end of the month, the president and Congress must agree on a plan to continue funding the government, or it will shut down. And by mid-October, they will have to agree to raise the debt limit, or risk a default. The White House has said it won't negotiate on the debt limit, as it did twice before, counting on the public and business groups to pressure Republicans. Democrats were hopeful the budget issues would put the White House back on more solid political footing. "I think the public has a heck of a lot more confidence in the president on economics and budget than [in] the House Republicans," said Sen. Carl Levin (D-Mich.). That may be wishful thinking, said Ross Baker, a political science professor at Rutgers University, who studies the Senate. "These things carry over. There's no firewall between issues," he said. "Failure in one area leads to problems in other areas." The debate over the war in Syria may be on an extended pause, although prospects of Obama returning to Congress to ask for a use-of-force authorization seem slim. A bipartisan group of senators is drafting an amended authorization, but the group is not expected to fully air its proposal until diplomatic talks conclude. There were some signs that the debate may have won the president some empathy, if not support. At a private lunch with Republican senators this week, Obama asked them not to undermine him on the world stage. Sen. Ron Johnson of Wisconsin, who is part of a group of GOP senators working with the White House on fiscal issues, said the appeal resonated.

#### Leverage is finite key to a deal

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

The country will crash into the debt ceiling in mid-October, which would be an economic disaster, especially with a government shutdown looming at the same time. These are deadlines that Congress already learned two years ago not to toy with, but memories appear to be preciously short. The Federal Reserve needs a new chief in three months, someone who will help the country confront its raging unemployment crisis that has left 12 million people without jobs. The president has promised to choose a warm body within the next three weeks, despite the fact that his top pick, Larry Summers, would likely spark an ugly confirmation battle – the "fight of the century," according to some – with a Congress already unwilling to do the President's bidding. Congress was supposed to pass a farm bill this summer, but declined to do so even though the task is already two years late. As a result, the country has no farm bill, leaving agricultural subsidies up in the air, farmers uncertain about what their financial picture looks like, and a potential food crisis on the horizon. The two main housing agencies, Fannie Mae and Freddie Mac, have been in limbo for four years and are desperately in need of reform that should start this fall, but there is scant attention to the problem. These are the problems going unattended by the Obama administration while his aides and cabinet members have been wasting the nation's time making the rounds on television and Capitol Hill stumping for a profoundly unpopular war. The fact that all this chest-beating was for naught, and an easy solution seems on the horizon, belies the single-minded intensity that the Obama White House brought to its insistence on bombing Syria. More than one wag has suggested, with the utmost reason, that if Obama had brought this kind of passion to domestic initiatives, the country would be in better condition right now. As it is, public policy is embarrassingly in shambles at home while the administration throws all of its resources and political capital behind a widely hated plan to get involved in a civil war overseas. The upshot for the president may be that it's easier to wage war with a foreign power than go head-to-head with the US Congress, even as America suffers from neglect. This is the paradox that President Obama is facing this fall, as he appears to turn his back on a number of crucial and urgent domestic initiatives in order to spend all of his meager political capital on striking Syria. Syria does present a significant humanitarian crisis, which has been true for the past two years that the Obama administration has completely ignored the atrocities of Bashar al-Assad. Two years is also roughly the same amount of time that key domestic initiatives have also gone ignored as Obama and Congress engage in petty battles for dominance and leave the country to run itself on a starvation diet imposed by sequestration cuts. Leon Panetta tells the story of how he tried to lobby against sequestration only to be told: Leon, you don't understand. The Congress is resigned to failure. Similarly, those on Wall Street, the Federal Reserve, those working at government agencies, and voters themselves have become all too practiced at ignoring the determined incompetence of those in Washington. Political capital – the ability to horse-trade and win political favors from a receptive audience – is a finite resource in Washington. Pursuing misguided policies takes up time, but it also eats up credibility in asking for the next favor. It's fair to say that congressional Republicans, particularly in the House, have no love for Obama and are likely to oppose anything he supports. That's exactly the reason the White House should stop proposing policies as if it is scattering buckshot and focus with intensity on the domestic tasks it wants to accomplish, one at a time.

#### The impact is the 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.

### 1nc doj CP

#### 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 <<<use of drone strikes against new terrorist threats where the Executive has not undergone administrative review to identify particular groups covered The Department of Justice officials involved should counsel against the use of drone strikes in those instances absent administrative review The Executive Order should also require written publication of Office of Legal Counsel opinions.

#### Executive pre-commitment to DOJ advice solves the aff

**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.

### 1nc navy advantage cp

The United States Federal Government should fully fund and protect its aircraft carrier program, including all necessary carrier-based drones.

Solves the entire navy advantage—drones bad net benefit.

### 1nc legal code pic

#### Text – The United States Federal Government should prohibit the executive euse of drone strikes against new terrorist threats where the executive has not undergone administrative review to identify parituclar groups covered.

#### Using the standard classification system creates misguided faith in the idea that the law is exact and deterministic and excludes minority perspectives

Delgado and Stefancic 89 (Richard, professor of law at the University of Wisconsin, and Jean, Technical Services Librarian at the University of San Francisco Law Library, November, Stanford Law Review, 42 Stan. L. Rev. 207, p. 216-217)

Existing classification systems serve their intended purpose admirably: They enable researchers to find helpful cases, articles, and books. Their power is instrumental; once the researcher knows what he or she is looking for, the classification systems enable him or her to find it. Yet, at the same time, the very search for authority, precedent, and hierarchy in cases and statutes can create the false impression that law is exact and deterministic -- a science -- with only one correct answer to a legal question. 62 Moreover, in many instances the researcher will not know what he or she is looking for. The situation may call for innovation. The indexing systems may not have developed a category for the issue being researched, or having invented one, have failed to enter a key item into the database selected by the researcher, thus rendering the system useless. The systems function rather like molecular biology's double helix: They replicate preexisting ideas, thoughts, and approaches. 63 Within the bounds of the three systems, moderate, incremental reform remains quite possible, but the systems make foundational, transformative innovation difficult. 64 Because the three classification systems operate in a coordinated network of information retrieval, we call the situation confronting the lawyer or scholar trying to break free from their constraints the triple helix dilemma.

### 1nc Terror

#### No retaliation—definitely no escalation

**Mueller 5** (John, Professor of Political Science – Ohio State University, Reactions and Overreactions to Terrorism, http://polisci.osu.edu/faculty/jmueller/NB.PDF)

However, history clearly demonstrates that overreaction is not necessarily inevitable. Sometimes, in fact, leaders have been able to restrain their instinct to overreact. Even more important, **restrained reaction--or even capitulation to terrorist acts--has often proved to be entirely acceptable politically**. That is, there are many instances where leaders did nothing after a terrorist attack (or at least refrained from overreacting) and did not suffer politically or otherwise. Similarly, after an unacceptable loss of American lives in Somalia in 1993, Bill Clinton responded by withdrawing the troops without noticeable negative impact on his 1996 re-election bid. Although Clinton responded with (apparently counterproductive) military retaliations after the two U.S. embassies were bombed in Africa in 1998 as discussed earlier, his administration did not have a notable response to terrorist attacks on American targets in Saudi Arabia (Khobar Towers) in 1996 or to the bombing of the U.S.S. Cole in 2000, and these non-responses never caused it political pain. George W. Bush's response to the anthrax attacks of 2001 did include, as noted above, a costly and wasteful stocking-up of anthrax vaccine and enormous extra spending by the U.S. Post Office. However, beyond that, it was the same as Clinton's had been to the terrorist attacks against the World Trade Center in 1993 and in Oklahoma City in 1995 and the same as the one applied in Spain when terrorist bombed trains there in 2004 or in Britain after attacks in 2005: the dedicated application of police work to try to apprehend the perpetrators. This approach was politically acceptable even though the culprit in the anthrax case (unlike the other ones) has yet to be found. The demands for retaliation may be somewhat more problematic in the case of suicide terrorists since the direct perpetrators of the terrorist act are already dead, thus sometimes impelling a vengeful need to seek out other targets. Nonetheless, the attacks in Lebanon, Saudi Arabia, Great Britain, and against the Cole were all suicidal, yet no direct retaliatory action was taken. **Thus, despite short-term demands that some sort of action must be taken**, experience suggests politicians can often successfully ride out this demand after the obligatory (and inexpensive) expressions of outrage are prominently issued.

#### No scenario for nuclear terror---consensus of experts

Matt Fay 13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

#### TKs cause more terrorism---Hydra effect and local backlash

Gabriella Blum 10, Assistant Professor of Law, Harvard Law School, and Philip Heymann, the James Barr Professor of Law, Harvard Law School, June 27, 2010, “Law and Policy of Targeted Killing,” Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2010/06/Vol-1\_Blum-Heymann\_Final.pdf

An immediate consequence of eliminating leaders of terrorist organizations will sometimes be what may be called the Hydra effect, the rise of more—and more resolute—leaders to replace them. The decapitating of the organization may also invite retaliation by the other members and followers of the organization. Thus, when Israel assassinated Abbas Mussawi, Hezbollah‘s leader in Lebanon, in 1992, a more charismatic and successful leader, Hassan Nassrallah, succeeded Mussawi. The armed group then avenged the assassination of its former leader in two separate attacks, blowing up Israeli and Jewish targets in Buenos Aires, killing over a hundred people and injuring hundreds more.¶ Targeted killing may also interfere with important gathering of critical intelligence. The threat of being targeted will drive current leaders into hiding, making the monitoring of their movements and activities by the counterterrorist forces more difficult. Moreover, if these leaders are found and killed, instead of captured, the counterterrorism forces lose the ability to interrogate them to obtain potentially valuable information about plans, capabilities, or organizational structure.¶ The political message flowing from the use of targeted killings may be harmful to the attacking country’s interest, as it emphasizes the disparity in power between the parties and reinforces popular support for the terrorists, who are seen as a David fighting Goliath. Moreover, by resorting to military force rather than to law enforcement, targeted killings might strengthen the sense of legitimacy of terrorist operations, which are sometimes viewed as the only viable option for the weak to fight against a powerful empire. If collateral damage to civilians accompanies targeted killings, this, too, may bolster support for what seems like the just cause of the terrorists, at the same time as it weakens domestic support for fighting the terrorists.¶ When targeted killing operations are conducted on foreign territory, they run the risk of heightening international tensions between the targeting government and the government in whose territory the operation is conducted. Israel’s relations with Jordan became dangerously strained following the failed attempt in September 1997 in Jordan to assassinate Khaled Mashaal, the leader of Hamas. Indeed, international relations may suffer even where the local government acquiesces in the operation, but the operation fails or harms innocent civilians, bringing the local government under political attack from domestic constituencies (recall the failed attack in Pakistan on Al-Zawahiri that left eighteen civilians dead).¶ Even if there is no collateral damage, targeted killings in another country’s territory threatens to draw criticism from local domestic constituencies against the government, which either acquiesced or was too weak to stop the operation in its territory. Such is the case now in both Pakistan and Yemen, where opposition forces criticize the governments for permitting American armed intervention in their countries.¶ The aggression of targeted killings also runs the risk of spiraling hatred and violence, numbing both sides to the effects of killing and thus continuing the cycle of violence. Each attack invites revenge, each revenge invites further retaliation. Innocent civilians suffer whether they are the intended target of attack or its unintentional collateral consequences.¶ Last but not least, exceptional measures tend to exceed their logic. As in the case of extraordinary detention or interrogation methods, there is a danger of over-using targeted killings, both within and outside of the war on terrorism. A particular danger in this context arises as the killing of a terrorist often proves a simpler operation than protracted legal battles over detention, trial, extradition, and release.

#### Doesn’t solve terror – they ignore hard evidence

Boyle, 13 [“The costs and consequences of drone warfare”, MICHAEL J. BOYLE, International Affairs 89: 1 (2013) 1–29, assistant professor of political science at LaSalle University]

Arguments for the effectiveness of drones can be subdivided into four separate claims: (1) that drones are effective at killing terrorists with minimal civilian casualties; (2) that drones have been successful at killing so-called ‘high value targets’ (HVTs); (3) that the use of drones puts such pressure on terrorist organizations that it degrades their organizational capacity and ability to strike; and (4) that a cost–benefit analysis of their use relative to other options—such as the deployment of ground troops—provides a compelling argument in their favour. **None of these claims should be taken at face value**. The evidence behind each is often less compelling than is assumed, in part because reliable data on the drone strikes and their effects are difficult to obtain. Some of these arguments are based on dubious counterfactuals that try to measure the costs of drone strikes against the effects of prevented, and entirely hypothetical, enemy attacks.17 Others **conflate efficiency**—that is, an advantageous ratio of inputs to outputs in executing an activity—**with** the **effectiveness** of a particular action in achieving a wider goal. Still others operate with an attenuated notion of effectiveness which focuses exclusively at the tactical level without considering the wider strategic costs of drone warfare. The position of the American foreign policy establishment on drones— that they are an effective tool which minimizes civilian casualties—is based on a highly selective and partial reading of the evidence.

#### Decapitation fails and turns the case

Jordan, Ph.D. political science and post-doctoral research fellow – Harris School of Public Policy Studies @ U Chicago, ‘9

(Jenna, “When Heads Roll: Assessing the Effectiveness of Leadership Decapitation,” Security Studies Vol. 18, Issue 4, p. 719-755)

The data presented in this paper show that decapitation is not an effective counterterrorism strategy. While decapitation is effective in 17 percent of all cases, when compared to the overall rate of organizational decline, decapitated groups have a lower rate of decline than groups that have not had their leaders removed. The findings show that decapitation is more likely to have counterproductive effects in larger, older, religious, and separatist organizations. In these cases decapitation not only has a much lower rate of success, the marginal value is, in fact, negative. The data provide an essential test of decapitation's value as a counterterrorism policy. There are important policy implications that can be derived from this study of leadership decapitation. Leadership decapitation seems to be a misguided strategy, particularly given the nature of organizations being currently targeted. The rise of religious and separatist organizations indicates that decapitation will continue to be an ineffective means of reducing terrorist activity. It is essential that policy makers understand when decapitation is unlikely to be successful. Given these conditions, targeting bin Laden and other senior members of al Qaeda, independent of other measures, is not likely to result in organizational collapse. Finally, it is essential that policy makers look at trends in organizational decline. Understanding whether certain types of organizations are more prone to destabilization is an important first step in formulating successful counterterrorism policies. This study illustrates the need to develop a new model for understanding the effectiveness of leadership decapitation. Extant analyses on leadership decapitation are unable to account sufficiently for variability in the success of decapitation. This study suggests that a group's age, type, and size are critical to identifying when decapitation will result in the cessation of terrorist activity. As an organization becomes older and larger, it is much more likely to withstand attacks on its leadership. All organizations need to replenish both members and leaders, and older organizations will have developed the networks and support systems necessary to replenish key members. This argument is consistent with the organizational literature on bureaucratic organizations. 106 As an organization ages and grows, it is also more likely to become bureaucratized and to develop a division of labor based on specialization. 107 It should be easier for organizations with a higher degree of specialization to replace leadership. The model of the firm may also be useful in understanding the strength of terrorist organizations. Early in its creation a firm should have a higher likelihood of falling apart. These variables suggest that the dynamic nature of organizations is essential to predicting when decapitation will be effective and can provide a richer basis for social network models of organizational strength and weakness. Existing approaches do not consider organizational change and are thus unable to account for variation in the rate of organizational collapse. The two dominant models that have been used to understand decapitation assume that an organization's vulnerability is based on static and unchanging characteristics regarding the role of a leader or the structure of an organization. The significance of organizational typology may signal an important relationship between organizational structure and a group's susceptibility to decapitation. Ideological organizations are most likely to fall apart after decapitation, while religious groups are highly resilient. There are two implications that can be derived from this finding. First, the charismatic model is insufficient to account for these findings. If religious and separatist organizations are more likely to have a charismatic leader then these organizations should be more likely to fall apart when the charismatic leader is removed. I argue that the resilience of religious organization can be attributed in part to the fact that many of these groups are older and larger. Second, it is frequently assumed that religious and separatist organizations are more decentralized in structure, while ideological organizations are more hierarchical. 108 The literature on social network analysis argues that decentralized organizations are less likely to suffer setbacks than hierarchically structured organizations. Initial findings support this claim. I argue that the weight of key organizational variables provides a more nuanced understanding of organizational structure and can account for more variability in the success of decapitation. Overall, this study shows that we need to rethink current counterterrorism policies. Decapitation is not ineffective merely against religious, old, or large groups, it is actually counterproductive for many of the terrorist groups currently being targeted. In many cases, targeting a group's leadership actually lowers its rate of decline. Compared to a baseline rate of decline for certain terrorist groups, the marginal value of decapitation is negative. Moreover, going after the leader may strengthen a group's resolve, result in retaliatory attacks, increase public sympathy for the organization, or produce more lethal attacks. Based on these findings, it seems imperative that policy makers consider not only the overall effectiveness of decapitation as a counterterrorism measure but also the potential for adverse consequences.

#### No US attack—AQAP’s distracted and stupid

**KOEHLER-DERRICK 11** (Gabriel; Combating Terrorism Center at West Point, “A False Foundation? AQAP, Tribes and Ungoverned Spaces in Yemen,” September, <http://www.ctc.usma.edu/wp-content/uploads/2011/10/CTC_False_Foundation2.pdf>)

Al-Qaida in the Arabian Peninsula’s use of terrorist violence has frequently been marred by tactical failure. AQAP boasts a low success rate against hardened targets. While operationally innovative, the group has consistently failed to match the tactical skill of other al-Qa`ida affiliates.445 The group too often reuses failed tactics and has not capitalized on real or perceived successes as often as would be expected of an organization that demonstrates such strategic discipline. Although the increasing influence of foreign members does extend AQAP’s reach deeper into the West than at any other point in the group’s history, attacks on the U.S. homeland remain an issue of low salience to a vast majority of Yemenis, preoccupied as they are with far more pressing local concerns.

The public will always support drones

LaFranchi 6/3/13

Howard LaFranchi, Staff writer, CSMonitor, June 3, 2013, "American public has few qualms with drone strikes, poll finds", http://www.csmonitor.com/USA/Military/2013/0603/American-public-has-few-qualms-with-drone-strikes-poll-finds

When a US drone strike last week killed a top Taliban leader in Pakistan, critics of the strikes that have become a staple of President Obama’s counterterrorism policy were quick to condemn it. The killing of Waliur Rehman in the North Waziristan region on May 29 would only make reconciliation talks between the Taliban and the Afghan government – a US priority – more difficult to convene, some critics said. Others said such strikes infuriate local populations and are a recruiting tool for Al Qaeda and other Islamist extremists. But the American public appears to be unmoved by such arguments. A new Monitor/TIPP poll finds that a firm majority of Americans – 57 percent – support the current level of drone strikes targeting “Al Qaeda targets and other terrorists in foreign countries.” Another 23 percent said the use of drones for such purposes should increase. Only 11 percent said the use of drones should decrease. The poll, conducted from May 28-31, followed a major speech in which Mr. Obama suggested the use of drone strikes would decline. In the May 26 address, he also hinted at his own ambivalence about the controversial tactic, weighing the program’s efficacy against the moral questions and long-term impact. Obama acknowledged that the pluses of drone strikes – no need to put boots on the ground and the accuracy and secrecy they offer – can “lead a president and his team to view drone strikes as a cure-all for terrorism.” He balanced that against words of caution: “To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance.” The drone strikes, which under Obama have mostly been carried out in secrecy by the CIA, are credited with killing as many as 3,000 terrorists and Islamist militants – at least four of whom were American citizens. Obama is planning to shift most drone operations to the military as part of an effort to make the program more transparent. Americans are by and large comfortable with drone strikes being ordered by the president, the CIA, or by the military, according to the Monitor poll. Less popular is the idea of creating a separate “drone court” – a panel that would presumably increase the accountability of the program. Almost two-thirds of Americans (62 percent) say they approve of drone-strike authorization coming from the president, the Pentagon, or the CIA. About a quarter (26 percent) favor setting up a drone court to sign off on strikes.

#### Ant-drone backlash is small and inevitable

Byman 13 (Daniel Byman, Brookings Institute Saban Center for Middle East Policy, Research Director, and Foreign Policy, Senior Fellow, July/Aug 2013, “Why Drones Work: The Case for the Washington's Weapon of Choice”, www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman)

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.

#### Unaccountable drone strikes strengthen AQAP and destabilize Yemen

Jacqueline Manning 12, Senior Editor of International Affairs Review, December 9 2012, “Free to Kill: How a Lack of Accountability in America’s Drone Campaign Threatens U.S. Efforts in Yemen,” http://www.iar-gwu.org/node/450

Earlier this year White House counter-terrorism advisor, John Brennan, named al-Qaeda in the Arabian Peninsula (AQAP) in Yemen the greatest threat to the U.S. Since 2009, the Obama administration has carried out an estimated 28 drone strikes and 13 air strikes targeting AQAP in Yemen, while the Yemeni Government has carried out 17 strikes, and another five strikes cannot be definitively attributed to either state . There is an ongoing debate over the effectiveness of targeted killings by drone strikes in the fight against al-Qaeda. However, what is clear is that the secrecy and unaccountability with which these drone strike are being carried out are undermining U.S. efforts in Yemen.¶ The drone campaign in Yemen is widely criticized by human rights activists, the local population and even the United Nations for its resulting civilian casualties. It is also credited with fostering animosity towards the U.S. and swaying public sentiment in Yemen in favor of AQAP. The long-term effects, as detailed by a 2012 report by the Center for Civilians in Conflict, seem to be particularly devastating. The resulting loss of life, disability, or loss of property of a bread-winner can have long-term impacts, not just on an individual, but on an entire family of dependents.¶ The effectiveness of drone technology in killing al-Qaeda militants, however, cannot be denied. Targeted killings by drone strikes have eliminated several key AQAP members such as Anwar al-Awlaki, Samir Khan, Abdul Mun’im Salim al Fatahani, and Fahd al-Quso . Advocates of the counterterrorism strategy point out that it is much less costly in terms of human lives and money than other military operations.¶ While there are strong arguments on both sides of the drone debate, both proponents and critics of targeted killings of AQAP operatives by drones agree that transparency and accountability are needed.¶ Authorizing the CIA to carry out signature strikes is of particular concern. In signature strikes, instead of targeting individual Al Qaeda leaders, the CIA targets locations without knowing the precise identity of the individuals targeted as long as the locations are linked to a “signature” or pattern of behavior by Al Qaeda officials observed over time. This arbitrary method of targeting often results in avoidable human casualties.¶ Secrecy surrounding the campaign often means that victims and families of victims receive no acknowledgement of their losses, much less compensation. There are also huge disparities in the reported number of deaths. In addition, according to The New York Times, Obama administration officials define “militants” as “all military-age males in a strike zone...unless there is explicit intelligence posthumously proving them innocent” This definition leads to a lack of accountability for those casualties and inflames anti-American sentiment.¶ In a report submitted to the UN Human Rights Council, Ben Emmerson, special rapporteur on the promotion and protection of human rights while countering terrorism, asserted that, "Human rights abuses have all too often contributed to the grievances which cause people to make the wrong choices and to resort to terrorism….human rights compliant counter-terrorism measures help to prevent the recruitment of individuals to acts of terrorism." There is now statistical evidence that supports this claim. A 2010 opinion poll conducted by the New America Foundation in the Federally Administered Tribal Areas (FATA) of Pakistan, where U.S. drone strikes have been carried out on a much larger scale, shows an overwhelming opposition to U.S. drone strikes coupled with a majority support for suicide attacks on U.S. forces under some circumstances.¶ It is clear that the drone debate is not simply a matter of morality and human rights; it is also a matter of ineffective tactics. At a minimum the U.S. must implement a policy of transparency and accountability in the use of drones. Signature strikes take unacceptable risks with innocent lives. Targets must be identified more responsibly, and risks of civilian casualties should be minimized. When civilian casualties do occur, the United States must not only acknowledge them, but also pay amends to families of the victims.

### 1nc Navy

#### Naval primacy inevitable – US will adapt and is too far ahead

**Harris 8** (Stuart, BEc (Sydney) and PhD (The Australian National University), is Professor in the Department of International Relations at the Australian National University, “China's "new" diplomacy: tactical or fundamental change?”, Google Books, pg 20)

The United States also keeps a close eye on Chinas military modernization. It believes that by 2020 "China will be, by any measure, a first rate military power."6 It will therefore take whatever steps it sees as necessary to maintain its military superiority, notably in the seas in and around the region. Nor is this superiority being challenged directly by China. That Chinas concept for sea-denial capability is limited to the seas around Taiwan and against Chinas eastern coast has been acknowledged by the United States.7 Outside of that, although President Hu Jintao has spoken of the need to develop Chinas naval capabilities, overwhelming U.S. naval superiority will remain for a long time.

#### Navy’s only useful for blockades—no historical proof of the deterrence arg

**Daniel, December 2002** [Donald C.F. “The Future of American Naval Power: Propositions and Recommendations,” Globalization and American Power. Chapter 27. Institute for National Strategic Studies National Defense University. http://www.ndu.edu/inss/Books/Books\_2002/Globalization\_and\_Maritime\_Power\_Dec\_02/01\_toc.htm]

In sum, there would seem to be a special role for the U.S. Navy in contingency response along littorals, but, outside the context of a specific crisis, constant day-to-day presence does not do much to deter unwanted behavior. Thus, it would seem a raising of false expectations to argue, for example, that the “gapping of aircraft carriers in areas of potential crisis is an invitation to disaster—and therefore represents culpable negligence on the part of America’s defense decision-makers.”33 In the early 1960s, the United States maintained three aircraft carrier battlegroups in the Mediterranean Sea but later gradually found that it needed to scale back. Currently, a single battlegroup operates there for less than 9 months of the year on average. This is a significant reduction, but no one can prove that the Mediterranean region became less stable. Conversely, the Navy began to maintain a regular presence in the Arabian Gulf in 1979, but this did not prevent Iran or Iraq from attacking ships during their war. In the 1980s, attacks generally increased in number over the 8 years of the war. **As for deterring the** initiation of a **crisis in the first place, it is essentially impossible** for an outsider **to prove** that **such** **deterrence was successful** except in the rare case in which a deterred party admits that he was deterred and states the reasons. Adam Siegel, John Arquilla, Paul Huth, Paul Davis, and a Rutgers Center for Global Security and Democracy team led by Edward Rhodes have each attempted to study the effects of forward presence and general deterrence. The deficiency of such study is always in making the definitive link between them. The majority of these studies suggest that “[h]istorically seapower has not done well as a deterrent” in preventing the outbreak of conflicts,36 principally because land-based powers not dependent on overseas trade are relatively “insensitive” to the operations of naval forces.

#### No Asia war, tons of checks

**Feng 10 –** professor at the Peking University International Studies [Zhu, “An Emerging Trend in East Asia: Military Budget Increases and Their Impact”, http://www.fpif.org/articles/an\_emerging\_trend\_in\_east\_asia?utm\_source=feed]

As such, the surge of defense expenditures in East Asia does not add up to an arms race. No country in East Asia wants to see a new geopolitical divide and spiraling tensions in the region. The growing defense expenditures powerfully illuminate the deepening of a regional “security dilemma,” whereby the “defensive” actions taken by one country are perceived as “offensive” by another country, which in turn takes its own “defensive” actions that the first country deems “offensive.” As long as the region doesn’t split into rival blocs, however, an arms race will not ensue. What is happening in East Asia is the extension of what Robert Hartfiel and Brian Job call “competitive arms processes.” The history of the cold war is telling in this regard. Arm races occur between great-power rivals only if the rivalry is doomed to intensify. The perceived tensions in the region do not automatically translate into consistent and lasting increases in military spending. Even declared budget increases are reversible. Taiwan’s defense budget for fiscal year 2010, for instance, will fall 9 percent. This is a convincing case of how domestic constraints can reverse a government decision to increase the defense budget. Australia’s twenty-year plan to increase the defense budget could change with a domestic economic contraction or if a new party comes to power. China’s two-digit increase in its military budget might vanish one day if the type of regime changes or the high rate of economic growth slows. Without a geopolitical split or a significant great-power rivalry, military budget increases will not likely evolve into “arms races.” The security dilemma alone is not a leading variable in determining the curve of military expenditures. Nor will trends in weapon development and procurement inevitably induce “risk-taking” behavior. Given the stability of the regional security architecture—the combination of U.S.-centered alliance politics and regional, cooperation-based security networking—any power shift in East Asia will hardly upset the overall status quo. China’s military modernization, its determination to “prepare for the worst and hope for the best,” hasn’t yet led to a regional response in military budget increases. In contrast, countries in the region continue to emphasize political and economic engagement with China, though “balancing China” strategies can be found in almost every corner of the region as part of an overall balance-of-power logic. In the last few years, China has taken big strides toward building up asymmetric war capabilities against Taiwan. Beijing also holds to the formula of a peaceful solution of the Taiwan issue except in the case of the island’s de jure declaration of independence. Despite its nascent capability of power projection, China shows no sign that it would coerce Taiwan or become **militarily assertive** over contentious territorial claims ranging from the Senkaku Islands to the Spratly Islands to the India-China border dispute. 

#### No risk of major Hormuz disruption

Eugene **Gholz and** Daryl G. **Press, 2010**; Eugene Gholz is associate professor at the LBJ School of Public Affairs at the University of Texas at Austin. Daryl G. Press is associate professor of government at Dartmouth College and coordinator of War and Peace Studies at the John Sloan Dickey Center for International Understanding; Protecting “The Prize”: Oil and the U.S. National Interest, Security Studies, 19:3, 453-485, Taylor and Francis Online

Thankfully, **no country in the Gulf could close the Strait of Hormuz**.71 Iran, the country best positioned geographically to try, could harass shipping and damage some tankers.72 It could not, however, close the strait, nor could it seriously disrupt shipping for an extended period of time.73 The mission of creating a prolonged disruption to that much commerce is simply too challenging, especially for a middleweight military power like Iran. First, even at its narrowest point, the strait is 34 km across, and almost all of that water is deep enough for a laden supertanker to safely pass. Physically blocking the waterway, for instance with scuttled ships, is therefore implausible.74 Second, if Iran tried to use antiship missiles to close the strait, it would be constrained by the missiles’ limited effectiveness against oil tankers, and the heavy ship traffic through the strait would quickly consume Iran’s entire arsenal. Iran’s missile stockpile numbers in the hundreds.75 Those missiles would be pitted against an average of more than one thousand large commercial ships entering the Gulf each month, including more than two hundred large oil tankers.76 Reliably distinguishing between oil tankers and other potential targets would not be simple in the Persian Gulf haze or at night, and during a crisis, shipping would scatter to avoid the missile batteries and complicate targeting.77 Moreover, each attack on a tanker (or merchantman misidentified as a tanker) would require several shots. During the Tanker War, many missiles launched at undefended commercial ships failed to function properly or missed their targets. Even when they hit, antiship missiles are not particularly lethal against large commercial ships (in contrast to their highprofile successes against smaller warships like the HMS Sheffield, the USS Stark, and the INS Hanit). The tankers’ thick hulls, compartmentalized construction, fire-inert reservoirs of crude oil, and advanced fire-suppression systems limit damage from missile strikes.78 During the Tanker War, several tankers survived five or even six missile hits without sinking.79 Missile technology has progressed since the Tanker War, but the new missiles are unlikely to be dramatically more effective against oil tankers.80 So to effectively disrupt a single tanker’s transit, Iran would have to launch a substantial volley of missiles to account for target misidentification, outright malfunctions and misses, and the need to hit a tanker multiple times to disable it. With its limited arsenal, Iran could not use missiles to close the strait and overwhelm adaptation in the oil market. Third, Iran could also try to use mines to disrupt traffic in the strait. However, like cruise missiles, mines would **only harass** shipping rather than close the waterway. Although the strait is too deep and the current through it too strong to use old-fashioned contact mines effectively, Iran has an arsenal of modern Chinese rocket-propelled mines.81 The higher-tech mines, however, are not simple to operate. Like antiship missiles, advanced mines risk failure in many different ways. For example, they sometimes become stuck in the muck on the bottom or become misaligned by ocean currents.82 Roughly **ninety-five percent** of the advanced mines the Iraqis deployed in 1990–91 were not functional because either their batteries had expired or they had been set incorrectly.83 Moreover, although the Strait of Hormuz is a narrow sea passage compared to the open ocean, it is still very large compared to the area of effect of each advanced mine, meaning that Iran would have to emplace an extremely large number of mines to create a high probability that the minefield would disrupt a tanker’s transit.84 Iran may not have enough mines, and the other militaries of the world (whether regional competitors like Saudi Arabia or global oil consumers like the great powers of Europe and Asia and the United States) would not stand idly by while Iran methodically planted mines. Finally, even if mines’ primary effect is to generate fear and uncertainty, tanker captains, brokers, and insurers in the past have shown that they are willing to take risks to deliver valuable cargos (like oil).85 **The markets’ resilience would be especially likely** as participants came to understand that the real risk of striking a mine in the Strait of Hormuz, even after an extensive Iranian mine-laying campaign, would be quite limited.

#### No impact to oil shocks and they won’t happen---newest data

**Kahn 11** – writer for Newsweek, IHT, and NYT, previous editor of the New Republic, Masters in IR from LSE and B.S. in History from Penn (2/13, Boston Globe, “Crude reality”, www.boston.com/bostonglobe/ideas/articles/2011/02/13/crude\_reality/?page=full)

Will a Middle Eastern oil disruption crush the economy? New research suggests the answer is no -- and that a major tenet of American foreign policy may be fundamentally wrong.

For more than a month, the world has been riveted by scenes of protest in the Middle East, with demonstrators flooding streets from Tunisia to Egypt and beyond. As the unrest has spread, people in the West have also been keeping a wary eye on something closer to home: the gyrating stock market and the rising price of gas. Fear that the upheaval will start to affect major oil producers like Saudi Arabia has led speculators to bid up oil prices — and led some economic analysts to predict that higher energy costs could derail America’s nascent economic recovery.

The idea that a sudden spike in oil prices spells economic doom has influenced America’s foreign policy since at least 1973, when Arab states, upset with Western support for Israel during the Yom Kippur War, drastically cut production and halted exports to the United States. The result was a sudden quadrupling in crude prices and a deep global recession. Many Americans still have vivid memories of gas lines stretching for blocks, and of the unemployment, inflation, and general sense of insecurity and panic that followed. Even harder hit were our allies in Europe and Japan, as well as many developing nations.

Economists have a term for this disruption: an oil shock. The idea that such oil shocks will inevitably wreak havoc on the US economy has become deeply rooted in the American psyche, and in turn the United States has made ensuring the smooth flow of crude from the Middle East a central tenet of its foreign policy. Oil security is one of the primary reasons America has a long-term military presence in the region. Even aside from the Iraq and Afghan wars, we have equipment and forces positioned in Oman, Saudi Arabia, Kuwait, and Qatar; the US Navy’s Fifth Fleet is permanently stationed in Bahrain.

But a growing body of economic research suggests that this conventional view of oil shocks is wrong. The US economy is **far less susceptible** to interruptions in the oil supply than previously assumed, according to these studies. Scholars examining the recent history of oil disruptions have found the worldwide oil market to be remarkably adaptable and surprisingly quick at compensating for shortfalls. Economists have found that much of the damage once attributed to oil shocks can more persuasively be laid at the feet of bad government policies. The US economy, meanwhile, has become less dependent on Persian Gulf oil and less sensitive to changes in crude prices overall than it was in 1973.

## 2nc

### congress fails

#### History – the history of restrictions is a history of abject failure – they check the President in the short-term – but future Congresses will acquiesce

**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. 84-88)

If the constitutional framework of liberal legalism is too rickety to contain executive power, perhaps statutes can substitute new legal constraints. A principal hope of liberal legal theory is that the deficiencies of the constitutional framework can be patched up by framework statutes that will channel and constrain executive power. The executive comprises the president and (various types of) agencies, and liberal legalism tries to constrain both, through different statutes. As to the agencies, liberal legalists hope that general procedural statutes such as the Administrative Procedure Act (APA) can “translate” the principles and values underlying the separation of powers into a world in which agencies routinely hold consolidated powers of lawmaking, law-execution, and law-interpretation.1 As to the president, Congress has enacted many subject-specific framework statutes that attempt to constrain executive power, especially with regard to warmaking, foreign policy, and emergencies. And liberal legal theorists often propose new statutes of this sort—for example, a statute that would confine presidential emergency powers in the aftermath of a terrorist attack.2

These efforts all fall short of the aspirations of liberal legalism, in greater or lesser degree. The subject-specific framework statutes that attempt to constrain presidential power are the most conspicuous failure; most are dead letters. Seemingly more successful is the APA, which remains the central framework for the administrative state. We will suggest that this is something of an illusion; the greater specificity of the subject-specific statutes, and the greater plasticity and ambiguity of the APA, make the failure of the former group more conspicuous, while giving the latter a misleading appearance of constraining force.

The secret of the APA’s “success”—its ability to endure in a nominal sense—is that it contains a series of adjustable parameters that the courts use to dial up and down the intensity of their scrutiny over time. The APA’s basic flexibility allows courts to allow government to do what government needs to do when it needs to do it. The result is a series of legal “black holes” and “grey holes”—the latter being standards of reasonableness that have the appearance of legality, but not the substance, at least not when pressing interests suggest otherwise. This regime is a triumph for the nominal supremacy of the APA, but not for any genuine version of the rule of law. Liberal legalism’s basic aspiration, that statutes (if not the Constitution) will subject the administrative state to the rule of law, is far less successful than it appears.

SUBJECT-SPECIFIC FRAMEWORK STATUTES

With a few exceptions, most of the subject-specific firamework statutes that attempt to constrain executive power, particularly presidential power, are a product of the era after Watergate. As revelations of executive abuses by both federal and state governments multiplied and a backlash against executive power set in, all three branches of government acted to reduce the scope of executive discretion in matters touching on security and antiterrorism. In the middle to late 1970s, Congress imposed a range of statutory constraints on the powers and activities of the executive branch generally and the presidency in particular, especially in matters relating to foreign affairs and national security.

The most prominent examples are the War Powers Resolution,3 which constrained executive use of force abroad; the National Emergencies Act,4 which limited executive declarations of emergency; the International Economic Emergency Powers Act,5 which limited the executive’s power to impose various economic sanctions and controls; the Ethics in Government Act,6 which created independent counsels to investigate government wrongdoing; and the Inspector General Act of 1978, described below. Other constraints were imposed by litigation and judicial decree. Finally, some constraints were self-imposed, by executive guidelines that curtailed FBI authority to investigate groups with the potential to engage in terrorism. The restrictive Levi Guidelines of 19767 exemplified this executive self-constraint.

This framework for national security law has not endured. Indeed, a large part of the story of national security law in ensuing decades, and especially after 9/11, has involved efforts by various institutions and groups to loosen the constraints of the post-Watergate framework. By and large, those efforts have succeeded.8 The following are four major examples.

1. The War Powers Resolution (1973). At its core, the resolution attempts to limit executive use of armed forces in conflicts abroad, without congressional approval, to a period of 60 or 90 days (omitting many complicated details). But the resolution has by many accounts become a dead letter, especially after President Clinton’s rather clear breach of its terms during the Kosovo conflict.9 Congress has proven unable to enforce the resolution by ex post punishment of executive violations or arguable violations; the courts have invoked various doctrines of justiciability to avoid claims for enforcement of the resolution by soldiers and others. As one Madisonian scholar puts it, “In the area of military policy making, the War Powers Resolution, in its current form, has simply proven inadequate to discipline executive branch unilateralism.”10

2. The National Emergencies Act (1976). This statute abolished all preexisting states of emergency declared by executive order, and substituted a process for congressional review of new declarations. The process has proven largely ineffective, in large part because later Congresses have usually proven unable to use the statutory mechanism for overriding executive declarations. The Act’s default rule is set so that affirmative congressional action is necessary to block an executive proclamation of emergency, and congressional inertia has generally prevailed. In practice, “anything the President says is a national emergency is a national emergency.”11

3. The International Emergency Economic Powers Act (1977). Enacted to regulate and constrain executive action during international economic crises, the statute has been construed by the courts to grant broad executive power. The Supreme Court held that it implicitly authorized the president to suspend claims pending in American courts against Iranian assets, as part of a deal to free hostages.12 And a lower court said that the president had unreviewable discretion to determine that the government of Nicaragua satisfied the statutory requirement of “an unusual and extraordinary threat,” thus triggering enhanced executive powers.13

4. Inspector General Act of 1978. A final accountability mechanism is the cadre of inspectors general, who now hold offices within most federal agencies, including the Department of Justice. Inspectors general have the power to investigate legal violations, sometimes including crimes, within the executive branch. Some can be discharged by the agency head, but some can be discharged only by the president, and in either case Congress must be notified. It is clear that inspectors general have created a large apparatus of compliance monitoring and bureaucratic reporting, and have used a great deal of paper; what is harder to assess is whether they have been effective at promoting executive accountability, either to Congress or to the citizenry. The leading systematic study14 concludes that “the Inspectors General have been more or less effective at what they do, but what they do has not been effective. That is, they do a relatively good job of compliance monitoring, but compliance monitoring alone has not been that effective at increasing governmental accountability. Audits and investigations focus too much on small problems at the expense of larger systemic issues.”15

Why did these statutes prove less effective than their proponents hoped or, in the extreme, become dead letters? In all the cases, the basic pattern is similar. The statutes were enacted during a high-water mark of political backlash against strong executive power, which supermajorities in Congress attempted to translate into binding legal constraints. However, once the wave of backlash receded and the supermajorities evaporated, there was insufficient political backing for the laws to ensure their continued vigor over time. Later Congresses have not possessed sufficient political backing or willpower to employ the override mechanisms that the statutes create, such as the override of presidential declarations of emergency created by the National Emergencies Act.

Even where the statutes attempt to change the legal default rule, so that the president cannot act without legislative permission—as in the case of the War Powers Resolution, after the 60- or 90-day grace period has passed—the president may simply ignore the statutory command, and will succeed if he has correctly calculated that Congress will be unable to engage in ex post retaliation and the courts will be unwilling to engage in ex post review. President Clinton’s implicit decision to brush aside the resolution during the Kosovo conflict (albeit with the fig leaf of a compliant legal opinion issued by the Justice Department’s Office of Legal Counsel)16 shows that what matters is what Congress can do after the fact, not what it says before the fact.

Here a major problem for framework statutes is the “presidential power of unilateral action”17 to which we referred in the introduction. Statutory drafters may think they have cleverly closed off the executive’s avenues of escape when they set the legal status quo to require legislative permission. Because the president can act in the real world beyond the law books, however—the armed forces did not threaten to stand down from their Kosovo mission until Congress gave its clear approval, but instead simply obeyed the President’s orders—the actual status quo may change regardless of whether the legal situation does. Once armed forces are in action, the political calculus shifts and legislators will usually be unable to find enough political support to retaliate—especially not on the basis of an arcane framework statute passed years or decades before.

#### Motive – Congress is made of political hacks concerned mainly about re-election – political incentives make it difficult to oppose the President in a crisis

**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. 88)

To be sure, if the framework statutes are very specific, then violating them may itself create a political cost for the president, whose political opponents will denounce him for Caesarism. This cost is real, but in the type of high-stakes matters that are most likely to create showdowns between the president and Congress in the first place, the benefits are likely to be greater than the costs so long as the president’s action is popular and credible—the crucial constraints we will discuss in chapter 4. Moreover, if the president can credibly claim to the public that the violation was necessary, then the public will be unlikely to care too much about the legal niceties. As legal theorist Frederick Schauer argues for constitutional violations18 (and, we add, the argument holds a fortiori for statutory violations), there is an interesting asymmetry surrounding illegality: if the underlying action is unpopular, then citizens will treat its illegality as an aggravating circumstance, but if the underlying action is popular, its illegality usually has little independent weight. Finally, if the president credibly threatens to violate the statute, then Congress will have strong incentives to find some face-saving compromise that allows the president to do what he wishes without forcing a showdown that, legislators anticipate, may well end badly.

### 2nc doj cp overview

#### This isn't your grandmas XO counterplan—it creates a unique model for decisionmaking—even their DOJ ev assumes a different counterplan—punish them for reading the wrong 2ac.

#### It files a binding, public XO that requires the President to consult the DOJ for decisions about the aff. We fiat that the Office of Legal Counsel and Solicitor General issue written opinions mandating the aff. The XO requires sharing OLC opinions with Congress when the President claims authority. This pre-commitment galvanizes OLC restraint and creates a deterrent cost to circumvention.

### aff authors

Zenko concludes Obama solves

Micah Zenko, Douglas Dillon fellow in the Center for Preventive Action at the Council on Foreign Relations, January 2013, “Reforming U.S. Drone Strike Policies,” CFR Special Report #65, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎

Recommendations

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease).

#### Transparency and self-restraint solve U.S. and global norms

Zenko, Douglas Dillon fellow in the Center for Preventive Action at the Council on Foreign Relations, January 2013

(Micah, “Reforming U.S. Drone Strike Policies,” CFR Special Report #65, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎)

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone prolifera- tion and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international norma- tive framework, and U.S. compliance with that framework, would pre- serve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space.

In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would under- mine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies.

Much like policies governing the use of nuclear weapons, offensive cyber capabilities, and space, developing rules and frameworks for innovative weapons systems, much less reaching a consensus within the U.S. government, is a long and arduous process. In its second term, the Obama administration has a narrow policy window of opportunity to pursue reforms of the targeted killings program. The Obama admin- istration can proactively shape U.S. and international use of armed drones in nonbattlefield settings through transparency, self-restraint, and engagement, or it can continue with its current policies and risk the consequences. To better secure the ability to conduct drone strikes, and potentially influence how others will use armed drones in the future, the United States should undertake the following specific policy recommendations.

Executive Branch

The president of the United States should

■■ limit targeted killings to individuals who U.S. officials claim are being targeted—the leadership of al-Qaeda and affiliated forces or individ- uals with a direct operational role in past or ongoing terrorist plots against the United States and its allies—and bring drone strike prac- tices in line with stated policies;

■■ either end the practice of signature strikes or provide a public account- ing of how it meets the principles of distinction and proportionality that the Obama administration claims;

■■ review its current policy whereby the executive authority for drone strikes is split between the CIA and JSOC, as each has vastly different legal authorities, degrees of permissible transparency, and oversight;

■■ provide information to the public, Congress, and UN special rappor- teurs—without disclosing classified information—on what proce- dures exist to prevent harm to civilians, including collateral damage mitigation, investigations into collateral damage, corrective actions based on those investigations, and amends for civilian losses; and

■■ never conduct nonbattlefield targeted killings without an account- able human being authorizing the strike (while retaining the poten- tial necessity of autonomous decisions to use lethal force in warfare in response to ground-based antiaircraft fire or aerial combat).

#### (read yellow highlighting to support “legal justifications key” claim)

#### Presidential use of drone strikes is on its last straw, reform of the AUMF stops court strikedown

**Barnes 13** [Beau, International Parliamentary Fellow as staff to a congressional candidate for the Mercy Corps, honor graduate of Lewis and Clark College where he focused on National Security Law and Policy/International Law, joint-degree student at Boston University Law School and the Fletcher School of Law and Diplomacy, where he focuses on national security law and policy, “The War On Terror Has Changed – Now The Rules Should, Too,” 5-16 <http://cognoscenti.wbur.org/2013/05/16/authorization-for-use-of-military-force-beau-barnes>]

The law that forms the foundation of the war on terror is almost obsolete, undermining the legal basis of U.S. counterterrorism operations. On Thursday, the Senate Armed Services Committee will take a long-overdue first step to fix this problem, a development we should all applaud.¶ On September 14, 2001, Congress passed the Authorization for Use of Military Force (AUMF), authorizing “all necessary and appropriate force against those nations, organizations, or persons” behind the 9/11 attacks. Over a decade later, al-Qaida, the group that perpetrated the attacks, is on the ropes. But other armed groups – like the Haqqani Network, al-Shabab, and al-Qaida in the Islamic Maghreb – have become targets of the Obama administration’s worldwide counterterrorism efforts. The statute’s explicit reference to the 9/11 attacks, however, means it can’t authorize military action against groups with only superficial links to al-Qaida. In the wake of 9/11, the AUMF provided legal authority and demonstrated congressional support for the U.S. invasion of Afghanistan. But the Bush administration soon abandoned the AUMF, justifying the war on terror on the basis of the president’s inherent constitutional powers as commander-in-chief. These interpretations were soon discredited, both in the court of public opinion and in actual courts, with the Supreme Court repeatedly chastising the Bush administration’s legal approach to counterterrorism.¶ In a laudable attempt to bring U.S. counterterrorism policy back within the rule of law, the Obama administration has invoked the AUMF as the basis for its global “targeted killing” operations, known by most simply as “drone strikes.” But, like its predecessor, this administration has also stretched the law to serve its purposes, and is currently contemplating even more implausible interpretations of the AUMF. The president and his legal team are pushing us closer to a place where every terrorist is a member of al-Qaida.¶ How we justify counterterrorism operations is not just a question for the lawyers – it’s a policy choice with far-reaching domestic and international implications. Military might and covert operations alone can’t win the global struggle against al-Qaida and its ideological comrades-in-arms. We need credible arguments too, both to secure support from potential partners and undermine extremist justifications. As former Defense Department general counsel Jeh Johnson argued, “we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.” The administration has already read nearly all meaning out of the legal concepts of “imminence” and “hostilities” — another far-fetched legal interpretation might be the last straw for the administration’s legitimacy in the arena of counterterrorism. Alternatives to the AUMF exist, but they’re not good. Relying on inherent presidential power runs into considerable legal and political difficulties. Legally, this approach would risk intervention by a Supreme Court with a willingness to strike down excessive claims of executive power. Politically, it would be difficult to sustain for a president who ran for office largely on the promise of repudiating Bush-era legal excesses.¶ A rationale base d on the international law of self-defense is similarly unappealing. Although the Obama administration maintains that the AUMF “does not authorize military force against anyone the Executive labels a ‘terrorist,’” using this legal argument would lead to precisely that result, usurping Congress’s constitutionally provided role in national security policy. Since the United States plays an important role in setting norms of international conduct, our government should not claim legal rights that it is not prepared to see proliferate around the globe. UN officials recognize that the Obama administration’s “expansive and open-ended interpretation of the right to self-defense threatens to destroy the prohibition on the use of armed force.” CIA director John Brennan noted in 2012 that U.S. drone strikes “are establishing precedents that other nations may follow” – a concern that is already materializing.¶ With international armed groups unlikely to disappear any time soon, one option rises above the rest: it’s time for a new AUMF. President Obama is understandably reluctant to legally entrench President Bush’s war on terror, but a properly drafted law could provide legitimacy to existing operations and constrain future presidents. Indeed, our concern shouldn’t be a new counterterrorism statute, but what happens in its absence.¶ A new AUMF should not provide a blanket authorization to kill anyone the president considers an enemy. Instead, it should create a framework for continued counterterrorism operations that addresses which groups are valid targets, the circumstances under which they can be targeted, and where such operations can occur. Unlike the current AUMF, a new law should include an expiration date, but not be legally tied to any specific event

#### (read yellow part)

#### Emerging extra-AUMF threats make the AUMF obsolete now – reform is key to overall US CT strategy

**Chesney et al 13** <Benjamin Wittes is a senior fellow in governance studies at the Brookings Institution and codirector of the Harvard Law School–Brookings Project on Law and Security. Matthew Waxman is a professor of law at Columbia Law School and an adjunct senior fellow at the Council on Foreign Relations. He previously served as principal deputy director of policy planning (2005–7) and acting director of policy planning (2007) at the US Department of State. He also served as deputy assistant secretary of defense for detainee affairs (2004–5), director for contingency planning and international justice at the National Security Council (2002–3), and special assistant to National Security Adviser Condoleezza Rice (2001–2). He is a graduate of Yale College and Yale Law School. Jack Goldsmith is the Henry L. Shattuck Professor of Law at Harvard University. Former assistant attorney general, Office of Legal Counsel, Goldsmith holds a JD from Yale Law School, a BA and an MA from Oxford University. Robert Chesney is a professor at the University of Texas School of Law, a nonresident senior fellow of the Brookings Institution, and a distinguished scholar at the Robert S. Strauss Center for International Security and Law. “Is the "War on Terror" Lawful?” February 25, 2013. http://www.hoover.org/publications/defining-ideas/article/141091>

Since September 18, 2001, a joint resolution of Congress known as the Authorization to Use Military Force (AUMF) has served as the primary legal foundation for the “war on terror.” In this essay we explain why the AUMF is increasingly obsolete, why the nation will probably need a new legal foundation for next-generation terrorist threats, what the options are for this new legal foundation, and which option we think is best. ¶ The AUMF authorizes the president to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, . . . .” The authorization of “force” in the AUMF is the main legal basis for the president’s power to detain and target members of al Qaeda and The Taliban. In addition, since September 11, Congress, two presidential administrations, and the lower federal courts have interpreted the “force” authorized by the AUMF to extend to members or substantial supporters of the Taliban and al Qaeda, and associated forces.¶ The main reason the AUMF is becoming obsolete is that the conflict it describes – which on its face is one against the perpetrators of the September 11 attacks and those who harbor them – is growing less salient as U.S. and allied actions degrade the core of Al Qaeda and the U.S. military draws down its forces fighting the Taliban in Afghanistan. At the same time that the original objects of the AUMF are dying off, newer terrorist groups that threaten the United States and its interests are emerging around the globe. Some of the terrorist groups have substantial ties to al Qaeda and thus can be brought within the AUMF by interpretation.¶ For example, the President has been able to use force against al Qaeda in the Arabian Peninsula (“AQAP”), a terrorist organization in Yemen, because it is a supporter or associated force of al Qaeda. But this interpretive move is increasingly difficult as newer threatening groups emerge with dimmer ties, if any, to al Qaeda. As a result, we are reaching the end point of statutory authority for the President to meet terrorist threats.¶ We should emphasize at the outset that we do not claim that the increasingly obsolete AUMF demands immediate amendment or alteration. We do not make this claim because we lack access to classified information that would indicate the full nature of the terrorist threats the nation faces, or their connection to al Qaeda, or the nation’s ability to meet the threat given current legal authorities.¶ We also recognize that any new force authorizations carry significant strategic and political consequences beyond their immediate operational consequences. We nonetheless believe strongly – based on public materials and conversations with government officials – that the AUMF’s usefulness is running out, and that this trend will continue and will demand attention, in the medium term if not in the short term. Our aim is to contribute to the conversation the nation will one day have about a renewed AUMF by explaining why we think one will be necessary and the possible shape it might take.¶ Part I of this paper explains in more detail why the AUMF is becoming obsolete and argues that the nation needs a new legal foundation for next-generation terrorist threats. Part II then describes the basic options for this new legal foundation, ranging from the President’s Article II powers alone to a variety of statutory approaches, and discusses the pros and cons of each option, and the one we prefer. Part III analyzes additional factors Congress should consider in any such framework.¶ I. ¶ The Growing Problem of Extra-AUMF Threats and the Need for a New Statutory Framework¶ In this Part we explain why the AUMF is growing obsolete and why a combination of law enforcement and Article II authorities, standing alone, is not an adequate substitute.¶ 1. The Growing Obsolescence of the AUMF¶ The September 2001 AUMF provides for the use of force against the entity responsible for the 9/11 attacks, as well as those harboring that entity. It has been clear from the beginning that the AUMF encompasses al Qaeda and the Afghan Taliban, respectively. This was the right focus in late 2001, and for a considerable period thereafter. But for three reasons, this focus is increasingly mismatched to the threat environment facing the United States. ¶ First, the original al Qaeda network has been substantially degraded by the success of the United States and its allies in killing or capturing the network’s leaders and key personnel. That is not to say that al Qaeda no longer poses a significant threat to the United States, of course. The information available in the public record suggests that it does, and thus nothing we say below should be read to suggest that force is no longer needed to address the threat al Qaeda poses. Our point is simply that the original al Qaeda network is no longer the preeminent operational threat to the homeland that it once was.¶ Second, the Afghan Taliban are growing increasingly marginal to the AUMF. As noted above, the AUMF extended to the Taliban because of the safe harbor they provided to al Qaeda. That rationale makes far less sense a dozen years later, with the remnants of al Qaeda long-since relocated to Pakistan’s FATA region. This issue has gone largely unremarked in the interim because U.S. and coalition forces all along have been locked in hostilities with the Afghan Taliban, and thus no occasion to reassess the AUMF nexus has ever arisen.¶ Such an occasion may well loom on the horizon, however, as the United States draws down in Afghanistan with increasing rapidity. To be sure, the United State no doubt will continue to support the Afghan government in its efforts to tamp down insurgency, and it also will likely continue to mount counterterrorism operations within Afghanistan. It may even be the case that at some future point, the Taliban will again provide safe harbor to what remains of al Qaeda, thereby at least arguably reviving their AUMF nexus. But for the time being, the days of direct combat engagement with the Afghan Taliban appear to be numbered. ¶ If the decline of the original al Qaeda network and the decline of U.S. interest in the Afghan Taliban were the only considerations, one might applaud rather than fret over the declining relevance of the AUMF. There is, however, a third consideration: significant new threats are emerging, ones that are not easily shoehorned into the current AUMF framework.¶ To a considerable extent, the new threats stem from the fragmentation of al Qaeda itself. In this sense, the problem with the original AUMF is not so much that its primary focus is on al Qaeda, but rather that it is increasingly difficult to determine with clarity which groups and individuals in al Qaeda’s orbit are sufficiently tied to the core so as to fall within the AUMF. And given the gravity of the threat that some of these groups and individuals may pose on an independent basis, it also is increasingly odd to premise the legal framework for using force against them on a chain of reasoning that requires a detour through the original, core al Qaeda organi zation.¶ ¶ The fragmentation process has several elements. First, entities that at least arguably originated as mere regional cells of the core network have established a substantial degree of organizational and operational independence, even while maintaining some degree of correspondence with al Qaeda’s leaders. Al Qaeda in the Arabian Peninsula (AQAP) is a good example. Al Qaeda in Iraq (AQI) arguably fits this description as well, though in that case one might point to a substantial degree of strategic independence as well.¶ Second, entities that originated as independent, indigenous organizations have to varying degrees established formal ties to al Qaeda, often rebranding themselves in the process. Al Qaeda in the Islamic Maghreb (AQIM), formerly known as the Salafist Group for Call and Combat, illustrates this path. Al Shabaab in Somalia arguably does as well. And then there are circumstances (such as the ones currently unfolding in Mali, Libya, and Syria) in which it is not entirely clear where the organizational lines lie among (i) armed groups that work in concert with or even at the direction of one of the aforementioned al Qaeda affiliates; (ii) armed groups that are sympathetic and in communication with al Qaeda; and (iii) armed groups that are wholly-independent of al Qaeda yet also stem from the same larger milieu of Salafist extremists.¶ This situation – which one of us has described as the emergence of “extra-AUMF” threats – poses a significant problem insofar as counterterrorism policy rests on the AUMF for its legal justification. In some circumstances it remains easy to make the case for a nexus to the original al Qaeda network and hence to the AUMF. But in a growing number of circumstances, drawing the requisite connection to the AUMF requires an increasingly complex daisy chain of associations – a task that is likely to be very difficult (and hence subject to debate) in some cases, and downright impossible in others.¶ The emergence of this problem should come as no surprise. It has been nearly a dozen years since the AUMF’s passage, and circumstances have evolved considerably since then. It was inevitable that threats would emerge that might not fit easily or at all within its scope. The question is whether Congress should do anything about this situation, and if so precisely what.

### solves executive cred

#### Respecting the OLC makes the executive credible

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

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

#### 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

#### Using the OLC expands presidential power even if it solves the specific application of the plan

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>

There is an important twist that complicates the analysis. The President can choose to publicize the OLC's opinions. Naturally, the President will be tempted to publicize only favorable opinions. When Congress alleges 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 the head of the OLC, so, if the OLC gave bad advice, the Senate must share the blame. Second, OLC lawyers likely care about their future prospects in the legal profession, which will tum in part on their ability to avoid scandals and to render plausible legal advice, and they may also seek to maintain the office's reputation. When the OLC's opinions are not merely private advice but are used to justify actions, then the OLC takes on a quasi-judicial function. Presidents are not obliged to publicize the OLC's opinions, but clearly they see an advantage to doing so, and in this way, they have given the OLC quasi-judicial status.

If the President publicizes all OLC opinions, he takes the risk that the 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 a 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 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, the OLC might be able to prevent the President from taking an action that he would otherwise prefer. At a minimum, the OLC raises the political cost of the action.

I have simplified greatly, but this basic logic has led some scholars to believe that the OLC constrains the President. But this is a mistake. The OLC strengthens the President's hand in some cases and weakens it in others, but overall it extends his power and serves as enabler, not constraint.

### perm

#### Voluntary executive consultation improves decision-making and captures all of the benefits of the aff without constraining authority to act

**Baker, 7 -** Chief Judge to the United States Court of Appeals for the Armed Forces, former Special Assistant to the President and Legal Advisor to the National Security Council (James, IN THE COMMON DEFENSE: NATIONAL SECURITY LAW FOR PERILOUS TIMES, p. 25-27)

Understanding process also entails an appreciation as to how to effectively engage the constitutional process between branches. Unilateral executive action has advantages in surprise, speed, and secrecy. In context, it is also functionally imperative. As discussed in Chapter 8, for example, military command could hardly function if it were subject to interagency, let alone, interbranch application. Unilateral decision and action have other advantages. Advantage comes in part from the absence of objection or dissent and in the avoidance of partisan political obstruction. In the view of some experts, during the past fifteen years, “party and ideology routinely trump institutional interests and responsibilities” in the Congress.6 These years coincide with the emergence of the jihadist threat.

However, there are also security benefits that derive from the operation of external constitutional appraisal. These include the foreknowledge of objection and the improvements in policy or execution that dissent might influence. Chances are, if the executive cannot sell a policy to members of Congress, or persuade the courts that executive actions are lawful, the executive will not be able to convince the American public or the international community.

A sustained and indefinite conflict will involve difficult public policy trade-offs that will require sustained public support; that means support from a majority of the population, not just a president’s political base or party. Such support is found in the effective operation of all the constitutional branches operating with transparency. Where members of Congress of both parties review and validate a policy, it is more likely to win public support. Likewise, where the government’s legal arguments and facts are validated through independent judicial review, they are more likely to garner sustained public support. Thus, where there is more than one legal and effective way to accomplish the mission, as a matter of legal policy, the president and his national security lawyers should espouse the inclusive argument that is more likely to persuade more people for a longer period of time. The extreme and divisive argument should be reserved for the extraordinary circumstance. In short, congressional and judicial review, not necessarily decision, offers a source of independent policy and legal validation that is not found in the executive branch alone.

Further, while the president alone has the authority to wield the tools of national security and the bureaucratic efficiencies to do so effectively, that is not to say the president does not benefit from maximizing his authority through the involvement and validation of the other branches of government. Whatever can be said of the president’s independent authority to act, as the Jacksonian paradigm recognizes, when the president acts with the express or implied authorization of the Congress in addition to his own inherent authority, he acts at the zenith of his powers. Therefore, those who believe in the necessity of executive action to preempt and respond to the terrorist threat, as I do, should favor legal arguments that maximize presidential authority. In context, this means the meaningful and transparent participation of the Congress and the courts.

#### Legislation is distinct—causes a veto to protect authority—fiat means that gets overridden

Covington 12 Megan Covington(School of Engineering, Vanderbilt University) “Humanities and Social Sciences: Executive Legislation and the Expansion of Presidential Power” Spring 2012 | Volume 8 | © 2012 • Vanderbilt University Board of Trust http://webcache.googleusercontent.com/search?q=cache:K7qBxiQpm5AJ:ejournals.library.vanderbilt.edu/index.php/vurj/article/download/3556/1738+&cd=2&hl=en&ct=clnk&gl=us //Chappell

In actuality, however, Congress is generally unwilling or unable to respond to the president’s use of executive legislation. Congress can override a presidential veto but does not do it very often; of 2,564 presidential vetoes in our nation’s history, only 110 have ever been overridden. 44 The 2/3 vote of both houses needed to override a veto basically means that unless the president’s executive order is grossly unconstitutional – and thus capable of earning bipartisan opposition - one party needs to have a supermajority of both houses. Even passing legislation to nullify an executive order can be difficult to accomplish, especially with Congress as polarized and bitterly divided along party lines as it is today. Congress could pass legislation designed to **limit the power of the president**, but such a bill would be difficult to pass and any veto on it – which would be guaranteed – would be hard to override. In addition, if such legislation was passed over a veto, there is no guarantee that the bill would successfully limit the president’s actions; the War Powers Act does little to restrain the president’s ability to wage war.45 Impeachment is always an option, but the gravity of such a charge would prevent many from supporting it unless the president was very unpopular and truly abused his power.

#### That destroys the agenda

**Slezak, 7 -** Center for the Study of the Presidency Fellow 2006-2007 at UCLA, MA in Security Studies at Georgetown (Nicole, “The Presidential Veto: A Strategic Asset” https://host.genesis4100.net/thepresidency/pubs/fellows2007/Slezak.pdf)

Although the veto offers the president a significant advantage in dealing with a sometimes combative and divisive Congress, James Gattuso discusses four “caveats” that should be considered by presidents when devising a veto strategy. First, presidents should not veto without care, for if Congress overrides it is politically damaging to the president.8 This means that if the president does not garner the required one-third plus one in either house of Congress and his veto is overridden, he will not only lose face, but lose political capital that gives him leverage in dealing with Congress. If the president loses political capital he can put himself at a disadvantage for future interactions with Congress; hence, when vetoing he must consider his support in Congress and the potential ramifications of an override. However, Gattuso adds that worse than having a veto overridden is a president who threatens to veto and does not follow through once Congress has passed legislation.9 This is even more damaging than an override because the president is caught making “empty threats.” Therefore, Congress will continue to produce legislation to their liking rather than revising it because Congress is inclined to believe the president is no longer serious about his veto threats.

### court strikedown

#### Court politics – judges recognize political constraints to unpopular decisions in wartime – so the aff might fiat the plan, but they can’t fiat adherence to precedent by subsequent courts – who have strong reasons not to conform – the history of court crisis politics proves

**Posner and Vermeule, 7** – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian,Terror in the Balance: Security, Liberty, and the Courts p. 56)

Finally, to the extent that the critics of executive power envision judicial review as the solution, they are whistling in the wind, especially during times of emergency. The critics envision an imperial executive, who is either backed by a sustained national majority or else has slipped the political leash, and who enjoys so much agency slack as to be heedless of the public’s preferences. In either case, it is not obvious what the critics suppose the judges will or can do about it. As we will recount in more detail in later chapters, the judges proved largely powerless to stem the tide of the New Deal, in conditions of economic emergency, or to stop Japanese internment during World War II, or to block aggressive punishment and harassment of communists during the cold war. What is more, many of the judges had no desire to block these programs. Judges are people too and share in national political sentiments; they are also part of the political elite and will rally ’round the flag in times of emergency just as much as others do.83

#### Decentralization of the judiciary – the Supreme Court can’t regulate lower courts and there will be strongly divergent decisions

**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. 29-30)

The gap between the executive and the judiciary, in information and expertise, is even wider than between the executive and Congress. Whereas many legislators have a narrowly defined field of policy expertise, particularly in the House of Representatives, federal judges are mostly generalists, barring a few specialized courts. Furthermore, the partial insulation from current politics that federal judges enjoy, by virtue of life tenure and salary protection, brings with it a kind of informational impoverishment.25 Legislators, who must please other people at least some of the time, interact with the outside world far more systematically than generalist judges, whose main source of information is the briefs and arguments of litigants. When the executive says that resolving a plaintiff’s claim would require disclosure of “state secrets,” with dangerous consequences for national security, judges know that either an ill-motivated or a well-motivated executive might be making the claim and that they have no easy means to assess whether the claim is credible.

Collective action problems and decentralization

If congressional monitoring of executive discretion is hampered by collective action problems, judicial monitoring is hampered by a similar condition, the decentralized character of the federal judiciary. The judiciary too is a “they,” not an “it,” and is decentralized along mainly geographic lines. Different judges on different courts have different views of the costs and benefits of oversight and of the appropriate level of monitoring. The Supreme Court is incapable of fully resolving these structural conflicts. Because the Court presides over a large institutional system and lacks the capacity to review more than a fraction of cases submitted to it, its role is restricted by necessity to the declaration of general principles of law and episodic, ad hoc intervention in the system.

The legitimacy deficit

In the federal system, appointed judges are not overtly partisan, though they are sometimes covertly so. The very condition that enables this relative lack of overt politicization—that federal judges are, at least in one familiar conception, legal technocrats appointed for their expertise rather than elected on a partisan basis—also creates a serious legitimacy deficit for the judiciary, understanding legitimacy in a strictly sociological sense.26 Aroused publics concerned about issues such as national security may have little tolerance for robust judicial oversight of executive discretion, which can always be condemned as “activism” by “unelected judges.” This charge sometimes succeeds and sometimes fails, but for the judges it is always a concern that acts as a drag on attempts to monitor executive behavior.

### oil shocks

#### And no impact to oil shocks – IMF study

Tobias N. **Rasmussen and** Agustín **Roitman** August 20**11** Middle East and Central Asia Department, International Monetary Fund; “Oil Shocks in a Global Perspective: Are they Really that Bad?”

VII. CONCLUSION Conventional wisdom has it that oil shocks are bad for oil-importing countries. This is grounded in the experience of slumps in many advanced economies during the 1970s. It is also consistent with the large body of research on the impact of higher oil prices on the U.S. economy, although the magnitude and channels of the effect are still being debated. In this paper, we offer a global perspective on the macroeconomic impact of oil prices. In doing so, we are filling a void of research on the effects of oil prices on developing economies. Our findings indicate that oil prices tend to be surprisingly closely associated with good times for the global economy. Indeed, we find that the United States has been somewhat of an outlier in the way that it has been negatively affected by oil price increases. Across the world, oil price shock episodes have generally not been associated with a contemporaneous decline in output but, rather, with increases in both imports and exports. There is evidence of lagged negative effects on output, particularly for OECD economies, but the magnitude has typically been small. Controlling for global economic conditions, and thus abstracting from our finding that oil price increases generally appear to be demand-driven, makes the impact of higher oil prices stand out more clearly. For a given level of world GDP, we do find that oil prices have a negative effect on oil-importing countries and also that cross-country differences in the magnitude of the impact depend to a large extent on the relative magnitude of oil imports. The effect is still not particularly large, however, with our estimates suggesting that a 25 percent increase in oil prices will cause a loss of real GDP in oil-importing countries of less than half of one percent, spread over 2–3 years. One likely explanation for this relatively modest impact is that part of the greater revenue accruing to oil exporters will be recycled in the form of imports or other international flows, thus contributing to keep up demand in oil-importing economies. We provide a model illustrating this effect and find supporting empirical evidence.

#### No impact to oil shocks and they won’t happen---newest data

**Kahn 11** – writer for Newsweek, IHT, and NYT, previous editor of the New Republic, Masters in IR from LSE and B.S. in History from Penn (2/13, Boston Globe, “Crude reality”, www.boston.com/bostonglobe/ideas/articles/2011/02/13/crude\_reality/?page=full)

Will a Middle Eastern oil disruption crush the economy? New research suggests the answer is no -- and that a major tenet of American foreign policy may be fundamentally wrong.

For more than a month, the world has been riveted by scenes of protest in the Middle East, with demonstrators flooding streets from Tunisia to Egypt and beyond. As the unrest has spread, people in the West have also been keeping a wary eye on something closer to home: the gyrating stock market and the rising price of gas. Fear that the upheaval will start to affect major oil producers like Saudi Arabia has led speculators to bid up oil prices — and led some economic analysts to predict that higher energy costs could derail America’s nascent economic recovery.

The idea that a sudden spike in oil prices spells economic doom has influenced America’s foreign policy since at least 1973, when Arab states, upset with Western support for Israel during the Yom Kippur War, drastically cut production and halted exports to the United States. The result was a sudden quadrupling in crude prices and a deep global recession. Many Americans still have vivid memories of gas lines stretching for blocks, and of the unemployment, inflation, and general sense of insecurity and panic that followed. Even harder hit were our allies in Europe and Japan, as well as many developing nations.

Economists have a term for this disruption: an oil shock. The idea that such oil shocks will inevitably wreak havoc on the US economy has become deeply rooted in the American psyche, and in turn the United States has made ensuring the smooth flow of crude from the Middle East a central tenet of its foreign policy. Oil security is one of the primary reasons America has a long-term military presence in the region. Even aside from the Iraq and Afghan wars, we have equipment and forces positioned in Oman, Saudi Arabia, Kuwait, and Qatar; the US Navy’s Fifth Fleet is permanently stationed in Bahrain.

But a growing body of economic research suggests that this conventional view of oil shocks is wrong. The US economy is **far less susceptible** to interruptions in the oil supply than previously assumed, according to these studies. Scholars examining the recent history of oil disruptions have found the worldwide oil market to be remarkably adaptable and surprisingly quick at compensating for shortfalls. Economists have found that much of the damage once attributed to oil shocks can more persuasively be laid at the feet of bad government policies. The US economy, meanwhile, has become less dependent on Persian Gulf oil and less sensitive to changes in crude prices overall than it was in 1973.

#### No impact—effects are minor

Tobias N. **Rasmussen and** Agustín **Roitman** August 20**11** Middle East and Central Asia Department, International Monetary Fund; “Oil Shocks in a Global Perspective: Are they Really that Bad?”

VII. CONCLUSION Conventional wisdom has it that oil shocks are bad for oil-importing countries. This is grounded in the experience of slumps in many advanced economies during the 1970s. It is also consistent with the large body of research on the impact of higher oil prices on the U.S. economy, although the magnitude and channels of the effect are still being debated. In this paper, **we offer a global perspective** on the macroeconomic impact of oil prices. In doing so, we are filling a **void of research** on the effects of oil prices on developing economies. Our findings indicate that oil prices tend to be surprisingly closely associated with good times for the global economy. Indeed, we find that the United States has been somewhat of an outlier in the way that it has been negatively affected by oil price increases. Across the world, oil price shock episodes have generally not been associated with a contemporaneous decline in output but, rather, with increases in both imports and exports. There is evidence of lagged negative effects on output, particularly for OECD economies, but the magnitude has typically been small. Controlling for global economic conditions, and thus abstracting from our finding that oil price increases generally appear to be demand-driven, makes the impact of higher oil prices stand out more clearly. For a given level of world GDP, we do find that oil prices have a negative effect on oil-importing countries and also that cross-country differences in the magnitude of the impact depend to a large extent on the relative magnitude of oil imports. The effect is still not particularly large, however, with our estimates suggesting that a 25 percent increase in oil prices will cause a loss of real GDP in oil-importing countries of less than half of one percent, spread over 2–3 years. One likely explanation for this relatively modest impact is that part of the greater revenue accruing to oil exporters **will be recycled** in the form of imports or other international flows, thus contributing to keep up demand in oil-importing economies. We provide a model illustrating this effect and find supporting empirical evidence.

#### Even if their studies are right, the US has become less vulnerable over time

Walid **Khadduri, 8-23-2011** Former Middle East Economic Survey Editor-in-Chief, "The impact of rising oil prices on the economies of importing nations", http://english.alarabiya.net/views/2011/08/23/163590.html

What is the impact of oil price shocks on the economies of importing nations? At first glance, there appears to be large-scale and extremely adverse repercussions for rising oil prices. However, a study published this month by researchers in the IMF Working Paper group suggests a different picture altogether (it is worth mentioning that the IMF has not endorsed its findings.) The study (Tobias N. Rasmussen & Agustin Roitman, "Oil Shocks in a Global Perspective: Are They Really That Bad?", IMF Working Paper, August 2011) mentions that “Using a comprehensive global dataset […] we find that the impact of higher oil prices on oil-importing economies is generally small: a 25 percent increase in oil prices typically causes GDP to fall by about half of one percent or less.” The study elaborates on this by stating that this impact differs from one country to another, depending on the size of oil-imports, as “oil price shocks are not always costly for oil-importing countries: although higher oil prices increase the import bill, there are partly offsetting increases in external receipts [represented in new and additional expenditures borne by both oil-exporting and oil-importing countries]”. In other words, the more oil prices increase, benefiting exporting countries, the more these new revenues are recycled, for example through the growth in demand for new services, labor, and commodity imports. The researchers argue that the series of oil price rallies (in 1983, 1996, 2005, and 2009) have played an important role in recessions in the United States. However, Rasmussen and Roitman state at the same time that **significant changes** in the U.S. economy in the previous period (the appearance of combined elements, such as improvements in monetary policy, the institution of a labor market more flexible than before and a relatively smaller usage of oil in the U.S. economy) has greatly mitigated the negative effects of oil prices on the U.S. economy.

### hormuz

#### Iran won’t touch Hormuz

**Boot and Russell 2012** – \*Kirkpatrick Senior Fellow for National Security Studies at CFR, \*\*chief of staff to U.S. Navy Central Command/Fifth Fleet in Bahrain, visiting fellow at the Council on Foreign Relations (1/4, Bradley, CFR, “Iran Won't Close the Strait of Hormuz”, http://www.cfr.org/iran/iran-wont-close-strait-hormuz/p26960?cid=rss-middleeast-iran\_won\_t\_close\_the\_strait\_of-010412&utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+region%2Fmiddle\_east+%28CFR.org+-+Regions+-+Middle+East%29&utm\_content=Google+Reader, WEA)

Despite the unveiling of a new antiship cruise missile called the Qader, Iran's conventional naval and air forces—on display during the Veleyat 90 naval exercises in the Persian Gulf which ended Monday— are still no match for the U.S. and its allies in the region. The U.S. alone has in the area two carrier strike groups, an expeditionary strike force (centered around an amphibious assault ship that is in essence a small aircraft carrier), and numerous land-based aircraft at bases such as Al Udied in Qatar, Al Dafra in the United Arab Emirates, and Isa Air Base in Bahrain. The U.S. and our Arab allies (which are equipped with a growing array of modern American-made equipment such as F-15s and F-16s) could use **overwhelming force** to destroy Iran's conventional naval forces in very short order.

Iran's real ability to disrupt the flow of oil lies in its asymmetric war-fighting capacity. Iran has thousands of mines(and any ship that can carry a mine is by definition a mine-layer), a small number of midget submarines, thousands of small watercraft that could be used in swarm attacks, and antiship cruise missiles. If the Iranians lay mines, it will take a significant amount of time to clear them. It took several months to clear all mines after the Tanker War, but a much shorter period to clear safe passages through the Persian Gulf to and from oil shipping terminals.

Antiship cruise missiles are mobile, yet those can also be found and destroyed. Yono submarines are short-duration threats—they eventually have to come to port for resupply, and when they do they will be sitting ducks. U.S. forces may take losses, as they did with the hits on the USS Stark and Samuel B. Roberts, but they will prevail and in fairly short order.

The Iranians must realize that the balance of forces does not lie in their favor. By initiating hostilities they risk American retaliation against their most prized assets—their covert nuclear-weapons program. The odds are good, then, that the Iranians will **not follow through** on their saber-rattling threats.

#### Iran won’t risk upsetting China by effecting the Strait

**Ackerman, 12** [1/10, “Let’s Hope Iran Tries To Close The World’s Oil Spigot”,Spencer, Wired.Com., <http://www.wired.com/dangerroom/2012/01/strait-of-hormuz/>]

Why? Because Iran would suddenly be responsible for sending world energy prices skyrocketing — perhaps to [$200 a barrel](http://www.businessweek.com/news/2012-01-09/hormuz-closure-may-send-brent-oil-to-200-a-barrel-socgen-says.html) — after a disruption of Gulf oil shipping. Washington usually has a hard sell when convincing other countries that Iran’s regional bellicosity and lack of transparency on its nuclear program merits a tough response. But when Iran hits the entire world in the wallet, the argument gets substantially easier.

Especially when making that argument in Beijing. The Chinese, in need of Mideast oil to propel their economy, often try to [temper hostilities](http://www.jpost.com/IranianThreat/News/Article.aspx?id=251556) between the U.S. and Iran, lest regional instability stops the flow of crude. Usually that expresses itself in terms of restraining Washington. But if Iran is unilaterally responsible for the oil flow stopping, just watch Beijing move out of Washington’s way for harsher sanctions. Who knows: maybe China would even get on board with an American push to forcibly reopen the strait if Iran keeps it closed. (Although, as Gen. Martin Dempsey, the chairman of the Joint Chiefs of Staff has observed, Iran probably [lacks the naval capability](http://www.businessweek.com/news/2012-01-10/iran-able-to-block-strait-of-hormuz-general-dempsey-says-on-cbs.html) to block sea traffic through the strait for extended periods.) The last time the oil flow through the strait was disrupted, during the Iran-Iraq war of the 1980s, the Chinese armed Iran against aggressor Iraq.

If anything, Iran’s closure of the strait would probably play like its old enemy Saddam Hussein’s 1990 decision to invade Kuwait. Before the invasion, world governments might not have liked Saddam, but most of them didn’t consider him an implacable threat to regional stability (and, hence, their economic interests). Afterward, the world viewed him as a rogue who needed to be confronted.

And one of Iran’s biggest strategic assets is a perception that the U.S. bullies it. That narrative is already taking a beating, thanks to Greenert’s Navy and the Coast Guard, which have now saved two [Iranian vessels](http://www.wired.com/dangerroom/2012/01/navy-iranian-pirates/) in [five days](http://www.foxnews.com/world/2012/01/10/us-navy-rescues-distressed-iranians-at-sea-for-second-time/), even as Iran issues its threats. The more Iran acts as an aggressor — and in particular, in a manner that harms the interests of those outside Washington, Jerusalem, or the Arab Gulf states — the more it squanders its advantage.

None of this to say any military confrontation with Iran is desirable; it would probably be a [bloody disaster](http://www.wired.com/dangerroom/2011/11/i-bombed-iran/), especially if the U.S. turned it into a full-fledged war with more expansive goals than re-opening the waterway. The point is that Iran has more to lose than to gain by closing the strait. Shutting it would be another sign of Iran’s tendency to shoot itself in the foot — just like with the crazy-if-true story about its [elite Qods Force trying to assassinate a Saudi diplomat](http://www.wired.com/dangerroom/2011/10/iran-bomb-plot-true/).

But outright confrontation may not even be the most lasting damage Iran sustains. China is one of Iran’s biggest trade benefactors. Now that Washington [loosened Russia from Iran’s orbit](http://www.wired.com/dangerroom/2010/09/nyet-russia-now-wont-sell-badass-missile-to-iran/), Iran doesn’t have any big, powerful friends left. **Screwing with oil prices means screwing with China** — which might make Beijing rethink its entire relationship with Iran after any crisis in the strait, from its economic ties to its diplomatic blocking and tackling over the Iranian nuclear program. Maybe it should be Mahmoud Ahmadinejad, not Adm. Greenert, who should have some restless nights thinking about the strait.

### sequestration takeout

#### Sequestration thumper

Jeff Lightfoot 13, deputy director of the Brent Scowcroft Center on International Security at the Atlantic Council, 3/1/13, “Sequestration’s Credibility Costs,” <http://nationalinterest.org/commentary/sequestrations-credibility-costs-8172>

The debate over sequestration is focused nearly entirely on the impact of spending reductions on the U.S. economy. Far less attention is given to how the automatic spending cuts would undermine the credibility of American power abroad. As sequestration comes into force, the White House and Congress signal a dangerous lack of resolve to both allies and adversaries. In doing so, they run the risk that a nervous Israel and an adventurous Iran could plunge the Mideast into a war the United States can ill afford.

## 1nr

### Overview

#### Turns the navy advantage

Norm Ornstein, resident scholar at the American Enterprise Institute, 9/1/13, Showdowns and Shutdowns, www.foreignpolicy.com/articles/2013/09/01/showdowns\_and\_shutdowns\_syria\_congress\_obama

Then there is the overload of business on the congressional agenda when the two houses return on Sept. 9 -with only nine legislative days scheduled for action in the month. We have serious confrontations ahead on spending bills and the debt limit, as the new fiscal year begins on Oct. 1 and the debt ceiling approaches just a week or two thereafter. Before the news that we would drop everything for an intense debate on whether to strike militarily in Syria, Congress-watchers were wondering how we could possibly deal with the intense bargaining required to avoid one or more government shutdowns and/or a real breach of the debt ceiling, **with** devastating consequences for American credibility **and the** international economy. Beyond the deep policy and political divisions, Republican congressional leaders will likely use both a shutdown and the debt ceiling as hostages to force the president to cave on their demands for deeper spending cuts. **Avoiding this end-game bargaining will require** the unwavering attention of the same top leaders in the executive and legislative branches who will be deeply enmeshed in the Syria debate. The possibility -even probability -of disruptions caused by partial shutdowns could complicate any military actions. The possibility is also great that the rancor that will accompany the showdowns over fiscal policy will bleed over into the debate about America and Syria.

### 2nc uniqueness wall

#### 1nc Liasson compares the relative divisions between Dems and Republicans—Obama has the upper hand now—that's what enables his current hardline posture

#### Dem unity and GOP divisions mean Obama will make them cave

**Davis, 9/23/13** (Susan, USA Today, “Clock ticking on shutdown, with 'Obamacare' center stage;

GOP ties health care law to two budget deadlines” lexis)

House Republicans are assembling a debt limit package for a vote as early as this week that would increase the debt limit through 2014 but with conditions: a one-year delay of the implementation of the health care law and a grab bag of GOP-backed economic growth proposals, health care entitlement spending changes, construction of the Keystone XL oil pipeline and instructions for an overhaul of the U.S. federal tax code. Democrats and the White House have not blinked. "We are going to stand together to protect the president's health care law, and we're going to stand together and not negotiate one iota when it comes to the debt ceiling," said Sen. Charles Schumer, D-N.Y. During an impasse in 2011 over the debt limit, the Treasury Department ruled out many stopgap measures to maintain spending and pay its debts, such as selling off assets. The United States has more than $350 billion in gold reserves on its balance sheet, but Treasury officials said a "fire sale" on gold would hurt the dollar and the economy. The Treasury has no practical way of reducing payments by an across-the-board percentage to stay under the debt limit. Congress has debated several proposals to prioritize payments -- by making sure bond holders, Social Security recipients or active-duty military would get paid first, for example. But without direct congressional authority, the Treasury has no way to prioritize who gets paid and who doesn't. "At that point, meeting our nation's financial obligations -- including Social Security and Medicare benefits, payments to our military and veterans and contracts with private suppliers -- will be put at risk," Treasury Secretary Jacob Lew said last week. GOP divisions The legislative assault on the health care law has exposed divides in the GOP, not on the merit -- because there is strong support for delaying or dismantling the law -- but on the tactics and the political risks they hold. At least a dozen Republican senators have publicly split with colleagues on the effort to tie defunding the law on the stopgap spending measure -- a clear indication that the defunding effort can't pass Congress.

#### Our ev assumes Syria—he's regrouping on debt ceiling—PC is working now

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

There’s a simple reason President Barack Obama is using his bully pulpit to focus the nation’s attention on the battle over the budget: In this fight, he’s watching Republicans take swings at each other. And that GOP fight is a lifeline for an administration that had been scrambling to gain control its message after battling congressional Democrats on the potential use of military force in Syria and the possible nomination of Larry Summers to run the Federal Reserve. If House Republicans and Obama can’t cut even a short-term deal for a continuing resolution, the government’s authority to spend money will run out on Oct. 1. Within weeks, the nation will default on its debt if an agreement isn’t reached to raise the federal debt limit. For some Republicans, those deadlines represent a leverage point that can be used to force Obama to slash his health care law. For others, they’re a zero hour at which the party will implode if it doesn’t cut a deal. Meanwhile, “on the looming fiscal issues, Democrats — both liberal and conservative, executive and congressional — are virtually 100 percent united,” said Sen. Charles Schumer (D-N.Y.). Just a few days ago, all that Obama and his aides could talk about were Syria and Summers. Now, they’re bringing their party together and shining a white hot light on Republican disunity over whether to shut down the government and plunge the nation into default in a vain effort to stop Obamacare from going into effect. The squabbling among Republicans has gotten so vicious that a Twitter hashtag — #GOPvsGOPugliness — has become a thick virtual data file for tracking the intraparty insults. Moderates, and even some conservatives, are slamming Texas Sen. Ted Cruz, a tea party favorite, for ramping up grassroots expectations that the GOP will shut down the government if it can’t win concessions from the president to “defund” his signature health care law. “I didn’t go to Harvard or Princeton, but I can count,” Sen. Bob Corker (R-Tenn.) tweeted, subtly mocking Cruz’s Ivy League education. “The defunding box canyon is a tactic that will fail and weaken our position.” While it is well-timed for the White House to interrupt a bad slide, Obama’s singular focus on the budget battle is hardly a last-minute shift. Instead, it is a return to the narrative arc that the White House was working to build before the Syria crisis intervened.

### at: syria thumper

#### Obama’s weakened by Syria but still strong enough to win a debt ceiling fight

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

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

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

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

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

### At: summers

#### Summers doesn’t pound

Kevin Carmichael, Globe and Mail, 9/17/13, With Summers out of running, a fractious fall looms in U.S., Lexis

Ms. Warren was one of four Democrats on the banking committee who said they would vote against Prof. Summers. That meant the White House would have had to have sought Republican support to get Prof. Summers through the committee stage of the nomination process and onto the Senate floor. **That's more political capital than the President** currently **has to spend.** "Republicans would have wanted something in return," Mr. Bosworth said. **"It wasn't worth it."** More of the contentious fiscal showdowns that have characterized Mr. Obama's relationship with the Republican-led House of Representatives are on the horizon. While the U.S. government's fiscal year ends on Sept. 30, Democrats and Republicans appear nowhere near agreement on a new budget, despite promises earlier in the year that they would do so. Failure to come up with a fiscal plan, or extend existing spending authority, would force the government to cease operations.

### at: gun control thumper

#### Obama won’t push it and he’s saving his PC for the debt ceiling and budget

**Madhani, 9/23**/13 (Aamer, “Obama swamped by several crises; Shows frustration over gun laws during tribute” USA Today, lexis)

With a series of domestic and international crises coming to a head at once, President Obama made clear on Sunday that he won't be pouring a great deal of his own political capital into reigniting the debate on the country's gun laws. During a memorial service, the president offered warm tributes to the 12 victims of last week's mass shooting at the Navy Yard. But his tone also had an edge of frustration that was absent from his December remarks at the memorial honoring the victims of the tragedy at Sandy Hook Elementary School, the site of the last major mass shooting in the U.S. where 20 young children and 6 adults were slain. There he choked back tears and set the goal -- which would prove to elude him -- of overhauling the nation's gun laws. In Sunday's memorial, he made clear that he's all but given up hope that he can persuade Congress. "By now, though, it should be clear that the change we need will not come from Washington, even when tragedy strikes Washington," said Obama, who has gone through a withering six months in which he has fought with Republicans on gun laws, immigration and Syria and has faced fierce domestic and international criticism over a series of revelations about the National Security Agency's surveillance programs. For Obama, the all-too-familiar moment of serving as consoler-in-chief after yet another mass shooting comes at one of the most difficult periods in his presidency -- leaving him with little time, energy or political capital to re-litigate the gun issue just months after he tried and failed to push Congress to get behind a sweeping overhaul of the nation's gun laws. Among the emerging domestic crises on his plate: The White House is pushing forward with implementation of Obama's signature health care law in the face of a Republican call for repeal; the federal government appears headed toward a shutdown at the beginning of next month; and Obama and the House GOP are at loggerheads over raising the nation's debt limit.

#### Even if they were right, it would be months after our disad

**Epstein, 9/21/13** (Jennifer, Politico, “Obama vows to continue gun-law push” lexis)

President Barack Obama vowed Saturday to keep pushing ahead on his domestic agenda, fighting for tougher gun laws and resisting Republican efforts to cut funding for health care and food stamps. "We fought a good fight earlier this year, but we came up short and that means we've gotta get back up and go back at it" to put in place new gun laws, Obama told the Congressional Black Caucus Foundation's annual dinner in Washington, in a combative speech aimed squarely at firing up a key part of his base. "We can't rest until all of our children can go to school or walk down the street free from the fear that they will be struck down by a stray bullet," he said. "Just two days ago in my hometown, Chicago, 13 people were shot during a pickup basketball game, including a three-year-old girl." (Also on POLITICO: Anti-gun groups demand action) On Sunday, Obama will meet with the families of victims of the Navy Yard shooting, who "now know the same unspeakable grief [as] families in Newtown and Aurora and Tucson and Chicago and New Orleans and all across the country," he said. They're "people whose loved ones were torn from them without headlines sometimes and public outcry, but it's happening every single day," Obama continued, later adding: "As long as there are those who fight to make it as easy as possible for dangerous people to get their hands on a gun, then we've got to work as hard as possible for the sake of our children. We've got to be ones who are willing to do more work to make it harder." Obama's speech signaled that he may be willing to expend political capital on gun laws **in the coming months**. Before that, though, he must reach a deal with Republicans to avert a government shutdown on Oct. 1, and to raise the debt ceiling by later this fall.

### polcap up

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

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

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

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

#### Their argument is exaggerated bad press

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

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

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

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

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

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

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

#### Obama still has capital and his clout is growing

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

Democrats say their Syria fight looked like Yalta compared to the GOP’s “civil war” over Obamacare, the continuing resolution and the debt limit. Still, Obama spent the first weeks of September making the case for a military strike that was unpopular not just with the public but with his own Democratic allies in Congress. At worst, it was a demonstration that he has lost influence on Capitol Hill and within his own party. At best, it was a major message distraction.

Carney alluded to the lost Syria weeks on Monday when he said “time is short” for the president to make his case before the deadline for extending government funding.

Now, the White House has seemingly pushed its message machine back on track — and it’s getting an extra boost from congressional Democrats who want to take the fight to the GOP. Some House Democrats privately express the view — to reporters and to the White House — that it might be better to let the government shut down rather than extend sequester-level spending for a few months. Such a destabilizing event could do enough damage to the GOP brand to shatter Republicans’ lock on a House majority in next year’s election, they hope, without seriously harming the economy.

### Link

#### **Having to defend authority against Congress derails 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.

#### **Plan’s a perceived as a loss – saps capital**

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

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

#### Current set of losses aren’t enough to sink his agenda – but another high profile loss will end it

**Lawrence, 9/17/13 -** national correspondent at National Journal.(Jill, “Obama Says He’s Not Worried About Style Points. He Should Be.” National Journal, <http://www.nationaljournal.com/whitehouse/obama-says-he-s-not-worried-about-style-points-he-should-be-20130917>)

In some ways Obama's fifth year is typical of fifth years, when reelected presidents aim high and often fail. But in some ways it is atypical, notably in the number of failures, setbacks, and incompletes Obama has piled up. Gun control and immigration reform are stalled. Two Obama favorites withdrew their names as potential nominees in the face of congressional opposition – Susan Rice, once a frontrunner for secretary of state, followed by Larry Summers, a top candidate to head the Federal Reserve. Secretary of State John Kerry's possibly offhand remark about Assad giving up his chemical weapons, and Putin's jump into the arena with a diplomatic proposal, saved him from almost certain defeat on Capitol Hill. Edward Snowden set the national security establishment on its heels, then won temporary refuge from … Putin. It's far from clear how that will be resolved. And that's as true for the budget and debt-limit showdowns ahead. Some of Obama's troubles are due to the intransigence of House conservatives, and some may be inevitable in a world far less black and white than the one Reagan faced. But the impression of ineffectiveness is the same. "People don't like it when circumstances are dictating the way in which a president behaves. They want him to be the one in charge," says Dallek, who has written books about nine presidents, including Reagan and Franklin Roosevelt. "It's unfair… On the other hand, that's what goes with the territory. People expect presidents to be in command, and they can't always be in command, and the public is not forgiving." Obama's job approval numbers remain in the mid-40s. The farther they fall below 50 percent, history suggests, the worse he can expect Democrats to do in the midterm House and Senate elections next year. Obama would likely be in worse trouble with the public, at least in the short term, if he had pushed forward with a military strike in Syria. In fact, a new Pew Research Center poll shows 67 percent approve of Obama's switch to diplomacy. But his journey to that point made him look weak and indecisive. Indeed, the year's setbacks are accumulating and that is dangerous for Obama. "At some point people make a collective decision and they don't listen to the president anymore. That's what happened to both Jimmy Carter and George W. Bush," Cannon says. "I don't think Obama has quite gone off the diving board yet in the way that Carter or Bush did … but he's close to the edge. He needs to have some successes and perceptions of success."

#### Reducing war powers will end credibility with Congress—it encourages stronger GOP pushback—and that fight will wreck markets

**Seeking Alpha, 9/10/13** (“Syria Could Upend Debt Ceiling Fight”, <http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight>)

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

### 2nc pc key

#### And it’s key to avoid having to make concessions

**Garnham, 9/17/13** (Peter, “Summers not over for dollar strength” Euromoney,

Full article: <http://www.euromoney.com/Article/3255829/Category/16/ChannelPage/0/Summers-not-over-for-dollar-strength.html?single=true&copyrightInfo=true>)

That is because seeking his confirmation in the US Senate could have cost Obama valuable political capital. As Geoffrey Yu, strategist at UBS, points out, that could have meant that reaching an agreement on raising the debt ceiling afterwards would have therefore required even greater concessions from Obama and created additional fiscal drag on the US economy. Overall, it would seem the ripple effects from Summers’ withdrawal from the race to become Fed chairman and the negative impact on the dollar could disappear quickly.

#### That splits the base—means no deal

**Cook, 9/17**/13 - Economic and Fiscal Policy Correspondent at National Journal (Nancy, “How Dangerous Is the Rift Among Democrats?” National Journal, <http://www.nationaljournal.com/congress/how-dangerous-is-the-rift-among-democrats-20130917>)

Remember that split among congressional Republicans on fiscal strategy? Well, now it seems the Democrats have the makings of a similar problem. In recent weeks, congressional D's have been uncharacteristically independent, breaking with their leadership and the Obama administration. First they opposed military action in Syria, warning the president they would deny his request to strike. And then came Larry Summers, who was brought down by a handful of Senate Democrats who let the White House know they would not confirm him as Fed chief. All this bodes quite poorly for President Obama (and Harry Reid and Nancy Pelosi) as the spending and debt fights approach. If Obama's advisers take anything away from the Syria and Summers episodes, Capitol Hill aides and lawmakers suggest it should be the message that Democrats are not going to get in line with a budget deal that compromises their liberal positions. No longer should the White House feel free, as it has in the past, to consider tweaks to programs like Medicare or Social Security, for instance (unless, of course, Republicans agree to extract more money from taxpayers). Reid and one of his primary deputies, Sen. Patty Murray, continue to oppose the "chained CPI" proposal that would change the way government benefits are calculated and make them less generous—one of the ideas the president offered up in past budget negotiations. House Democrats largely are not in favor of one of the president's other previous budget offers—to cut Medicare by $400 billion. These concessions would be an incredibly hard sell to Democrats during a year where the country's annual deficit continues to fall, says a House Democratic leadership aide. "A lot of our members were concerned about the drift of the negotiations during the fiscal cliff," the aide said. "Our sense is that any deal this fall would not be as large so there is not as much of a necessity to offer up those items." The White House hasn't ruled those items out though; it's not really even engaging in the discussion at all yet. If lawmakers start to draw lines in the sand, the president will have fewer tools to use and fewer levers to pull to score a deal that keeps the government running and the United States current on its debt.

#### Err neg—only our framing explains the Summers withdrawal

**Lowrey, 9/16/13** (Annie, “Summers Seen as Costly in Political Terms” New York Times, <http://www.nytimes.com/2013/09/17/business/democrats-saw-summerss-fed-nomination-as-too-costly-in-political-capital.html?pagewanted=all>)

The second option would have been to barter for Republican votes. Aides described that strategy as possible: many Republicans would have been willing to vote for Mr. Summers, they said, for a price. But handing the Republicans leverage in the midst of the debt ceiling and budget debates would have weakened the White House’s hand.

### 2nc key to economy

**It would be legitimate default—substitute measures wouldn’t reassure markets**

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

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

#### Even the credible possibility of default will destroy the economy

**Davis, 9/18/13 -** professor of political science at Brigham Young University(Richard, Deseret News, “Raise the debt ceiling, then talk about spending less” <http://www.deseretnews.com/article/865586538/Raise-the-debt-ceiling-then-talk-about-spending-less.html>)

This is a strategy popular with the Republican right wing, but it is bad policy for the nation. Paying the nation’s bills is not about politics. It sends the wrong signal to investors that U.S. political leaders are not serious about the consequences of default. The nation’s bond rating was lowered after the last near-default. That would happen again if the government defaulted. Even the possibility of default makes investors jittery and undermines our reputation as a nation that always lives up to its promise to pay its bills. A lower bond rating costs taxpayers more money because borrowing comes at a heavier price, just as a lower credit score for failure to pay bills hurts an individual.

#### Every key sector will implode

**McAuliff, 9/18/13** (Michael, “Debt Limit Showdown Could Be Catastrophic For Economy: Analysts” Huffington Post, <http://www.huffingtonpost.com/2013/09/18/debt-limit-showdown_n_3950890.html>)

"You can only put the gun to your head so many times before someone's going to make a mistake and pull the trigger, and it's to everyone's detriment," Zandi told Duffy.

He gave a crushing summary of the potential impacts of a default.

"If you don't raise the debt limit in time, you will be opening an economic Pandora's box. It will be devastating to the economy," he predicted. "If you don't do it in time, confidence will evaporate, consumer confidence will sharply decline, [as well as] investor confidence, business confidence. Businesses will stop hiring, consumers will stop spending, the stock market will fall significantly in value, borrowing costs for businesses and households will rise."

#### Delay risks economic collapse

**Puzzanghera, 9/18/13** (Jim, “Delay in raising debt limit risky, Lew says” Los Angeles Times, lexis)

As the nation fast approaches its debt limit, Treasury Secretary Jacob J. Lew issued his strongest warning yet to Congress about the economic consequences of waiting until just before the deadline to pass an increase.

"Trying to time a debt-limit increase to the last minute could be very dangerous," Lew told the Economic Club of Washington on Tuesday. "We cannot afford for Congress to gamble with the full faith and credit of the United States of America."

Republicans are balking at raising the $16.7-trillion debt limit, which Congress must do by as early as mid-October, unless the Obama administration agrees to major concessions including deep spending cuts and a delay in implementing the healthcare reform law.

During a meeting last week, House Speaker John A. Boehner (R-Ohio) gave Lew a list of times in the past when the White House and Congress used the need to raise the debt limit as a way to find bipartisan solutions on fiscal issues, Boehner's office said.

Boehner has said that any increase in the debt limit must be offset by budget cuts or spending reforms at least as large as the increase.

But Lew reiterated Tuesday that President Obama would not negotiate over raising the debt limit because it involves paying for bills already authorized by Congress and because the notion of a federal government default should not be a bargaining chip.

Lew specifically ruled out a delay in the healthcare law, the Affordable Care Act, a move being pushed by some House conservatives.

"That's just not reality, and they're going to have to start dealing in reality," he said.

But as the Treasury runs out of the accounting maneuvers it has used since the spring to continue borrowing to pay the nation's bills, Lew said lawmakers needed to act.

Since the U.S. technically reached its debt limit in the spring, the Treasury has been using so-called extraordinary measures, such as suspending investments in some federal pension funds, to juggle the nation's finances to pay bills. Those measures will be exhausted by the middle of October.

Lew noted that Washington politicians like to wait until they are up against a deadline to act, as they often do with spending bills and did last year with the so-called fiscal cliff, the combination of automatic tax increases and government spending cuts.

But the debt limit is different, Lew said, because of the complexity of identifying an exact date when the nation would run out of borrowing authority -- and because of the consequences of a first-ever federal government default.

Lew said a default would be "a self-inflicted wound that can do harm to our economy right at a moment when the recovery is strengthening."

A bitter battle over the debt limit in 2011, resolved at the last minute, raised fears of a first-ever U.S. government default. The lengthy standoff led Standard & Poor's to downgrade the nation's credit rating for the first time and triggered financial market turmoil along with a deep drop in consumer confidence.

"Some in Congress seem to think they can keep us from failing to pay our nation's bills by simply raising the debt ceiling right before the moment our cash balance is depleted," Lew said. Such a view is misguided, he said.

The Treasury Department doesn't know with precision the exact day that it won't have enough incoming cash to make all the required outgoing payments once it runs out of borrowing authority.

Lew formally told Congress last month that the Treasury would run out of borrowing authority in mid-October. At that point, the government would be able to pay bills only with cash on hand of about $50 billion on any given day.

An analysis released last week by the Bipartisan Policy Center, which also cited the difficulty of pegging an exact date, estimated that the U.S. would run out of borrowing authority between Oct. 18 and Nov. 5.

The vagaries of the debt-limit issue mean that Congress must act sooner rather than later, Lew said.

"I'm nervous about the desire to drive this to the last minute when the last minute is inherently unknowable and the risk of making a mistake could be catastrophic," he said.

### Xo

#### The White House has ruled out invoking the 14th amendment this time – and 2011 proves they won’t do it

Bendery, writer for the Huffington Post, 12/7/2012

(Jennifer, “In Debt Ceiling Standoff, 14th Amendment Is Not An Option, Says White House,”

http://www.huffingtonpost.com/2012/12/07/debt-ceiling-14th-amendment\_n\_2257610.html)

The White House signaled Thursday that President Barack **Obama would not use the Constitution to unilaterally raise the debt ceiling** in the event of a standoff with Republicans. But there are plenty of key Democrats who think that wouldn't be such a bad idea.

During his Thursday briefing, White House Press Secretary Jay Carney dismissed the idea that Obama has the constitutional authority to increase the debt limit himself if Congress doesn't do it by early February, when the government is expected to run out of money. The debt ceiling is currently capped at $16.4 trillion.

"**This administration does not believe that the 14th Amendment gives the president the power to ignore the debt ceiling** -- period," Carney said.

Carney said the White House has been consistent in opposing that approach, though he noted "there was a period where this was under discussion" during the 2011 debt ceiling fight. Ultimately, though, the White House dismissed the idea, questioning the legality of that option, he said.

#### Latest evidence proves – political capital is still key

Weyl, writer for Roll Call, 1/2/2013

(Ben, “Lawmakers Eye Policy Actions on Debt Limit,” http://www.rollcall.com/news/lawmakers\_eye\_policy\_actions\_on\_debt\_limit-220488-1.html)

Many Republicans think Obama would ultimately fold, recalling how they secured more than $2 trillion in spending reductions over 10 years as part of the 2011 debt ceiling law (PL 112-25). **The White House has already** ruled out **claiming that the Constitution’s 14th Amendment allows the president to raise the debt ceiling unilaterally**, **a position that may constrain** Obama’s choices and resign **the White House to** something of a stare-down.

## 2nr

### stopgaps fail

#### Debt ceiling will collapse the economy – outweighs tapering

**Holliday, 9/18/13** (Katie, CNBC, “Debt ceiling, not tapering, is the bigger market risk” <http://www.cnbc.com/id/101042572>)

Talk of a reduction in U.S. stimulus has been all the rage since Federal Reserve Chairman Ben Bernanke first uttered the 'T word' in late May, but as more worrying issues come into focus, analysts say the industry's favorite topic of conversation is set to change.

According to Mark Zandi, chief economist at Moody's Analytics, once investors find out whether the Fed will begin tapering following this week's policy meeting, the U.S. government's debt ceiling will come back to the fore.

"The debt ceiling will become a real problem by mid-October... I think [industry commentators] need to start talking a little more about that," said Zandi.

If Congress is unable to pass legislation on the debt ceiling in the coming weeks, Zandi said the issue could be more detrimental than the tapering fallout, which prompted a sharp selloff across global equity markets as investors ditched risk and piled into safe haven assets. Emerging market equity, fixed income and currencies were hit particularly hard.

"If Congress and the Administration don't come together pretty soon… if we don't have a piece of legislation on that in the next few weeks, that's going to be a real significant problem, much bigger than tapering," he added.

The government has been bumping against its $16.7 trillion debt ceiling limit since May. But the issue has lurked in the background recently as worries over tapering and geopolitical issues surrounding Syria took precedent.

### at: olc not international signal

#### OLC opinions bind executive action and are perceived internationally

Harris 5 (George C., Professor of Law – University of the Pacific McGeorge School of Law, “The Professional Responsibilities of Executive Branch Lawyers in the Wake of 9/11,” Journal of National Security Law & Policy, 1 J. Nat'l Security L. & Pol'y 409, Lexis)

C. The Role of Government Lawyers in Formulating the Unlawful Enemy Combatant Doctrine

In the months following 9/11, the OLC responded to requests from the White House and the Department of Defense for interpretation of domestic and international law bearing on the detention and treatment of terrorism suspects. OLC lawyers surely understood not only the urgency and significance of those requests, but also the profound implications of the issues **raised for international relations** and the rule of law itself.

[\*428] If those lawyers consulted the professional canons at this historic moment, they found, as demonstrated above, somewhat varied and equivocal guidance. Even approaching their responsibilities in the narrowest possible way, however, as parallel to the duties of a private lawyer asked by an organizational client for guidance regarding the limits of legal conduct, certain guiding principles should have been uncontroversial.

As expressed in Model Rules 1.2 and 2.1, they were obligated: (1) to provide advice, not advocacy - an honest and objective assessment of the actual legal and other consequences likely to result from any proposed courses of conduct, including the risks associated with those courses of conduct; (2) not to confine themselves to technical legal advice, if broader moral and ethical considerations were relevant; and (3) not to counsel any criminal conduct or recommend any means by which a crime might be committed with impunity. Whether or not those lawyers had broader, constitutional duties in light of their high office and oath, as a simple matter of competence and diligence n89 they were obligated to consider: (1) relevant executive branch as well as judicial precedent, including any history of prior executive branch opinions on related topics; and (2) likely responses to any proposed course of conduct by other government officials or parties that would be of consequence to the client.

The OLC lawyers who authored the Opinion Memos were not, however, merely lawyers for a private organizational client. The Assistant Attorney General in charge of the OLC was himself a high government official, appointed by the President and confirmed by the Senate. He and all of his deputies had taken oaths to uphold the Constitution and laws of the United States. n90 In preparing opinion memos for the President and other executive branch officials, they were exercising authority, given to the Attorney General by Congress in the Judiciary Act of 1789 and delegated by the Attorney General to the OLC, to determine the legal boundaries of executive power and discretion under the Constitution and laws. They knew that their opinions would likely guide the conduct of the President and bind the rest of the executive branch.

As noted above, commentators with OLC experience have differed regarding if and when the OLC's role should be quasi-judicial rather than client-centered. Unlike many of the opinion requests routinely discharged by the OLC that are subject to immediate judicial testing through the adversary [\*429] process - such as, for example, the constitutionality and effect of proposed legislation or the soundness of the government's proposed litigation posture-OLC lawyers understood that the requests addressed by the post-9/11 Opinion Memos had immediate implications for executive action that would be reviewed, if ever, only after the implementation of executive policies with potentially **far-reaching** impact on domestic and international affairs. Indeed, the Opinion Memos opined that the President's determination of some of these matters would never be subject to judicial review. n91

In this context, the quasi-judicial model championed by former OLC chief Randolph Moss a year before the 9/11 attacks n92 seems particularly appropriate. Guardianship of the rule of law itself lay conspicuously in the OLC's in-box. Advising the President on whether he could unilaterally suspend or disregard treaty obligations or customary international law would be reckless on anything but the "best view" of the law arrived at after full consideration of relevant executive branch as well as judicial precedent.

### AT: Ellison

#### Ellison concludes that the plan isn’t sufficient

Ellison ’13 (Keith Ellison, “Time for Congress to build a better drone policy”, <http://articles.washingtonpost.com/2013-01-13/opinions/36311903_1_drone-strikes-drone-program-drone-policy>, January 13, 2013)

An unmanned U.S. aerial vehicle — or drone — reportedly killed eight people in rural Pakistan last week, bringing the estimated death toll from drone strikes in Pakistan this year to 35. As the frequency of drone strikes spikes again, some questions must be asked: How many of those targeted were terrorists? Were any children harmed? And what is the standard of evidence to carry out these attacks? The United States has to provide answers, and Congress has a critical role to play. The heart of the problem is that our technological capability has far surpassed our policy. As things stand, the executive branch exercises unilateral authority over drone strikes against terrorists abroad. In some cases, President Obama approves each strike himself through “kill lists.” While the president should be commended for creating explicit rules for the use of drones, unilateral kill lists are unseemly and fraught with hazards. When asked about the drone program in October during an interview on the “The Daily Show,” the president said, “One of the things we’ve got to do is put a legal architecture in place, and we need congressional help in order to do that, to make sure that not only am I reined in, but any president’s reined in terms of some of the decisions that we’re making.” It’s time to put words into action. Weaponized drones have produced results. They have eliminated 22 of al-Qaeda’s top 30 leaders and just last week took out a Taliban leader. Critically, they lessen the need to send our troops into harm’s way, reducing the number of U.S. casualties. Yet the costs of drone strikes have been ignored or inadequately acknowledged. The number of innocent civilian casualties may be greater than people realize. A recent study by human rights experts at Stanford Law School and the New York University School of Law found that the number of innocent civilians killed by U.S. drone strikes is much higher than what the U.S. government has reported: approximately 700 since 2004, including almost 200 children. This is unacceptable. Another cost is how drone strikes are shaping views of the United States around the world. You might develop a negative attitude toward the United States if your only perception of it is a foreign aircraft buzzing over your house that occasionally fires missiles into your neighborhood. In Pakistan, where 95 percent of U.S. drone strikes have occurred, people familiar with them overwhelmingly express disapproval (97 percent, according to Pew polling from June) and believe they kill too many innocent people (94 percent). Drone strikes may well contribute to the extremism and terrorism the United States seeks to deter. U.S. drone use has also lowered the threshold for the use of lethal force in foreign countries. Would we fire so many missiles into Pakistan, Yemen and Somalia if doing so required sending U.S. troops into harm’s way? Our drone policy must be guided by more than capability. It must be guided by respect for noncombatants, necessity and urgency. It is Congress’s responsibility to exercise oversight and craft policies that govern the use of lethal force. But lawmakers have yet to hold a single hearing examining U.S. drone policy. Any rules must provide adequate transparency, respect the rule of law, conform with international standards and prudently advance U.S. national security over the long term. In codifying a legal framework to guide executive action on drone strikes, Congress should consider these steps: First, we must do more to avoid innocent civilian casualties. The Geneva Conventions, which have governed the rules of war since World War II, distinguish between combatants and noncombatants in the conduct of hostilities and state that civilian casualties are not acceptable except in cases of demonstrated military necessity. This is the standard we must follow. Second, Congress must require an independent judicial review of any executive-branch “kill list.” The U.S. legal system is based on the principle that one branch of government should not have absolute authority. Congress should object to that concentration of power, especially when it may be used against U.S. citizens. A process of judicial review would diffuse executive power and provide a mechanism for greater oversight. Third, the United States must collaborate with the international community to develop a widely accepted set of legal standards. No country — not even our allies — accepts the U.S. legal justification for targeted killings. Our justification must rest on the concept of self-defense, which would allow the United States to protect itself against any imminent threat. Any broader criteria would create the opportunity for abuse and set a dangerous standard for other countries to follow, which could harm long-term U.S. security interests. The United States will not always enjoy a monopoly on sophisticated drone technology. The Iranian-made drone that Hezbollah recently flew over Israel should compel us to think about the far-reaching implications of current policy. A just, internationally accepted protocol on the use of drones in warfare is needed

. By creating and abiding by our own set of reasonable standards, the United States will demonstrate to the world that we believe in the rule of law.

### at: syria

#### There won’t be a Syria vote – the crisis was averted

**Pittsburgh Post-Gazette, 9/17**/13 (“SYRIAN SOLUTION?; DIPLOMACY TO END THE WAR STILL HAS A LONG WAY TO GO” lexis)

With the help of adroit diplomacy by the United States and others, the problem of Syria has been moved to a much better state than it was in a week ago.

At the same time, the situation is precarious, with a lot of "ifs" and moving pieces, the equivalent of a close football game in which the home team is ahead by two points but the contest is only in the second quarter.

President Barack Obama is considerably better off. Instead of facing a vote in Congress on attacking Syria -- which he probably would have lost, with unknown but serious consequences -- the issue of what to do about Syrian President Bashar Assad and his regime's possession and possible use of chemical weapons has now been shifted to international diplomacy, first through an agreement reached Saturday between the United States and Russia and then to implementation by the United Nations. That is where it should be, especially according to the U.S. public, who have indicated that they have no taste for another Middle East war, on the heels of the long Iraq war and the longer Afghanistan war now winding down.

Americans' distaste was based on a perception that, in spite of Mr. Obama's claims, no vital U.S. interests were at stake in Syria. They also developed no enthusiasm for U.S. attacks, in spite of advocacy by Sen. John McCain, R-Ariz., the American Israel Public Affairs Committee and some of the Syrian rebel groups.

The list of actions that must occur before anyone, including Mr. Obama, is out of the woods is nonetheless daunting. The Assad government must hand over a list of all its chemical weapons. U.N. inspectors have to see, secure and eventually destroy them, based on a Security Council resolution that has yet to be agreed upon and passed. To seek a transition from a chemical weapons agreement to a satisfactory end to the two-year-old civil war, the Syrian rebels, which include al-Qaida-affiliated groups, must be brought to a negotiating table through a combination of cajolery and military aid.

All this will not be easy, but it is preferable to the human, political and financial cost to the United States of another war. The performance of Secretary of State John F. Kerry so far encourages some optimism that he can, in the end, bring the matter to a successful conclusion for America.

#### And it no longer effects his capital

Bohan, 9/11 (Caren, 9/11/2013, “Delay in Syria vote frees Obama to shift to hefty domestic agenda,” <http://www.reuters.com/article/2013/09/11/usa-obama-agenda-idUSL2N0H716N20130911>))

WASHINGTON, Sept 11 (Reuters) - Putting off a decision on military strikes on Syria allows President Barack Obama to shift his attention back to a weighty domestic agenda for the fall that includes budget fights, immigration and selecting a new chairman of the Federal Reserve.

Obama and his aides have immersed themselves for a week and a half in an intensive effort to win support in Congress for U.S. military action in Syria after a suspected chemical weapons attack last month killed more than 1,400 people.

But the effort, which included meetings by Obama on Capitol Hill on Tuesday followed by his televised speech to Americans, seemed headed for an embarrassing defeat, with large numbers of both Democrats and Republicans expressing opposition.

The push for a vote on Syria - which has now been delayed - had threatened to crowd out the busy legislative agenda for the final three months of 2013 and drain Obama's political clout, making it harder for him to press his priorities.

But analysts said a proposal floated by Russia, which the Obama administration is now exploring, to place Syria's weapons under international control may allow Obama to emerge from a difficult dilemma with minimal political damage.

"He dodges a tough political situation this way," said John Pitney, professor of politics at Claremont McKenna College in California.