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## 1nc

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#### Authority means “authorization” – topical affirmatives must remove the permission to act, not just regulate the President

Hohfeld,Yale Law,1919(Wesley, <http://www.hku.hk/philodep/courses/law/HohfeldRights.htm>)

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

#### Voting issue – they destroy predictable limits – express delegations are finite and predictable; executive claims of authority are unlimited. They make every possible regulation of the President topical

### 1nc politics

#### 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.

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

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

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

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

#### Capital is finite and spending it elsewhere prevents 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.

### Kritik

#### Deploying the law in the context of cyber policy leaves unquestioned the violence innate to law itself

Cox and Knahl 11 Geoff Cox Researcher in Digital Aesthetics as part of the Digital Urban Living Research Center, Aarhus University (DK). He is also an occasional artist, and Associate Curator of Online Projects, Arnolfini, Bristol (UK), adjunct faculty, Transart Institute, Berlin/New York (DE/US), Associate Professor (Reader), University of Plymouth (UK), where he is part ofKURATOR/Art and Social Technologies Research group, and Martin Knahl, Lecturer at the University of Plymouth. He is a Research Fellow at the Centre for Information Security and Network Research, “NeMe: Critique of Software Violence,” <http://www.neme.org/1300/critique-of-software-security>, May 2011

Eventually Blue Security surrendered and went out of business, expressing their reluctance (unlike the Israeli State) to take part in an ever-escalating ‘soft war’ of violence and counter-violence. The point is that security software operates double standards. It would seem that the issue of security is reducible to the challenge of managing the inherent insecurities of networked relations. In other words, the network needs to distinguish whether you are a friend or not, evoking Carl Schmitt’s notion of enmity (in The Concept of the Political, of 1927).[11](http://www.neme.org/1300/critique-of-software-security#fn11) Under contemporary neo-liberal conditions – inextricably linked to security – it is clear that liberal democracies exert a form of violence through their insistence on friendliness and participation in networks. This is the organised violence of democracy or ‘violence of participation’, as Markus Meissen puts it (2007: 26).[12](http://www.neme.org/1300/critique-of-software-security#fn12) In other words, liberal democracy exerts a form of friendly violence that doesn’t appear violent at all – such as encouraging the use of certain kinds of software. All the time the violence is exerted nonviolently under the guise of protection from violence: security.

#### Their framing of cyber operations as “offensive” perpetuates the conventional war metaphor that inapplicable and misleading in the context of cyber space—turns the case

Lawson 12. Sean Lawson, professor of communications at the University of Utah, “Putting the ‘war’ in cyberwar: Metaphor, analogy, and cybersecurity discourse in the United States,” July 2, 2012, First Monday, online peer reviewed publication, 17:7 <http://firstmonday.org/ojs/index.php/fm/article/view/3848/3270>, accessed August 22, 2013

Western thought in the Enlightenment tradition has seen metaphor as a frivolous, literary device, a poor substitute for clear, literal language, which was to be the gold standard for truly scientific understanding and description of the world. But over the course of the twentieth century, scholars came to understand that “language, perception, and knowledge are inextricably intertwined” [[2](http://firstmonday.org/ojs/index.php/fm/article/view/3848/3270#2)] and that metaphor, therefore, is an essential part of the way that humans make sense of the world. But “metaphor is not just a matter of language, that is, of mere words ... . [H]uman thought processes are largely metaphorical ... the human conceptual system is metaphorically structured and defined” [[3](http://firstmonday.org/ojs/index.php/fm/article/view/3848/3270#3)]. This means that “[t]he essence of metaphor is understanding and experiencing one kind of thing in terms of another” [[4](http://firstmonday.org/ojs/index.php/fm/article/view/3848/3270#4)]. This is especially the case when it comes to understanding things that are new or novel. In addition to applying the biological metaphor of evolving systems to the world of human social relations, some have applied this metaphor to metaphors themselves, arguing that “[a]s evolving things, metaphors are open to novelty, surprise, inspiration and even mutation. They therefore can capture the underlying processes of other evolving entities surprisingly well” [[5](http://firstmonday.org/ojs/index.php/fm/article/view/3848/3270#5)]. By allowing us “to see similarity in difference and difference in similarity” (Geary, 2011), at its best metaphor can and should help to provide a balanced view of the new and novel in relation to the old and familiar.

As Lakoff and Johnson [[6](http://firstmonday.org/ojs/index.php/fm/article/view/3848/3270#6)] suggest, metaphorical language used to describe and communicate can serve as a window into conceptual systems that power human understanding and, ultimately, actions. In fact, many have come to see metaphors as not merely tools for understanding and describing the world, but as at least partially constitutive of that world [[7](http://firstmonday.org/ojs/index.php/fm/article/view/3848/3270#7)]. Metaphors not only work as cognitive but also normative “structuring devices” [[8](http://firstmonday.org/ojs/index.php/fm/article/view/3848/3270#8)]. They shape how we understand the way the world is, but also how it should be and the actions that we take based on these beliefs. Thus, while we cannot avoid or get beyond metaphor to absolutely literal and “objective” language, nonetheless we should be cautious and reflexive about our use of metaphors because they “carry with them, often covertly and insidiously, natural ‘solutions’” [[9](http://firstmonday.org/ojs/index.php/fm/article/view/3848/3270#9)]. Not only can metaphors limit our vision and understanding of the world, but they can also constrain our possible avenues of action [[10](http://firstmonday.org/ojs/index.php/fm/article/view/3848/3270#10)].

This is the case because metaphors do not just work individually or in isolation but collectively and systematically. First, they help to structure collective, human knowledge. This is where the use of metaphorical language helps to bridge the gap between individual human cognition and collective understanding and action. Scholars and practitioners alike of law (Lamond, 2006; Nerhot, 1991; Weinreb, 2005; Hibbitts, 1994), the natural sciences (Wyatt, 2004; Keller, 1995; Cowan, et al., 1999), foreign policy (Khong, 1992; Saperstein, 1997; Jervis, 1976) and military affairs (Lawson, 2011a; Bousquet, 2009; Paparone, 2008; Libicki, 1997) have all noted the central role of metaphors and analogies to the production of knowledge in these fields. Second, metaphors work together in systems and, therefore, come with “entailments” [[11](http://firstmonday.org/ojs/index.php/fm/article/view/3848/3270#11)]. This means that a root metaphor can bring with it other, related metaphors. In the case of the cyber war metaphor, notions of “attack,” “offense,” “defense,” “battlefields,” and “domains of war” are all entailments of the war metaphor. The very idea that the law of war can and should apply to cyber conflict and other malicious cyber activities is an entailment of employing a war metaphor, as is the resort to war–related analogies like Cold War nuclear deterrence. These two entailments, law of war and Cold War nuclear deterrence, will be the focus of the next two sections.

#### The alternative is a prior question—their invocation of extinction scenarios warps decision making and causes serial policy failure—critical interrogation is key

Brito and Watkins, 11 [Working paper, LOving the cyber bomb? the dangers of threat inflation in cybersecurity pol icy By Jerry Brito and Tate Watkins, \*Senior Research Fellow, Mercatus Center at George Mason University. J.D., George Mason University School of Law, 2005; B.A., Political Science, Florida International University, 1999 The authors would like to thank Jerry Ellig, Jim Harper, Adam Thierer, Dan Rothschild, and Richard Williams for their helpful comments on drafts of this article. \*\*Research Associate, Mercatus Center at George Mason University. M.A., Economics, Clemson University, 2008; B.A., Economics, Clemson University, 2007, April 2011, p pdf]

CONCLUSION Cybersecurity is an important policy issue, but the alarmist rhetoric coming out of Washington that focuses on worst-case scenarios is unhelpful and dangerous. Aspects of current cyber policy discourse parallel the run-upto the Iraq War and pose the same dangers. Pre-war threat inflation and conflation of threats led us into war on shaky evidence. By focusing on doomsday scenarios and conflating cyber threats, government officials threaten to legislate, regulate, or spend in the name of cybersecurity based largely on fear, misplaced rhetoric, conflated threats, and credulous reporting. The public should have access to classified evidence of cyber threats, and further examination of the risks posed by those threats, before sound policies can be proposed, let alone enacted. Furthermore, we cannot ignore parallels between the military-industrial complex and the burgeoning cybersecurity industry. As President Eisenhower noted, we must have checks and balances on the close relationships between parties in government, defense, and industry. Relationships between these parties and their potential conflicts of interest must be considered when weighing cybersecurity policy recommendations and proposals. Before enacting policy in response to cyber threats, policymakers should consider a few things.First, they should end the cyber rhetoric. The alarmist rhetoric currently dominating the policy discourse is unhelpful and potentially dangerous. Next, they should declassify evidence relating to cyber threats. Overclassification is a widely acknowledged problem, and declassification would allow the public to verify before trusting blindly. They must also disentangle the disparate cyber threats so that they can determine who is best suited to address which threats. In cases of cyber crime and cyber espionage, for instance, private network owners may be best suited and may have the best incentive to protect their own valuable data, information, and reputations. After disentangling threats, policymakers can then assess whether a market failure or systemic problem exists when it comes to addressing each threat. Finally, they can estimate the costs and benefits of regulation and its alternatives and determine the most effective and efficient way to address disparate cyber threats. No one wants a ―cyber Katrina‖ or a ―digital Pearl Harbor.‖ But honestly assessing cyber threats and appropriate responses does not mean that we have to learn to stop worrying and love the cyber bomb.

### 1nc pres powers

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

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

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

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

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

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

BEFORE THE CRISIS

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

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

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

DURING THE CRISIS

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

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

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

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

#### But even temporary restraints 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.

#### The impact is heg

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

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

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

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

The Changing Threat

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

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

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

• staying economically competitive with Japan;

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

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

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

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

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

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

• combating terrorism driven by sectarian or religious extremism;

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

• border security and illegal immigration;

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

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

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

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

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

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

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

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

### 1nc doj cp

#### COUNTERPLAN: The President should issue an Executive Order establishing a presumptive legal framework requiring that offensive cyber operations be funded, conducted, and directed pursuant to Title 50 United States Code § 413b. The Executive Order should also require consultation with the Office of Legal Counsel regarding offensive cyber operations. The Office of Legal Counsel should publish a written opinion in support of the legal framework.

#### Presumptive legal regime solves—this is what Brecher recommends—net benefits are politics and flexibility

**Brecher 2012** – JD 2013, University of Michigan Law School (December, Aaron P., Michigan Law Review, “NOTE: Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations”, 111 Mich. L. Rev. 423, Lexis)

Finally, while urging Congress to clarify the law governing cyberattacks may be advisable, one should consider the reality that such legislation is very difficult to pass. Congress is notoriously slow to act and legislation is difficult to push through the arduous process to enactment. There are numerous stages in the process at which a bill, even on an issue of significant importance, can be stalled or killed. n170 For example, a bill may not be considered by its corresponding committee in either House, may be bogged down with amendments that cause it to lose support, or be subject to the Senate filibuster, among other "vetogates." n171 In the case of clarifying the appropriate procedures for conducting a cyberattack, there may be concern that such legislation, either by imposing substantive constraints or reporting requirements, will improperly burden the president on a national security issue of increasing importance. Congress as an institution tends to acquiesce to presidential prerogative in national security matters. n172 Further, given that Congress has recently addressed cyberattacks in legislation, albeit in an unhelpfully vague provision, n173 the possibility of expansive legislative clarification in the near future seems even more remote.

An executive order making the covert action regime presumptive for cyberattacks gives the executive branch considerable flexibility while also ensuring notification to Congress. A presumptive regime helps remove current confusion within the executive branch, as well as allows cyberattack policy to develop with members of Congress gaining access to information that may be helpful in crafting later statutory controls on the use of cyberattacks. Moreover, some proposals for immediate legislative intervention overestimate congressional will to legislate in this field and underestimate the protections for interbranch collaboration offered by the covert action regime.

#### The counterplan pre-commits to a DOJ process that effectively restrains the executive

**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.

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

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

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

### Turf War

#### Grid – 1ac Dykes says physical issues collapse the grid inevitability

Dykes and Melton 13

(Aaron Dykes is a co-founder of TruthstreamMedia.com. As a writer, researcher and video producer who has worked on numerous documentaries and investigative reports, he uses history as a guide to decode current events, uncover obscure agendas and contrast them with the dignity afforded individuals as recognized in documents like the Bill of Rights” Big Sis Says Cyber Attack WILL Bring Down Power Grid: ‘When Not If’” – Quoting Homeland Security Chief Janet Napolitanbo. <http://truthstreammedia.com/big-sis-says-cyber-attack-will-bring-down-power-grid-when-not-if/> 9/5 //kjl)

Outgoing Homeland Security chief Janet Napolitano issued an ‘open letter’ to her successor warning that a cyber or physical event that knocks out the power grid will occur – and it is not a question of “if” but “when.”

#### No impact to grid failure

Douglas Birch 10-1, former foreign correspondent for the Associated Press and the Baltimore Sun who has written extensively on technology and public policy, 10/1/12, “Forget Revolution,” Foreign Policy, http://www.foreignpolicy.com/articles/2012/10/01/forget\_revolution?page=full

Government officials sometimes describe a kind of Hieronymus Bosch landscape when warning of the possibility of a cyber attack on the electric grid. Imagine, if you will, that the United States is blindsided by an epic hack that interrupts power for much of the Midwest and mid-Atlantic for more than a week, switching off the lights, traffic signals, computers, water pumps, and air conditioners in millions of homes, businesses, and government offices. Americans swelter in the dark. Chaos reigns!

Here's another nightmare scenario: An electric grid that serves two-thirds of a billion people suddenly fails in a developing, nuclear-armed country with a rich history of ethnic and religious conflict. Rail transportation is shut down, cutting off travel to large swathes of the country, while many miners are trapped underground.

Blackouts on this scale conjure images of civil unrest, overwhelmed police, crippled hospitals, darkened military bases, the gravely injured in the back of ambulances stuck in traffic jams.

The specter of what Defense Secretary Leon Panetta has called a "digital Pearl Harbor" led to the creation of U.S. Cyber Command, which is tasked with developing both offensive and defensive cyber warfare capabilities, and prompted FBI Director Robert Mueller to warn in March that cyber attacks would soon be "the number one threat to our country." Similar concerns inspired both the Democrats and Republicans to sound the alarm about the cyber threat in their party platforms.

But are cyber attacks really a clear and present danger to society's critical life support systems, capable of inflicting thousands of casualties? Or has fear of full-blown cybergeddon at the hands of America's enemies become just another feverish national obsession -- another of the long, dark shadows of the 9/11 attacks?

Worries about a large-scale, devastating cyber attack on the United States date back several decades, but escalatedfollowing attacks on Estonian government and media websites during a diplomatic conflict with Russia in 2007. That digital ambush was followed by a cyber attack on Georgian websites a year later in the run-up to the brief shooting war between Tbilisi and Moscow, as well as allegations of a colossal, ongoing cyber espionage campaign against the United States by hackers linked to the Chinese army.

Much of the concern has focused on potential attacks on the U.S. electrical grid. "If I were an attacker and I wanted to do strategic damage to the United States...I probably would sack electric power on the U.S. East Coast, maybe the West Coast, and attempt to cause a cascading effect," retired Admiral Mike McConnell said in a 2010 interview with CBS's 60 Minutes.

But the scenarios sketched out above are not solely the realm of fantasy. This summer, the United States and India were hit by two massive electrical outages -- caused not by ninja cyber assault teams but by force majeure. And, for most people anyway, the results were less terrifying than imagined.

First, the freak "derecho" storm that barreled across a heavily-populated swath of the eastern United States on the afternoon of June 29 knocked down trees that crushed cars, bashed holes in roofs, blocked roads, and sliced through power lines.

According to an August report by the U.S. Department of Energy, 4.2 million homes and businesses lost power as a result of the storm, with the blackout stretching across 11 states and the District of Columbia. More than 1 million customers were still without power five days later, and in some areas power wasn't restored for 10 days. Reuters put the death tollat 23 people as of July 5, all killed by storms or heat stroke.

The second incident occurred in late July, when 670 million people in northern India, or about 10 percent of the world's population, lost power in the largest blackout in history. The failure of this huge chunk of India's electric grid was attributed to higher-than-normal demand due to late monsoon rains, which led farmers to use more electricity in order to draw water from wells. Indian officials told the media there were no reports of deaths directly linked to the blackouts.

But this cataclysmic event didn't cause widespread chaos in India -- indeed, for some, it didn't even interrupt their daily routine. "[M]any people in major cities barely noticed the disruption because localized blackouts are so common that many businesses, hospitals, offices and middle-class homes have backup diesel generators," the New York Timesreported.

The most important thing about both events is what didn't happen. Planes didn't fall out of the sky. Governments didn't collapse. Thousands of people weren't killed. Despite disruption and delay, harried public officials, emergency workers, and beleaguered publics mostly muddled through.

The summer's blackouts strongly suggest that a cyber weapon that took down an electric grid even for several days could turn out to be little more than a weapon of mass inconvenience.

That doesn't mean the United States can relax. James Lewis, director of the technology program at the Center for Strategic and International Studies, believes that hackers threaten the security of U.S. utilities and industries, and recently penned an op-ed for the New York Times calling the United States "defenseless" to a cyber-assault. But he told Foreign Policy the recent derecho showed that even a large-scale blackout would not necessarily have catastrophic consequences.

#### DOD would be fine

**Sorebo**, chief cybersecurity technologist and vice president – SAIC, consultant for the government and industry in cybersecurity and smart grid technology, MA – GW University, JD – Catholic U, 2/8/**’10**

(Gib, “The Many Shades of Project Grey Goose,” RSA Conference)

As I noted in my previous post about a recent 60 Minutes segment, we often rely on rumor and innuendo as the basis for journalism in critical infrastructure. If a current or former high-ranking public official says he heard something, then it must be true. Unfortunately, Project Grey Goose, whose stated objective was “to answer the question of whether there has been any successful hacker attacks against the power grid, both domestically and internationally,” falls victim to much of the same **fear, uncertainty, and doubt.** As in all media reports, there are factual bases for findings that exaggerated the true state of the electric grid. For example, their statement that “90% of the U.S. Department of Defense's (DOD) most critical assets are entirely dependent on the bulk power grid” is presumably taken from a Government Accountability Office (GAO) report noting that 85 percent of critical DoD assets rely on commercial electric power. However, the “entirely dependent” statement ignores the wide variety of backup generators that support these assets, and while not adequate, are nonetheless a significant contribution to the reliability of critical DoD assets. So rather than sounding the alarm that military bases, for the most part, do not have their own power plants, a better response would have been to suggest that the military expand the use of backup generators and micro-grid technology to augment commercial power as the GAO report does. Of course, that would not grab as many headlines. ¶ Similarly, the Grey Goose Report note that “[m]ost Grid asset owners and operators have been historically resistant to report cyber attacks against their networks as well as make the necessary investments to upgrade and secure their networks.” While it may be true that incidents are underreported, the implication that the electricity industry is deficient compared to other industrial sectors is misleading or even wrong. Most companies do not report security incidents unless legally required to or to mitigate the harm to their customers, and even then the evidence of an intrusion and theft of data had better be definitive. Lost laptops and backup tapes are one thing. You cannot say they are within your control if they go missing. However, organizations in general have a horrible record of even detecting when a successful attack has occurred let alone what was taken. Like many industries, the electricity industry has struggled to pinpoint the source of many disruptions associated with their network infrastructure. **More often than not, the problems were inadvertent and not malicious.** We can certainly do better, and with technologies like Smart Grid, we have to. However, calling out the electricity industry for failures that we’ve all been subjected to is not very productive.¶ The other statements made about the vulnerabilities in the electricity sector are misleading. While North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) still does not apply to many aspects of the electrical grid for a variety of jurisdictional reasons, where it does apply, it is not voluntary, as the many utilities subjected to rigorous and painful audits can attest. The process may not be perfect, but utilities are being subjected to scrutiny. Moreover, anyone receiving stimulus grants under the Department of Energy’s Smart Grid grant program has to demonstrate a very rigorous approach to cyber security through the entire implementation life cycle. ¶ Finally, the report cites a litany of vulnerabilities discovered in various Smart Grid devices such as meters and perpetuates speculation about the potential impact on the grid without considering compensating security controls. **Nowhere does the report cite names of vulnerable vendors** nor does it provide any information about whether these vulnerable products have actually been implemented. It’s like saying that tests on personal computers showed that they were vulnerable to attack without identifying the operating system or the applications running on the device.

#### No cyber threat

**Clark**, MA candidate – Intelligence Studies @ American Military University, senior analyst – Chenega Federal Systems, 4/28/**’12**

(Paul, “The Risk of Disruption or Destruction of Critical U.S. Infrastructure by an Offensive Cyber Attack,” American Military University)

This increased focus on cyber-security has led to concern that the perceived risk is greater than the actual risk, a situation that has resulted in an imbalance between security and privacy and civil liberties (American Civil Liberties Union 2012). In 1993 a Rand Corporation paper predicted that “cyberwar is coming” and twenty years later the prediction is the same and critics argue that cyber-war is “more hype than hazard” (Rid 2012). A review of high profile cyberattacks shows that, with the exception of Stuxnet and the limited Israeli disruption of Syrian air defense networks, most cyber-attacks are categorized as information theft, network compromise, or website defacement (Lewis 2012). Even the high profile threat of an “Electronic Pearl Harbor” (Bronk 2009), despite being repeated by senior government officials like U.S. Defense Secretary Leon Panetta (Rid 2012) , has been found to be only a slight possibility (Wilson 2005). There is no doubt that cyber-security is important. Businesses recognize this importance and spent more than $80 billion on computer network security in 2011 (Johnson 2012) and the federal government is expected to be spending $10.5 billion per year by 2015 (Brito and Watkins 2012). This response is appropriate when data shows that the vast majority of cyber-attacks are focused on espionage and the theft of intellectual property. It is not clear why senior government officials and corporate executives focus on high-impact low-probability events and engage in “alarmist rhetoric” (Brito and Watkins 2011) that skews the public perception of risk and creates an atmosphere of fear. The danger of an inappropriate response in reaction to an inflated threat and prevalence of misinformation is exemplified by the politicized intelligence that led to the invasion of Iraq in 2003 (Brito and Watkins 2011). Understanding how information on the risk posed by cyber-attacks is poorly communicated and the public reaction to an increased perception of risk – fear – is important in identifying when the perceived risk is greater than the actual risk; when risk is more hype than threat. Critics of current cyber-security policy believe that threats are being conflated; this results in a threat appearing larger than it is (Brito and Watkins 2012). In essence, a wide variety of cyber-activity – political and social activity, criminal activity for profit, espionage, and offensive cyber-attack – are treated as presenting the same level of threat. There is a wide divide between easily mounted and easily defended denial of service attacks on public websites and high-potential cyber-weapons capable of severely disrupting or destroying critical infrastructure (Rid and McBurney 2012). The rise of automated tools that allow for low-level cyber-attacks to be easily mounted has caused a significant increase in the number of cyber-attacks, a statistic often cited as proof of increased risk, but qualified cyber-security organizations have discarded the number of cyber-attacks as a metric and consider it to be meaningless as a method of assessing the scope and effects of cyber-attacks (Wilson 2005). Without differentiating between generic malicious software and highly specialized and targeted offensive cyber-attacks, the risk of cyber-attacks on critical infrastructure systems like the electrical grid cannot be properly assessed.

### International Law

#### No threshold for their scenario – Williams says an attack can be misperceived – 1ac YI says there have been 47,000 of those

Yi 13 [Xiaoxiong Yi is the director of Marietta College's China Program.] June 22, 2013 “The coming of China-U.S. cyber war” http://www.mariettatimes.com/page/content.detail/id/552547.html

Verizon's 2013 Data Breach Investigations Report studied more than 47,000 cyber security incidents in 2012 and found that "96 percent of espionage cases were attributed to threat actors in China." Speaking on the findings of the report, Wade Baker, the managing principal of RISK Intelligence for Verizon, added, "State-affiliated actors tied to China are the biggest mover in 2012 - we used the word state affiliated that we absolutely know are part of the Chinese government or sponsored by the Chinese government directly." Internet censorship in China is already a reality and all flow of information in China is controlled. While more than 700 million Chinese people - approximately 30 percent of total Internet users worldwide - are netizens, Beijing's Great Firewall is blocking many major social networking and Western news websites, including Facebook, YouTube and Google search. Chinese government's Internet censorship has long been the target of American criticism and condemnation.

#### IOLD impact is laughable – its about one soldier violating trust and the violation of trust – no scenario for an escalating harm

#### Don’t solve soft power – Belk says conducting oco’s is bad – doesn’t say that covert oversight at all alters the perception of US soft power

#### No impact to cyber-attack – deterrence and rapid response solve misperception

**Fox 11**—Assistant Editor, InnovationNewsDaily (Stuart, 2 July 2011, “Why Cyberwar Is Unlikely ,” http://www.securitynewsdaily.com/cyberwar-unlikely-deterrence-cyber-war-0931/, RBatra)

In the two decades since cyberwar first became possible, there hasn't been a single event that politicians, generals and security experts agree on as having passed the threshold for strategic cyberwar. In fact, the attacks that have occurred have fallen so far short of a proper cyberwar that many have begun to doubt that cyberwarfare is even possible. The reluctance to engage in strategic cyberwarfare stems mostly from the uncertain results such a conflict would bring, the lack of motivation on the part of the possible combatants and their **shared inability to defend against counterattacks**. Many of the systems that an aggressive cyberattack would damage are actually as valuable to any potential attacker as they would be to the victim. The five countries capable of large-scale cyberwar (Israel, the U.S., the U.K., Russia and China) have **more to lose if a cyberwar were to escalate** into a shooting war than they would gain from a successful cyberattack. "The half-dozen countries that have cyber capability are deterred from cyberwar because of the fear of the American response. **Nobody wants this to spiral out of control,"** said James Lewis, senior fellow and director of technology and public policy at the Center for Strategic and International Studies in Washington, D.C. "The countries that are capable of doing this don't have a reason to," Lewis added. "Chinese officials have said to me, 'Why would we bring down Wall Street when we own so much of it?' They like money almost as much as we do." Big deterrent: retaliation Deterrence plays a major factor in preventing cyberwar. Attacks across the Internet would favor the aggressor so heavily that no country has developed an effective defense. Should one country initiate a cyberattack, the victim could quickly counter-attack, leaving both countries equally degraded, Lewis told InnovationNewsDaily. Even if an attacker were to overcome his fear of retaliation, the low rate of success would naturally give him pause. Any cyberattack would target the types of complex systems that could collapse on their own, such as electrical systems or banking networks. But experience gained in fixing day-to-day problems on those systems would allow the engineers who maintain them to **quickly undo damage caused by even the most complex cyberattack**, said George Smith, a senior fellow at Globalsecurity.org in Alexandria, Va. "You mean to tell me that the people who work the electrical system 24 hours a day don't respond to problems? What prevents people from turning the lights right back on?" Smith told SecurityNewsDaily. "And attacks on the financial system have always been a non-starter for me. I mean, [in 2008] the financial system attacked the U.S.!"

#### No China war

Robert J. **Art**, Fall **2010** Christian A. Herter Professor of International Relations at Brandeis University and Director of MIT's Seminar XXI Program The United States and the rise of China: implications for the long haul Political Science Quarterly 125.3 (Fall 2010): p359(33)

The workings of these three factors should make us cautiously optimistic about keeping Sino-American relations on the peaceful rather than the warlike track. The peaceful track does not, by any means, imply the absence of political and economic conflicts in Sino-American relations, nor does it foreclose coercive diplomatic gambits by each against the other. What it does mean is that the conditions are in place for war to be a low-probability event, if policymakers are smart in both states (see below), and that an **all-out war is** nearly **impossible** to imagine. By the historical standards of recent dominant-rising state dyads, this is no mean feat. In sum, there will be some security dilemma dynamics at work in the U.S.-China relationship, both over Taiwan and over maritime supremacy in East Asia, should China decide eventually to contest America's maritime hegemony, and there will certainly be political and military conflicts, but nuclear weapons should work to mute their severity because the security of **each state's homeland will never be in doubt** as long as each maintains a second-strike capability vis-a-vis the other. If two states cannot conquer one another, then the character of their relation and their competition **changes dramatically**. These three benchmarks--China's ambitions will grow as its power grows; the United States cannot successfully wage economic warfare against a China that pursues a smart reassurance (peaceful rise) strategy; and Sino-American relations are not doomed to follow recent past rising-dominant power dyads--are the starting points from which to analyze America's interests in East Asia. I now turn to these interests.

#### Soft power fails

**Rachman 9** [Gideon Rachman is the Economist's bureau chief in Brussels, June 1 http://www.ft.com/cms/s/0/e608b556-4ee0-11de-8c10-00144feabdc0.html]

Barack Obama is a soft power president. But the world keeps asking him hard power questions.

From North Korea to Guantánamo Bay, from Iran to Afghanistan, Mr Obama is confronting a range of vexing issues that cannot be charmed out of existence.

The problem is epitomised by the US president’s trip to the Middle East this week. Its focal point will be a much-trailed speech in Cairo on Thursday June 4, in which he will directly address the Muslim world.

The Cairo speech is central to Mr Obama’s efforts to rebuild America’s global popularity and its ability to persuade – otherwise known as soft power. The president has been trying out potential themes for the speech on aides and advisers for months. He is likely to emphasise his respect for Islamic culture and history, and his personal links to the Muslim world. He will suggest to his audience that both the US and the Islamic world have, at times, misjudged and mistreated each other – and he will appeal for a new beginning.

George W. Bush launched a military offensive in the Middle East. Mr Obama is launching a charm offensive.

There is plenty to be said for this approach. Mr Bush embroiled America in a bloody war in Iraq that strengthened Iran and acted as a recruiting sergeant for America’s enemies. Mr Obama’s alternative strategy is based on diplomacy, engagement and empathy.

Mr Bush had a shoe thrown at him in his last appearance in the Middle East. So if Mr Obama receives his customary standing ovation in Cairo, that will send a powerful symbolic message. But the president should not let the applause go to his head. Even if his speech is a success, the same foreign-policy problems will be sitting in his in-tray when he gets back to the Oval Office – and they will be just as dangerous as before.

In particular, there is chatter in official Washington that the Israelis may be gearing up to attack Iran’s nuclear facilities before the end of the year. The Obama administration is against any such move and it is normally assumed that Israel would not dare to pull the trigger without the go-ahead from Washington – not least because the Israelis would have to fly across US-controlled airspace to get to their targets. But the Americans do not have a complete veto over Israel’s actions. One senior US official asks rhetorically: “What are we going to do? Shoot down their planes?”

A conflict between Israel and Iran would scatter the Obama administration’s carefully laid plans for Middle East peace to the winds. It would also make talk of improving American soft power around the world seem beside the point. The immediate task would be to prevent a wider regional war.

In the meantime, the US will press on with the effort to achieve peace between the Israelis and the Palestinians. But even that goal is unlikely to be advanced much by Mr Obama’s trip to the Middle East. Many in the audience in Cairo and in the wider Islamic world will want and even expect the new president to lay out a complete vision for a peace settlement and to apply unambiguous pressure on Israel. For reasons of domestic politics, diplomacy and timing, Mr Obama is highly unlikely to do this.

Yet while his Arab audience may be disappointed by what he has to say about the Middle East peace process, Mr Obama is already facing an increasingly tense relationship with the new Israeli government. The administration has now clashed openly with the Israelis over the Netanyahu government’s tolerance of expanded settlements in occupied Palestinian land.

Mr Obama is also running up against the limits of soft power elsewhere. Closing the prison camp at Guantánamo was meant to be the ultimate tribute to soft power over hard power. The Obama team argued consistently that the damage that Guantánamo did to America’s image in the world outweighed any security gains from holding al-Qaeda prisoners there. Yet, faced with the backlash against releasing the remaining 240 prisoners or imprisoning them in the US, the Obama administration has back-tracked. It is not clear whether Guantánamo will be closed on schedule or what will happen to the riskier-sounding prisoners, who may still be held indefinitely. The much-criticised military trials are likely to be revived.

In Afghanistan, Mr Obama is trying a mixture of hard and soft power. There will be a military surge – but also a “civilian surge”, designed to build up civil society and governance in Afghanistan. Old hands in Washington are beginning to shake their heads and mutter about Vietnam.

Mr Obama’s preferred tools of diplomacy, engagement and charm do not seem to be of much use with Kim Jong-il of North Korea, either. The North Koreans have just tested a nuclear weapon – leaving the Obama administration scratching its head about what to do.

The president’s charisma and rhetorical skill are real diplomatic assets. If Mr Obama can deploy them to improve America’s image and influence around the world, that is all to the good. There is nothing wrong with trying to re-build American “soft power”.

The danger is more subtle. It is that President Yes-we-can has raised exaggerated hopes about the pay-off from engagement and diplomacy. In the coming months it will become increasingly obvious that soft power also has its limits.

#### Single reforms—soft power is doomed and their authors are clowns

**Afrasiabi, 07 –** PhD and author on Iran (Kaveh, Asia Times, “The illusion of American 'smart power'”

http://www.atimes.com/atimes/Middle\_East/IK13Ak02.html)

Over the years, Nye has been anything but shy about claiming credit for his singular contributions to the theories of power, yet much of it is undeserved, as any competent sociologist probing the history of thoughts, running from Max Weber to Antonio Gramsci to Michel Foucault, regarding the subtleties and complexities of power, would readily attest. Nye's theory is an excellent theory that can never be refuted precisely because it cannot be pinned down, its core assumptions too nebulous to lend themselves to scientific parsimony.

Aside from contradictory notions and simplistic truisms, eg, "strengthen America" by "bolstering its soft power", the report is distinguished by its unabashed glorification of the American military - that has "never been put in the service of building a colonial empire in the manner of European militaries". A little micro-focusing on post September 11, 2001, American interventionism, curiously absent in the whole report, would arguably lead to a diametrically different conclusion. Too much focus on power actually distracts from conscious policies.

To be sure, the authors of the "smart power" report are not void of praise for European imperialism, particularly the 19th-century British imperialism that, they claim, contains precious lessons for the "smarter" America of the 21st century. Their point - about "legitimized British power in the eyes of others" - is clearly Eurocentric and blind to the perception of the colonized populations who eventually removed the chains one way or another. But that is a separate story.

Tightly packed into the report is the incontrovertible fact that American standing in the world has suffered. Yet, any report focused on "how America wields power in the world" that omits a serious consideration of the multiple causes, such as the American quagmire in Iraq, cannot possibly be taken seriously.

The trouble is, however, that both authors of the report are on record supporting the 2003 invasion, although in fairness to Nye, he did criticize it as the "right war at the wrong time", and targeted President George W Bush's failure to "neglect of allies and institutions" that have created a "a sense of illegitimacy". [3] The problem with Nye's approach, however, is the failure to recognize that the "pretextual" war against a sovereign nation in the Middle East, which bypassed the UN, could not possibly have the required legitimacy even if professor Nye and his arsenal of "soft power" pills were in order at the White House; in a word, contrary to Nye, it was the wrong war at the wrong time.

Formerly of the US State Department, Francis Fukuyama has agreed that procuring legitimacy has to do with "justice". In other words, an unjust war cannot be called legitimate no matter what the verbal acrobatics by the likes of Nye and others, who pay lip service to the "de-legitimating" US Middle East policies, ie, neglecting the Middle East peace process, mentioned only in passing in the above-said report, without due consideration of the serious ramification of such neglects with respects to the threats facing the US today.

While side-stepping the Iraq issue with the lame excuse of "broader" perspectives that need to "replace the narrow lens focused on Iraq", the report gives several other reasons for the waning influence of US, ie, reactions to American-led globalization, US's "angry" response to September 11, perception of incompetence, and the side-effects of Cold War success as a lone superpower. Here, the authors conflate the long-term causes of power decline with the negative fall outs of questionable policies, such as with respect to US unilateralism.

Regarding the latter, Robert Jervis has correctly pointed at the structural causes of American unilateralism, chiefly the absence of external restraints to American power. In comparison, Nye and Armitage mention other nations resorting to the UN to "constrain" the US power, yet provide no analysis of why the US has fallen astray from "norm-based internationalism", the fact that it has to do with power dynamism and America's "totalizing" power grab at the global level, to borrow a term from the French philosophers Gilles Deleuze and Pierre-Felix Guattari.

In light of their benign, tolerant attitude toward the exercise of American power, even under the Bush administration, which is said to have used "elements of smart power", Nye and Armitage never really get to the bottom of their own frank admission that today many nations "resent US's unbounded dominance".

Instead of drawing from this insight the necessity of a multi-polar world order, the report on "smart power" is keen on maintaining America's "preeminence" in the world and the various ways to ensure it, simultaneously throwing ideas such as "shared leadership" and "accommodating rising powers". True to its contradictory nature, the report on the one hand admits that global politics is not a "zero-sum game" and, yet, in the same breath sends the message that "China can only become preeminent if the US continues to allow its own power of attraction to atrophy".

Flawed, inadequate diagnosis of the problems behind America's waning influence go hand-in-hand with equally inadequate prescriptions for a new US foreign policy, no matter how useful the insights on increasing foreign aid, closing down Guantanamo detention center, focusing on public diplomacy, that is, the usual panoply of "neo-liberal" recipes for action, with the sole exception of omitting the word "interdependence" previously highlighted in Nye's own writings.

These **recommendations are not far-reaching enough**, often tackling the symptoms rather than the real causes of problems, overall denoting a mindset that reflects policy continuity (with the past and the present) when discontinuity should have the upper hands signaling a real foreign policy reorientation away from the disastrous policies of the Bush presidency.

Clearly, such a reorientation is impossible short of a paradigmatic shift away from the core assumptions of the American hegemonic model (which are only superficially questioned in this report). Devoid of such a radical shift, the report's "smart power" has nested in it the elements of a vicious policy circle, bound to reintroduce failed US policies under new guises.

#### Reliance on i-law wrecks global democracy and turns their impacts

**Rivkin and Casey 2000** David B. Rivkin, Jr., American Enterprise Institute; and Lee A. Casey, Adjunct Professor of Law, George Mason School of Law, 2000/2001 WINTER, The National Interest

Although the Clinton administration has been generally supportive of the new international law, its key tenets create problems of the highest order for the United States. First, as a philosophical matter, any attack upon the principle of sovereignty threatens the very foundation of American democracy. Sovereignty is the necessary predicate of self-government. As Vattel wrote, a "sovereign State" is one that "governs itself, under what form so ever." Any limitation on sovereignty as an organizing principle, any "cession", to paraphrase Secretary Albright, is an abdication of the right of the citizens of the United States to be governed solely in accordance with their Constitution, and by individuals whom they have elected and who are ultimately accountable to them. To the extent that international law allows supranational, or extra-national, institutions to determine whether the actions of the United States are lawful, ultimate authority will no longer be vested in the American people, but in these institutions. Thus, for all of its humanitarian and democracy-building rhetoric, the new international law is profoundly undemocratic at its core. Indeed, with its lack of accountability and disdain for democratic practice (as opposed to rhetoric), it arguably poses the greatest challenge to Francis Fukuyama's anticipated global triumph of liberal democracy. If the aspirations of today's international law proponents were ever to prevail, the resulting international system would not remotely resemble a community of democratic nations.

#### This causes extinction

**Diamond 95** Larry, Senior Research Fellow, Hoover Institution, Co-Director, International Forum for Democratic Studies, Co-Editor, Journal of Democracy, October 1995, http://www.carnegie.org//sub/pubs/deadly/dia95\_01.html

OTHER THREATS This hardly exhausts the lists of threats to our security and well-being in the coming years and decades. In the former Yugoslavia nationalist aggression tears at the stability of Europe and could easily spread. The flow of illegal drugs intensifies through increasingly powerful international crime syndicates that have made common cause with authoritarian regimes and have utterly corrupted the institutions of tenuous, democratic ones. Nuclear, chemical, and biological weapons continue to proliferate. The very source of life on Earth, the global ecosystem, appears increasingly endangered. Most of these new and unconventional threats to security are associated with or aggravated by the weakness or absence of democracy, with its provisions for legality, accountability, popular sovereignty, and openness. LESSONS OF THE TWENTIETH CENTURY The experience of this century offers important lessons. Countries that govern themselves in a truly democratic fashion do not go to war with one another. They do not aggress against their neighbors to aggrandize themselves or glorify their leaders. Democratic governments do not ethnically "cleanse" their own populations, and they are much less likely to face ethnic insurgency. Democracies do not sponsor terrorism against one another. They do not build weapons of mass destruction to use on or to threaten one another. Democratic countries form more reliable, open, and enduring trading partnerships. In the long run they offer better and more stable climates for investment. They are more environmentally responsible because they must answer to their own citizens, who organize to protest the destruction of their environments. They are better bets to honor international treaties since they value legal obligations and because their openness makes it much more difficult to breach agreements in secret. Precisely because, within their own borders, they respect competition, civil liberties, property rights, and the rule of law, democracies are the only reliable foundation on which a new world order of international security and prosperity can be built.

#### Relying on i-law destroys US hegemony—we can’t all be like Europe

**Delahunty and Yoo, 05** (Robert, professor of law at the University of St. Thomas, and John, professor of law at Berkeley, 29 Harv. J.L. & Pub. Pol'y 291, “Against Foreign Law”, Fall, lexis)

Not only do their histories differ, but the United States and Europe face social and political circumstances so different as to counsel against any attempt to transplant constitutional values from one to the other. Europe has spent the last sixty years turning away from great power conflict and forging a cooperative enterprise that has solved the problem of German ambition and melded former enemies into a broad economic common market. 158 The tools for this amazing integration have not been military power and conquest, but rather supranational institutions, international law, and diplomacy. As Robert Kagan explains, "Europe is turning away from power, or to put it a little differently, it is moving beyond power into a self-contained world of laws and rules and transnational negotiation and cooperation." 159 The United States, on the other hand, relies on power rather than international law, employs military force as much as persuasion, and sees a world threatened by terrorist organizations, rogue nations, and the proliferation of weapons of mass destruction. 160 The difference between European and American attitudes has promoted the integration of Europe and permitted Europeans to attempt a new experiment in political organization. 161  [\*328]  The ability of European nations to put aside their historical animosities and engage in integration may be the result of an American security guarantee. The North Atlantic Treaty Organization and heavy American military presence in Western Europe deterred the Soviet Union and allowed European integration to proceed. As Lord Ismay, the first secretary general of NATO, famously quipped, the purpose of the Atlantic alliance was "to keep the Americans in, the Russians out, and the Germans down." 162 Existing disparities in defense spending have only grown since the end of the Cold War. In the 1990s, Europeans discussed increasing collective defense expenditures from $ 150 billion to $ 180 billion a year while the United States was spending $ 280 billion a year. 163 Ultimately, the Europeans could not, and had no political desire to, emulate high U.S. defense spending. The United States has become the "indispensable nation," without which Europe cannot handle even civil wars along its borders. Only the United States has the ability to project power globally. 164 Without the United States's willingness to engage in power politics, Europe would not have had the luxury to integrate. If this is correct, then European constitutional values are inappropriate for the United States. These values were developed because European governments enjoyed a different tradeoff between national security and individual liberties and economic prosperity. The United States, which has greater responsibility for keeping international peace and for guaranteeing stability in Europe, faces a different balance between the demands of national security and constitutional liberties.

#### Their ev is paranoia

Thomas P.M. Barnett 13, special assistant for strategic futures in the U.S. Defense Department's Office of Force Transformation from 2001 to 2003, is chief analyst for Wikistrat, March/April 2013, “Think Again: The Pentagon,” Foreign Policy, http://www.foreignpolicy.com/articles/2013/03/04/the\_pentagon?page=full

As for cyber serving as a stand-alone war-fighting domain, there you'll find the debates no less theological in their intensity. After serving as senior managing director for half a dozen years at a software firm that specializes in securing supply chains, **I'm deeply skeptical**. Given the uncontrollable nature of cyberweapons (see: Stuxnet's many permutations), I view them as the 21st century's version of chemical weapons -- **nice to have, but hard to use**. Another way to look at it is to simply call a spade a spade: Cyberwarfare is nothing more than espionage and sabotage updated for the digital era. Whatever cyberwar turns out to be in the national security realm, it will always be dwarfed by the industrial variants -- think cyberthieves, not cyberwarriors. But you wouldn't know it from the panicky warnings from former Defense Secretary Leon Panetta and the generals about the imminent threat of a "cyber Pearl Harbor."

#### Soft power emboldens aggressors --- causes numerous impacts including Russian adventurism

**Hawkins, 8** (John, Writer for Right Wing News, Human Events columnist, founder of the Rightroots group, awkins' work has been linked and discussed in numerous publications and on TV and radio shows including ABC News, BusinessWeek, C-Span, The Chicago Tribune, CNN and The Washington Post, “Hard Power, Soft Power & The Russo-Georgian War”, August 12)

There are a couple of columns I've read this morning about the Russo-Georgian war that have stuck with me. The first is by Spengler and while I don't agree with most of what he has to say, there were some points he made that shouldn't be discounted, If Russian Prime Minister Vladimir Putin were president of the United States, would Iran try to build a nuclear bomb? Would Pakistan provide covert aid to al-Qaeda? Would Hugo Chavez train terrorists in Venezuela? Would leftover nationalities with delusions of grandeur provoke the great powers? Just ask Georgia's President Mikheil Saakashvili, who now wishes he never tried to put his 4 million countrymen into strategic play. ...The **number of flashpoints for violence in the world has grown** in inverse proportion to their importance. The world is full of undead tribes with delusions of grandeur, and soon-to-be-extinct peoples who rather would go out with a bang than a whimper. Along similar lines, here's an excerpt from Victor Davis Hanson's spot-on take on the war, Together with the dismal NATO performance in Afghanistan, the Georgian incursion reveals the weakness of the Atlantic Alliance. The tragic irony is unmistakable. NATO was given a gift in not having made Georgia a member, since otherwise an empty ritual of evoking Article V's promise of mutual assistance in time of war would have effectively destroyed the Potemkin alliance. ...Indeed, **tired of European lectures, the Russians are now telling the world that soft power is, well, soft.** Moscow doesn't give a damn about the United Nations, the European Union, the World Court at the Hague, or any finger-pointing moralist from Geneva or London. Did anyone in Paris miss any sleep over the rubble of Grozny? ...**The Russians have sized up the moral bankruptcy of the Western Left.** They know that half-a-million Europeans would turn out to damn their patron the United States for removing a dictator and fostering democracy, but not more than a half-dozen would do the same to criticize their long-time enemy from bombing a constitutional state. The Russians rightly expect Westerners to turn on themselves, rather than Moscow -- and they won't be disappointed. Imagine the morally equivalent fodder for liberal lament: We were unilateral in Iraq, so we can't say Russia can't do the same to Georgia. (As if removing a genocidal dictator is the same as attacking a democracy). We accepted Kosovo's independence, so why not Ossetia's? (As if the recent history of Serbia is analogous to Georgia's.) We are still captive to neo-con fantasies about democracy, and so encouraged Georgia's efforts that provoked the otherwise reasonable Russians (As if the problem in Ossetia is our principled support for democracy rather than appeasement of Russian dictatorship). ...We talk endlessly about "soft" and "hard" power as if humanitarian jawboning, energized by economic incentives or sanctions, is the antithesis to mindless military power. In truth, there is soft power, hard power, and power-power -- the latter being the enormous advantages held by energy rich, oil-exporting states. Take away oil and Saudi Arabia would be the world's rogue state, with its medieval practice of gender apartheid. Take away oil and Ahmadinejad is analogous to a run-of-the-mill central African thug. Take away oil, and Chavez is one of Ronald Reagan's proverbial tinhorn dictators. Here's the reality of the world: most nations would cut the throats of their neighbors to put a dollar in their pockets, if they were only offered 50 cents to leave them alone. In other words, **the law of the jungle, not the law of tea room chats prevails on planet earth**. Does that mean that soft power is pointless? Not at all. However, the West has grown more and more reluctant to use even its soft power (See Iran for one perfect example of that) and since using old school European hard-power is abhorrent to much of the West, other than in the US and Israel, **they've let their capabilities and will erode to the breaking** point. So, when Iran builds nuclear weapons, OPEC works to keep oil prices high, or **Russia invades Georgia**, their expectation is that ultimately, we will respond with nothing more than empty words. The problem with this is that, despite what so many people would like to believe, most of the world is not comprised of civilized, reasonable, and good people. Therefore, **simply explaining our point of view to them and looking for common ground isn't going to fix the problem.** That doesn't mean we have to haul out the bombers for every situation, but it does mean that unless we respond to provocations like the one that has just occurred in Georgia in some sort of meaningful way, they will become more frequent and serious across the world as the bad actors deliberately test us to see how much they can get away with.

#### Global nuclear war

**Cohen, 97** (Ariel, Ph.D, Senior Policy Analyst, Heritage Foundation Reports, 1-25)

Much is at stake in Eurasia for the U.S. and its allies. Attempts to restore its empire will doom Russia's transition to a democracy and free-market economy. The ongoing war in Chechnya alone has cost Russia $ 6 billion to date (equal to Russia's IMF and World Bank loans for 1995). Moreover, it has extracted a tremendous price from Russian society. The wars which would be required to restore the Russian empire would prove much more costly not just for Russia and the region, but for peace, world stability, and security. As the former Soviet arsenals are spread throughout the NIS, these conflicts may **escalate** to include the use of **w**eapons of **m**ass **d**estruction. Scenarios including **unauthorized missile launches are especially threatening**. Moreover, if successful, a reconstituted Russian empire would become a major destabilizing influence both in Eurasia and throughout the world. It would endanger not only Russia's neighbors, but also the U.S. and its allies in Europe and the Middle East. And, of course, a neo-imperialist Russia could imperil the oil reserves of the Persian Gulf. n15 Vladimir Zhirinovsky, mouthpiece for the most irredentist elements in the Russian security and military services, constantly articulates this threat. Domination of the Caucasus would bring Russia closer to the Balkans, the Mediterranean Sea, and the Middle East. Russian imperialists, such as radical nationalist Vladimir Zhirinovsky, have resurrected the old dream of obtaining a warm port on the Indian Ocean. If Russia succeeds in establishing its domination in the south, the threat to Ukraine, Turkey, Iran, and Afganistan will increase. The independence of pro-Western Georgia and Azerbaijan already has been undermined by pressures from the Russian armed forces and covert actions by the intelligence and security services, in addition to which Russian hegemony would make Western political and economic efforts to stave off Islamic militancy more difficult. Eurasian oil resources are pivotal to economic development in the early 21st century. The supply of Middle Eastern oil would become precarious if Saudi Arabia became unstable, or if Iran or Iraq provoked another military conflict in the area. Eurasian oil is also key to the economic development of the southern NIS. Only with oil revenues can these countries sever their dependence on Moscow and develop modem market economies and free societies. Moreover, if these vast oil reserves were tapped and developed, tens of thousands of U.S. and Western jobs would be created. The U.S. should ensure free access to these reserves for the benefit of both Western and local economies.

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

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

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

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

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

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

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

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

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

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

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

#### He just needs to stay the course

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### healthcare warrant

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

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

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

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

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

#### The House will cave to the Senate deal so they can save strength for the debt fight

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

Republicans controlling the House of Representatives planned a vote Friday to ship to the Senate a measure that would prevent a government shutdown but cripple the signature legislative accomplishment of President Barack Obama's first term.

The House was set to vote on a temporary spending bill that would fund the government until Dec. 15, but also kill Obama's health care overhaul. The health care provision, however, has almost no chance of passing the Democratic-led Senate. Obama said Thursday he would veto it if it passed anyway.

That could create an impasse that leads to a shutdown. But more likely, Republicans will eventually accept the Senate version of the funding bill — with the health care measure stripped out of it. Republican leaders are wary of being blamed for a shutdown. And avoiding this fight would also allow them to focus on a bigger battle later this year over raising the government's borrowing authority.

### winners win

#### **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."

### popular

#### No turns – very little Congressional support exists to constrain the President

**Bradley and Morrison, 12** - \* William Van Alstyne Professor of Law, Duke Law School AND \*\* Isidor and Seville Sulzbacher Professor of Law, Columbia Law School (Curtis and Trevor, “ Historical Gloss and the Separation of Powers” 126 Harv. L. Rev. 411, lexis)

In addition to the veto limitation, Congress faces substantial collective action problems that are not present, at least to the same degree, in the executive branch. n124 Because Congress is a plural body, all of its members benefit from the protection and enhancement of legislative authority even if some of them do not contribute to the effort. As a result, each individual member has relatively little incentive to expend resources trying to increase or defend congressional power, since he or she will not be able to capture most of the gains. n125 Therefore, "even [\*441] when presidents are clearly taking action to push out the boundaries of their power, Congress will not tend to vote or respond on that basis, and will not, as a result, be able to defend or promote its institutional power very effectively." n126

### pc key

#### Political capital is key to avoid making concessions on the debt ceiling

**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.

#### Concessions will split the Democratic base and make a deal impossible

**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.

#### New controversial agenda items undermine White House leverage in the debt ceiling

**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>)

For the White House, that would have left two options, Senate aides said, both unpalatable. The first would have been to lean on the Democratic “no” votes, asking members to agree to pass Mr. Summers out of committee even if they intended to vote against him on the Senate floor. But the White House had not laid the groundwork for such a strategy. Some Democratic offices had not heard from White House representatives about the nomination at 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.

#### Political capital is key to drumming up public support to pressure the GOP

**Meet the Press, 9/15/13** (NBC News, lexis) **Woodward = Bob Woodward, investigative journalist.**

GREGORY: Well, we`ll see.

But I want to bring up a point with about a minute left. You know, Syria is now going to get mired in whether this agreement is lived up to or not. We`ve got a budget battle that`s brewing again with the debt ceiling.

But, you think this is the next crisis that Obama is facing with Congress. Are we going to raise the debt ceiling? Will he negotiate? He says...

WOODWARD: And this is really serious. Back in 2011, when the crisis visited them, the Secretary of the Treasury Tim Geithner was running around and saying if we don`t fix this, we could trigger a depression worse than the 1930s. And when I talked to Obama about this, he said, it was the most intense three weeks of his presidency. More than Osama bin Laden and so forth.

So -- and the Republicans are out here, a group of them in the House, essentially using extortion and blackmail methods to say, if we don`t defund Obamacare we`re not going to do the routine things of government.

PARKER: Well, we`re at a game of chicken at this point. And they are not -- no one thinks they`re going to defund Obama, not even the people pushing for it.

And at some point, you know, the Republicans are going to have to blink and they`re going to fund it. If they pass a bill that doesn`t include funding for Obamacare, then the Senate won`t pass the bill and, you know, somebody`s got to blink. We`re not going to shut down government. We can`t.

NAVARRO: But let`s be I think fair to the Republicans here. It`s not all Republicans saying let`s shut down the government if we don`t defund Obamacare. So I don`t think it`s fair to paint it as the Republicans, because the Republicans that have been here today, including John McCain, have been very much against this and saying...

WOODWARD: Yes, it`s the 40 extremists that`s who`s doing it.

PARKER: The insane caucus.

WOODWARD: You used it.

GREGORY: We`ll leave it there.

NAVARRO: You`re going to get a lot of flak from mental health advocates.

PARKER: Never had that happen.

GREGORY: All right, thank you all very much. We`ll leave it there.

Coming up next the future of our economy five years after the biggest financial crisis since the Great Depression. Among our guests, former Treasury Secretary Hank Paulson and CNBC`s Maria Bartiromo along with former Congresswoman Barney Frank on where we are five years later.

First our political collector Chuck Todd will be along with his "First Read Sunday." What to look for in the week ahead in politics. Back here in just a moment.

GREGORY: We`re back with more politics. Our political director Chuck Todd with his "First Read Sunday."

We just talked about the debt ceiling business. You`re looking at it this, this week. That of our poll.

CHUCK TODD, NBC NEWS CORRESPONDENT: We did. And we have a poll and we show the initial gauge of the public, the default position is don`t raise it. Look at this, 44 percent say no, 22 percent say yes. The White House pushing back on this poll saying you have to explain it to the people.

Well, this is the exact same place the debt ceiling was in April 2011.

Now, by the time if hit a crisis point, more of the public moved into in favor of raising the debt ceiling, but what this shows is the president has to use political capital and time to flip these numbers. It`s going to be a lot of work.

### key to econ

#### Even if a deal is eventually reached to prevent hitting the ceiling a protracted fight is economic sabotage – collapse growth, markets and confidence.

Johnson, 9/4/13 - Campaign for America's Future (Dave, “Fresh Hell When Congress Returns”, <http://truth-out.org/opinion/item/18597-fresh-hell-when-congress-returns>

There are two different levels of economic damage from a debt-ceiling fight. First there is the cost of the fight itself, as the world worries over whether Republicans would actually pull the trigger. The fact that they would talk about this at all causes considerable damage to growth and confidence. But the other level of damage – far more serious – comes if they actually do it. If the U.S. defaulted, the consequences to the country’s and world’s economic system are literally unimaginable. In January, The Washington Post looked at reports of the economic damage caused by the last debt-ceiling fight – the one that led to the economic damage of the “sequester.” The Post report summarized: The protracted, unsettling nature of the negotiations between the White House and Republicans dramatically slowed the recovery, economists conclude, looking back at the episode. Consumer confidence collapsed, reaching its worst level since the depths of the financial crisis. Hiring stalled, with the private sector creating jobs at its slowest pace since the economy exited the recession. The stock market plunged, sending the Standard & Poor’s 500-stock index down more than 10 percent. In the last debt-ceiling hostage battle, the government spent an extra $1.3 billion to borrow because of lender uncertainty over whether they would be paid back, according to the Government Accounting Office (GAO). Following the battle the Standard & Poor’s credit agency “downgraded” the U.S. credit rating, saying that any country that would even discuss default does not deserve the top rating. On top of that, the 10-year cost of higher interest rates from that fight is $18.9 billion. The unemployment rate increased as job growth was cut in half by the fight. Consumer confidence plunged “more than it did following the collapse of Lehman Brothers Holdings Inc. in 2008.” The consequences of actually letting the country default would begin with a panic in the stock market. And there would likely be a “run” on money markets, because the safety of the U.S. dollar is the foundation of the entire financial system. Next, many of the things the U.S. government must pay for would not be paid for. Because raising the debt ceiling is about allowing the government to get the money to pay for the things Congress has already spent money on, existing invoices would not be paid. So the government would default on paying for contracts, hospitals and doctors who had already performed services, fuel purchases, everything right up to payments to Social Security recipients and people trying to redeem their government bonds. The government would have to prioritize who to pay based on what is coming in from tax receipts, fees and market transactions, which would all drop dramatically as the world’s economy exploded. In any event, the government doesn’t have the computer systems in place to prioritize payments, and wouldn’t have the time or funds to get those running. There would be a dramatic rise in interest rates for borrowing. The United States would no longer be a “safe” borrower, so the price of loans – the interest rate – would go up. That would ripple out to the price of a loan to a business, a mortgage, a car loan and everything else that Americans finance. No matter how fast a default of the country was resolved, the shock to the confidence of the entire economic system would not go away. If the United States was no longer a “safe haven,” then a restructuring of the world’s core understanding of debt and repayment would follow. With the effect of the last fight now understood, any new fight has to be seen for what it is: “economic sabotage.”

#### 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.

#### PC key to quick debt ceiling resolution

PACE, 9/12/13 — AP White House Correspondent (Julie, “Syria debate on hold, Obama refocuses on agenda” <http://www.myrtlebeachonline.com/2013/09/12/3704721/obama-seeks-to-focus-on-domestic.html#storylink=cpy>)

WASHINGTON — With a military strike against Syria on hold, President Barack Obama tried Thursday to reignite momentum for his second-term domestic agenda. But his progress could hinge on the strength of his standing on Capitol Hill after what even allies acknowledge were missteps in the latest foreign crisis. "It is still important to recognize that we have a lot of things left to do here in this government," Obama told his Cabinet, starting a sustained White House push to refocus the nation on matters at home as key benchmarks on the budget and health care rapidly approach. "The American people are still interested in making sure that our kids are getting the kind of education they deserve, that we are putting people back to work," Obama said. The White House plans to use next week's five-year anniversary of the 2008 financial collapse to warn Republicans that shutting down the government or failing to raise the debt limit could drag down the still-fragile economy. With Hispanic Heritage Month to begin Monday, Obama is also expected to press for a stalled immigration overhaul and urge minorities to sign up for health care exchanges beginning Oct. 1. Among the events planned for next week is a White House ceremony highlighting Americans working on immigrant and citizenship issues. Administration officials will also promote overhaul efforts at naturalization ceremonies across the country. On Sept. 21, Obama will speak at the Congressional Black Caucus Gala, where he'll trumpet what the administration says are benefits of the president's health care law for African-Americans and other minorities. Two major factors are driving Obama's push to get back on track with domestic issues after three weeks of Syria dominating the political debate. Polls show the economy, jobs and health care remain Americans' top concerns. And Obama has a limited window to make progress on those matters in a second term, when lame-duck status can quickly creep up on presidents, particularly if they start losing public support. Obama already is grappling with some of the lowest approval ratings of his presidency. A Pew Research Center/USA Today poll out this week put his approval at 44 percent. That's down from 55 percent at the end of 2012. Potential military intervention in Syria also is deeply unpopular with many Americans, with a Pew survey finding that 63 percent opposing the idea. And the president's publicly shifting positions on how to respond to a deadly chemical weapons attack in Syria also have confused many Americans and congressional lawmakers. "In times of crisis, the more clarity the better," said Sen. Lindsey Graham, R-S.C., a strong supporter of U.S. intervention in Syria. "This has been confusing. For those who are inclined to support the president, it's been pretty hard to nail down what the purpose of a military strike is." For a time, the Obama administration appeared to be barreling toward an imminent strike in retaliation for the Aug. 21 chemical weapons attack. But Obama made a sudden reversal and instead decided to seek congressional approval for military action. Even after administration officials briefed hundreds of lawmakers on classified intelligence, there appeared to be limited backing for a use-of-force resolution on Capitol Hill. Rather than face defeat, Obama asked lawmakers this week to postpone any votes while the U.S. explores the viability of a deal to secure Syria's chemical weapons stockpiles. That pause comes as a relief to Obama and many Democrats eager to return to issues more in line with the public's concerns. The most pressing matters are a Sept. 30 deadline to approve funding to keep the government open — the new fiscal year begins Oct. 1 — and the start of sign-ups for health care exchanges, a crucial element of the health care overhaul. On Wednesday, a revolt by tea party conservatives forced House Republican leaders to delay a vote on a temporary spending bill written to head off a government shutdown. Several dozen staunch conservatives are seeking to couple the spending bill with a provision to derail implementation of the health care law. The White House also may face a fight with Republicans over raising the nation's debt ceiling this fall. While Obama has insisted he won't negotiate over the debt limit, House Speaker John Boehner on Thursday said the GOP will insist on curbing spending. "You can't talk about increasing the debt limit unless you're willing to make changes and reforms that begin to solve the spending problem that Washington has," the Ohio Republican said.

### 2nc food prices impact

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

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

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

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

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

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

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

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

perhaps even a global economic depression.

#### Global war

**Brown 7** – Director, Earth Policy Institute, (Lester R., 3-21, <http://www.earth-policy.org/press_room/C68/senateepw07>)

Urban food protests in response to rising food prices in low and middle income countries, such as Mexico, could lead to political instability that would add to the growing list of failing states. At some point, spreading political instability could disrupt global economic progress. Against this backdrop, Washington is consumed with "ethanol euphoria." President Bush in his State of the Union address set a production goal for 2017 of 35 billion gallons of alternative fuels, including grain-based and cellulosic ethanol, and fuel from coal. Given the current difficulties in producing cellulosic ethanol at a competitive cost and given the mounting public opposition to coal fuels, which are far more carbon-intensive than gasoline, most of the fuel to meet this goal might well have to come from grain. This could take most of the U.S. grain harvest, leaving little grain to meet U.S. needs, much less those of the hundred or so countries that import grain. The stage is now set for direct competition for grain between the 800 million people who own automobiles, and the world's 2 billion poorest people. The risk is that millions of those on the lower rungs of the global economic ladder will start falling off as rising food prices drop their consumption below the survival level.

### 2nc theory block

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

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

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

### 2nc doj cp overview

#### Err neg—best decision-maker for war powers—has the effect of legislation without the mechanism

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

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

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

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

### other authors

Lin:

For example, **the United States might choose to conduct its offensive cyber operations in such a way that cyberexploitations are clearly distinguishable** in a technical sense from cyber attack. Such a choice would reduce the operational flexibility of its instruments for offensive cyber operations by restricting the capabilities of an already inserted agent, but would minimize the likelihood that an adversary would mistake a cyberexploitation for a cyber attack

Biggs:

In a November report to Congress, DoD cited the need for cooperation as part of the impetus behind the creation of the new rules.¶ “As it continues to build and develop its cyber capabilities and organizational structures, **the Department is addressing operational needs by modifying its standing rules of engagement for commanders** to enable required decisions and take appropriate actions to defend critical information networks and systems

#### Chesney says legislation can HELP, not that it’s a necessary precondition—if we clue in Congressional actors, we solve this

Dycus doesn’t take a stance on plan vis a vis counterplan

**Some of these steps involve changes in ¶ congressional committees and responsibilities. Others would require ¶ coordination of cybersecurity functions within the executive branch. Still ¶ others would direct the President to keep Congress fully informed**

### brecher

#### Solves case and sets a durable precedent—restraint is better than legislation—the counterplan also solves interagency turf wars with a presumptive legal regime

**Brecher 2012** – JD 2013, University of Michigan Law School (December, Aaron P., Michigan Law Review, “NOTE: Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations”, 111 Mich. L. Rev. 423, Lexis)

III. Enacting the Covert Action Regime as Presumptive via Executive Order

Cyberattacks present a challenge for U.S. policymakers: they are difficult to locate within a clear legal category and there is a significant risk of uncontrollable consequences associated with their use. As a result, policymakers must choose a paradigm to govern their use that will ensure that the executive branch is held accountable and shares information with legislators.

This Part argues that the federal government should adopt the presumption that cyberattacks will be carried out under the covert action statute, and that the best way forward is for the president to issue an executive order making the covert action regime the presumptive framework for cyberattacks. It includes a brief discussion of why a president might willingly constrain her discretion by issuing the proposed executive order. It also shows that while the internal executive processes associated with both military and intelligence legal frameworks help mitigate the risk of cyberattacks' misuse by the executive, only the covert action regime provides an adequate role for Congress. Finally, this Part argues that the executive order option is preferable to one alternative proposed by scholars - enacting legislation - because of the practical difficulties of passing new legislation.

The covert action regime is the best approach for committing cyberattacks under the current law, as it would facilitate cooperation among executive agencies. The debate over which agency and set of legal authorities govern cyberattacks has caused no small amount of confusion. n145 Apparently, an Office of Legal Counsel ("OLC") memorandum declined to decide which legal regime should govern the use of cyberattacks, and the uncertainty has led to interagency squabbles, as well as confusion over how cyberattacks are to be regulated. n146 Establishing a presumptive answer would go far toward resolving this dispute.

Most importantly, adopting the covert action framework as the presumptive legal regime would be a principled way to help ensure constitutional legitimacy when the president orders a cyberattack. n147 There is also reason to believe that presidential power is intimately bound up in credibility, which in turn is largely dependent on the perception of presidential compliance with applicable domestic law. n148 A practice of complying with the covert action [\*448] regime for cyberattacks, both when they do not constitute a use of force and when it is unclear whether they do, is most likely to be in compliance with the law. Compliance with the covert action regime would also encourage covert action procedures in close cases without unduly restricting the executive's choice to use military authorities in appropriate circumstances.

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

A presumption in favor of the title 50 regime for cyberattacks is also desirable because it comports with the reality of an executive constrained by its own internal processes. Though energy, dispatch, and secrecy are among the key advantages the executive possesses over Congress, n151 the existence of a professional bureaucratic corps, including many lawyers, within the executive branch can foster necessary deliberation about important policy decisions. n152 For issues on which there is disagreement among executive agencies, such as a potential turf war between the military and intelligence communities over control of cyberattacks, advisory and adjudicatory bodies such as the Office of Legal Counsel can play a constructive role. n153 Even on an issue such as the best legal regime to govern cyberattacks, which is essentially [\*449] a policy choice, the friction between different competing agencies itself can serve a checking function. n154

#### Congress not key—careful XO clarifications solve better

**Brecher 2012** – JD 2013, University of Michigan Law School (December, Aaron P., Michigan Law Review, “NOTE: Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations”, 111 Mich. L. Rev. 423, Lexis)

Some scholars have proposed a contrary view. On this view, the speed with which cyberspace events can play out makes it important for the legislative role to be clearly established via statutory reform in advance of any cyberattack by the United States. n157 Thus, proposals for extensive legislative intervention would help ensure Congress's appropriate role in deciding whether or not to go to war. n158 The notion of congressional participation is well in line with the view of shared constitutional war powers articulated earlier in this Note. n159 Moreover, congressional participation comports with an ideal of government decisionmaking where the branch most immediately accountable to voters has been given a chance to express its view. Discussing the covert action regime, Stephen Dycus, professor of law at Vermont Law School, expresses concern that only the smaller group of intelligence committee leaders and the leaders of each House will be informed, and that in general the reporting requirements do not ensure that Congress will obtain the information it needs to play a meaningful role in the discussion. n160Additionally, there are concerns regarding the traditional military activities exception to the reporting requirements in the covert action statute. n161 Specifically, the worry is that the military might classify clandestine cyberwarfare activities as "operational preparation of the environment" and thereby skirt the reporting requirements, being accountable instead to the congressional armed services committees - which could create confusion. n162 Dycus's proposed legislative reforms include designating particular congressional committees to receive reports, forming a lead federal agency for cybersecurity, banning automated offensive responsive to a cyberattack, and crafting procedures to aid private networks that come under attack. n163

However, this position is flawed because it dismisses the covert action statute as wholly inadequate to protecting the value of congressional participation, and gives short shrift to the non-warlike dimensions of many [\*450] cyberattacks. The worry that motivates some of the proposals seems to ignore the many examples of cyberattacks - such as manipulation of electronic ballots in a foreign election or disseminating false information through foreign networks to affect media reports - that, outside normal contexts, could not plausibly fall under the military activities exception. Moreover, they underestimate the potential power of a presumption by the executive in favor of the covert action regime.

An executive order establishing such a presumptive posture of reporting could go a long way toward bringing Congress into the process. First, an order establishing written findings and congressional reporting as the default rule could cause momentum to settle around title 50 procedures for initiating cyberattacks. n164 Also, one scholar has argued that the most effective way to ensure congressional notification might not be changing the actual rules of who is to be notified and when, but rather implementing changes that encourage the executive branch to comply with existing requirements. n165

Significantly more modest statutory interventions have also been proposed; however, statutory clarification may not be necessary to achieve their aims. Like Dycus, Robert Chesney is concerned about drawing lines between covert action and traditional military activity in the cyberattack context. He argues that it may be useful for Congress to clarify that the military may conduct those operations outside the title 50 framework when defending Pentagon assets or acting pursuant to a separate statute authorizing force. n166 Moreover, he suggests notifying the congressional armed services committees when such operations are likely to have effects that spill over into areas outside a zone of conflict. n167 But there need not be a legislative mandate for an executive practice of reporting cyberattacks to both intelligence and armed services committees. Moreover, as Chesney himself argues, under a proper understanding of the definitions in the covert action statute, where routine support for ongoing hostilities is exempt under the military activities exception, any cyberattack initiated in support of a conflict authorized by congressional statute would be exempt. n168 This view accords well with that articulated in this Note, n169 and an executive order setting covert action procedures as the default would hardly preclude forgoing that framework in appropriate circumstances; a presumption, after all, merely encourages findings and reporting when there is doubt about the appropriate framework.

### sop

#### Congress fails—only internal constraints can modernize SOP

**Katyal 2006** – debate rockstar, JD from Yale, Saunders Professor of National Security Law at Georgetown (10/26, Neal, Yale Law Journal, “Toward Internal Separation of Powers”, http://yalelawjournal.org/the-yale-law-journal-pocket-part/executive-power/toward-internal-separation-of-powers/)

After all, Publius’s view of separation of powers presumes three branches with equivalent ambitions of maximizing their powers, yet legislative abdication is the reigning modus operandi. It is often remarked that “9/11 changed everything”;2 particularly so in the war on terror, in which Congress has been absent or content to pass vague, open-ended statutes. The result is an executive that subsumes much of the tripartite structure of government.

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

### turf wars

#### OLC voice is key to resolve interagency disputes

**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/)

In its most fully judgelike function, OLC also resolves interagency legal disputes.112 When disagreements on points of law affecting more than one agency arise, such as a disagreement between the Department of Defense and the Environmental Protection Agency on the validity or scope of an environmental statute, or a disagreement between the Equal Employment Opportunity Commission as the enforcer of nondiscrimination laws and some other agency in its role as employer regarding potential First Amendment implications of a discrimination or harassment rule, OLC will, upon request from the agencies involved, resolve the dispute. Its resolutions are then binding on the agencies involved.

#### Issuing legal opinions is perceived as the final word of law – solves perception args

McGinnis 93 (John O., Assistant Professor – Benjamin N. Cardozo School of Law, “Models of the Opinion Function of the Attorney General: A Normative, Descriptive, and Historical Prolegomenon,” Cardozo Law Review, October, 15 Cardozo L. Rev. 375, Lexis)

The judiciary is not the only branch of government that offers authoritative constructions of the Constitution and other federal laws. Since the beginning of the Republic, the executive branch has made [\*376] formal pronouncements on constitutional and statutory issues of such a substantial scope and variety that they rival the opinions of the Supreme Court. A public recording of the executive branch's most authoritative legal voice is contained in forty-three volumes of published opinions of the Attorney General and sixteen volumes of published opinions of the Office of Legal Counsel ("OLC") - the office to which the Attorney General now delegates the great majority of his legal opinion writing. n1 These published opinions are only the tip of the iceberg. In OLC's library sit at least five filing cabinets of largely unpublished opinions dating from the time of OLC's creation in 1932. Biographies of former Attorneys General also report the existence of important unpublished opinions and memoranda of advice from past Attorneys General. n2

These opinions comprise the largest body of official interpretation of the Constitution and statutes outside the volumes of the federal court reporters. Moreover, many of the opinions are the final word on the law because judicial resolution of the legal issue is unavailable. Yet, while the Supreme Court's work has been subjected to detailed and disparate analysis by historians, political scientists, and law professors, the opinion work of the Attorney General and his modern principal delegate - the OLC - has never been systematically addressed.

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

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

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

### 2nc at: perm solves

#### 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.

### international law

#### 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.

#### 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

## 1nr

### Soft Power

#### Alt causes takeout soft power – muddle the plans signal

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

One should be cautious of jumping too quickly to condemnation. No country has a perfect record on human rights. Indeed, as Darius Rejali and others have documented, modern torture techniques have been perfected not only by totalitarian states but also by the grand liberal democracies, particularly the UK, France, and the U.S. 6 But the scope and magnitude of the post-9/11 institutionalization of torture and other abuses is unique in modern history among the liberal democratic states. The institution undermines the principles of equality before the law, universal human dignity and autonomy, and basic liberties are the moral-philosophical core of the liberal democratic state. ¶ The system of torture and its legal arguments created in its defense have damaged international human rights standards and diminished credibility and legitimacy of the United States as a lead advocate for human rights. It is likely to have compromised national security as well. Is it possible to reverse this damage to credibility and security? A number of tenuous balancing acts are involved. Each of these elements stands on their own as a nest of complex issues in need of resolution and for which present options are suboptimal. Credibility, however, depends on each of them taken as an interrelated whole. these critical balancing acts include: 1) legally and humanely processing Guantanamo detainees and other detainees in light of the abuses, while also ensuring national and international security; 2) pursuing the moral and legal accountability required in a representational democracy, while mitigating other resulting political and social injuries; and 3) reinforcing international human rights standards and ensuring the rule of law in tandem with the pursuit of national interests. Furthermore, the events compel us to revisit a larger and older question addressed briefly in the final section: what must be said about the contemporary status and nature of human rights and their enforcement if powerful countries may ignore them or rewrite their content to accommodate the perceived interests of that country?

#### 2ac Nye evidence is all wrong

**Fan 7** (Ying, Senior Lecturer in Marketing at Brunel Business School, Brunel University in London, “Soft power: Power of attraction or confusion?”, November 14)

Despite its popularity, the concept soft power remains a power of confusion. The definition is at best loose and vague. Because of such confusion it is not surprising that the concept has been misunderstood, misused and trivialised ( Joffe, 2006a ). Criticisms of soft power centre mainly around three aspects: defi nition, sources and limitations. There may be little or no relationship between the ubiquity of American culture and its actual influence. Hundreds of millions of people around the world wear, listen, eat, drink, watch and dance American, but they do not identify these accoutrements of their daily lives with America ( Joffe, 2006b ). To Purdy (2001) soft power is not a new reality, but rather a new word for the most effi cient form of power. There are limits to what soft power could achieve. In a context dominated by hard power considerations, soft power is meaningless ( Blechman, 2004 ). The dark side of soft power is largely ignored by Nye. Excessive power, either hard or soft, may not be a good thing. In the affairs of nations, too much hard power ends up breeding not submission but resistance. Likewise, big soft power does not bend hearts; it twists minds in resentment and rage ( Joffe, 2006b ).

Nye’s version of soft power that rests on affection and desire is too simplistic and unrealistic. Human feelings are complicated and quite often ambivalent, that is, love and hate co-exist at the same time. Even within the same group, people may like some aspects of American values, but hate others. By the same token, soft power can also rest on fear ( Cheow, 2002 ) or on both affection and fear, depending on the context. Much of China ’ soft power in south-east Asia testifi es to this. Another example is provided by the mixed perception of the United States in China: people generally admire American technological superiority and super brands but detest its policies on Taiwan.

### Link to Ilaw

#### “LOAC has worked, and is key to stop collapse of society”

IOLD 12

#### “The development of international law is based on modeling – comes before treaties and conventions”

Brown and Poellet 12 (Colonel Gary Brown, JD Senior Legal Counsel for U.S. Cyber Command, Fort Meade, Maryland and Keira Pollet, JD and LLM Judge Advocate General and former Operations Law Attorney at US CYBERCOM, Strategic Studies Quarterly, Fall 2012, The Customary International Law of Cyberspace, Accessed 8/30/13) (www.au.af.mil/au/ssq/2012/fall/brown-poellet.pdf‎) /ejc\

#### The US has the authority to establish precedent as a member of the U.N. Security Council

Melnitzky 12 (Alexander B. Melnitzky, Associate at The Serbagi Law Firm, P.C. Former Associate Editor of Cardozo Journal of International and Comparative Law. He earned his J.D. from Benjamin N. Cardozo School of Law at Yeshiva University and a B.A. in History from NYU.) /ejc\ (https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=20+Cardozo+J.+Int%27l+%26+Comp.+L.+537&srctype=smi&srcid=3B15&key=e30e49aa22650c3c135d44854f)

#### International precedents will become self-perpetuating and legitimize further precedents

**Larson, 04** (Joan, professor of law at the University of Michigan, 65 Ohio St. L.J. 1283, “Importing Constitutional Norms from a "Wider Civilization": Lawrence and the Rehnquist Court's Use of Foreign and International Law in Domestic Constitutional Interpretation”, lexis)

This lack of reflection should alarm us. New forms of constitutional argument have a way of perpetuating themselves. As Professor Vicki Jackson has observed, "if Justices refer more to the constitutional decisions of other courts, this practice to some extent will become self-legitimating, a phenomenon that is already occurring around the world." 12 But before embracing any innovative form of constitutional argument, we should consider whether and how it improves upon our current modes of constitutional decision-making and whether it can be reconciled with our constitutional traditions.

#### The plan spurs lobbies to control the Court to apply international law precedents to other issues

**Kochan, 06** (Donald, professor of law at Chapman University, 29 Fordham Int'l L.J. 507, “SOVEREIGNTY AND THE AMERICAN COURTS AT THE COCKTAIL PARTY OF INTERNATIONAL LAW: THE DANGERS OF DOMESTIC JUDICIAL INVOCATIONS OF FOREIGN AND INTERNATIONAL LAW”, February, lexis)

Moreover, the possibility of circumventing domestic lawmaking processes by injecting foreign or international law is an enticing prospect for interest groups and others incapable of influencing the law through elected processes. **177** If courts are willing to adopt extraterritorial "laws," plaintiffs, NGOs, other policy groups, and defendants have an incentive to press principles not expressly adopted through normal U.S. lawmaking procedures to advance their self-interested goals. Individuals should not be willing to surrender their democratic control over applicable law to unelected judges and outside sources. **178** Controlling the lawmakers and the lawmaking process is a fundamental tenet of democracy. The invocation of laws, statements, or edicts from international or foreign institutions to which domestic citizens have no such control has no place in domestic jurisprudence.

### AT: Non State Actors

#### No interest

Ackerman 11 – American national security reporter and writer for the Washington Independent (Spencer "Pentagon Deputy: What if al-Qaeda Got Stuxnet?" Feb 15 [www.wired.com/dangerroom/2011/02/pentagon-deputy-what-if-al-qaeda-got-stuxnet/](http://www.wired.com/dangerroom/2011/02/pentagon-deputy-what-if-al-qaeda-got-stuxnet/))

Points for imagination here: at the RSA information-security conference in San Francisco, Deputy Defense Secretary William Lynn worried aloud about a terrorist group getting ahold of a malware tool like Stuxnet. Sure, al-Qaeda hasn’t launched any cyberattacks so far. Nor have its operatives manifested any ability to design anything as sophisticated as the Stuxnet worm. “But it is possible for a terrorist group to develop cyberattack tools on their own or to buy them on the black market,” Lynn, the Pentagon’s point man on cybersecurity, warned on Tuesday. “As you know better than I, a couple dozen talented programmers wearing flip-flops and drinking Red Bull can do a lot of damage.” Maybe so. But in last week’s congressional mega-hearing from the nation’s intelligence leaders on threats facing the country, no spymaster assessed that al-Qaeda was looking to launch a giant cyberattack. The most likely forecasted method of terrorist assault against the U.S. are “small-scale attacks” like homemade bombs, Director of National Intelligence James Clapper told a House panel. al-Qaeda appears more focused on making inroads to unsuspecting Muslim youth through social media.

#### Terrorists don’t have the ability to inflict major damage

**Weimann 4** (Dec., Gabriel Weimann is a senior fellow at the United States Institute of Peace and professor of communication at the University of Haifa, Israel, “Cyberterrorism: How Real Is the Threat?” <http://www.usip.org/files/resources/sr119.pdf> )

Amid all the dire warnings and alarming statistics that the subject of cyberterrorism gen- erates, it is important to remember one simple statistic: so far, there has been no recorded instance of a terrorist cyberattack on U.S. public facilities, transportation systems, nuclear power plants, power grids, or other key components of the national infrastructure. Cyber- attacks are common, but they have not been conducted by terrorists and they have not sought to inflict the kind of damage that would qualify them as cyberterrorism. **Technological expertise and use of the Internet do not constitute evidence of planning for a cyberattack**. Joshua Green (“The Myth of Cyberterrorism,” *Washington Monthly,* November 2002) makes this point after reviewing the data retrieved from terrorists in Afghanistan: When U.S. troops recovered al Qaeda laptops in Afghanistan, officials were surprised to find its members more technologically adept than previously believed. They discovered structural and engineering software, electronic models of a dam, and information on computerized water systems, nuclear power plants, and U.S. and European stadiums.¶ But nothing suggested they were planning cyberattacks, only that they were using the Internet to communicate and coordinate physical attacks. Neither al Qaeda nor any other terrorist organization appears to have tried to stage a serious cyberattack. For now, insiders or individual hackers are responsible for most attacks and intrusions and the hackers’ motives are not political. According to a report issued in 2002 by IBM Global Security Analysis Lab, 90 percent of hackers are amateurs with limited technical proficiency, 9 percent are more skilled at gaining unauthorized access but do not damage the files they read, and only 1 percent are highly skilled and intent on copying files or damaging programs and systems. Most hackers, it should be noted, try to expose security flaws in computer software, mainly in the operating systems produced by Microsoft. Their efforts in this direction have sometimes embarrassed corporations but have also been responsible for alerting the public and security professionals to serious security flaws. Moreover, although there are hackers with the ability to damage systems, disrupt e-commerce, and force websites offline, the vast majority of hackers do not have the necessary skills and knowledge. The ones who do, generally do not seek to wreak havoc. Douglas Thomas, a professor at the University of Southern California, spent seven years studying computer hackers in an effort to understand better who they are and what motivates them. Thomas interviewed hundreds of hackers and explored their “literature.” In testimony on July 24, 2002, before the House Subcommittee on Govern- ment Efficiency, Financial Management and Intergovernmental Relations, Thomas argued that “with the vast majority of hackers, I would say 99 percent of them, the risk [of cyberterrorism] is negligible for the simple reason that those **hackers do not have the skill or ability to organize or execute an attack that would be anything more than a minor inconvenience.”** His judgment was echoed in Assessing the Risks of Cyberterrorism, Cyber War, and Other Cyber Threats, a 2002 report for the Center for Strategic and International Studies, written by Jim Lewis, a sixteen-year veteran of the State and Commerce Departments. “The idea that hackers are going to bring the nation to its knees is too far-fetched a scenario to be taken seriously,” Lewis argued. “Nations are more robust than the early analysts of cyberterrorism and cyberwarfare give them credit for. Infrastructure systems [are] more flexible and responsive in restoring service than the early analysts realized, in part because they have to deal with failure on a routine basis.”¶ Many computer security experts do not believe that it is possible to use the Internet to inflict death on a large scale. Some pointed out that the resilience of computer systems to attack is the result of significant investments of time, money, and expertise. As Green describes, nuclear weapons systems are protected by “air-gapping”: they are not connected to the Internet or to any open computer network and thus they cannot be accessed by intruders, terrorists, or hackers. Thus, for example, the Defense Department protects sensitive systems by isolating them from the Internet and even from the Pentagon’s own internal network. The CIA’s classified computers are also air-gapped, as is the FBI’s entire computer system. The 9/11 events and the subsequent growing awareness of cyberterror highlighted other potential targets for such attacks. In 2002, Senator Charles Schumer (D-N.Y.) described “the absolute havoc and devastation that would result if cyberterrorists suddenly shut down our air traffic control system, with thousands of planes in mid-flight.” However, argues Green, “cybersecurity experts give some of their highest marks to the Federal Aviation Authority, which reason- ably separates its administrative and air traffic control systems and strictly air-gaps the latter.” Other sources of concern include subway systems, gas lines, oil pipelines, power grids, communication systems, water dams, and public services that might be attacked to inflict mass destruction. Most of these are managed and controlled by computer systems and are in the private sector—and thus they are more vulnerable than military or govern- ment systems. To illustrate the threat of such attack, a story in the *Washington Post* in June 2003 on al Qaeda cyberterrorism related an anecdote about a teenage hacker who allegedly broke into the SCADA system at Arizona’s Theodore Roosevelt Dam in 1998 and, according to the article, could have unleashed millions of gallons of water, imperil- ing neighboring communities. However, a probe by the computer-technology news site CNet.com revealed the story to be exaggerated and concluded that the hacker could not have endangered lives or property.