# 1

#### The Executive Branch of the United States should create a national security court housed within the executive branch with authority over targeted killing and “executive v. executive” divisions as per our Katyal evidence to promote internal separation of powers via separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts.

#### Presidential veto power and executive deference mean external restraints fail – internal separation of powers constrains the president and leads to better decision making

Katyal ’6 Neal Katyal, Professor of Law @ Georgetown, The Yale Law Journal, “Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within” 115 Yale L.J. 2314, 2006

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. That conversation desperately needs to center on how best to structure the ever-expanding modern executive branch. From 608,915 employees working in agencies in 1930, 3 to 2,649,319 individuals in 2004, 4 the growth of the executive has not generated a systematic focus on internal checks. We are all fond of analyzing checks on judicial activism in the post-Brown, post-Roe era. So too we think of checks on legislatures, from the filibuster to judicial review. But [\*2317] there is a paucity of thought regarding checks on the President beyond banal wishful thinking about congressional and judicial activity. This Essay aims to fill that gap. A critical mechanism to promote internal separation of powers is bureaucracy. Much maligned by both the political left and right, bureaucracy creates a civil service not beholden to any particular administration and a cadre of experts with a long-term institutional worldview. These benefits have been obscured by the now-dominant, caricatured view of agencies as simple anti-change agents. This Essay celebrates the potential of bureaucracy and explains how legal institutions can better tap its powers. A well-functioning bureaucracy contains agencies with differing missions and objectives that intentionally overlap to create friction. Just as the standard separation-of-powers paradigms (legislature v. courts, executive v. courts, legislature v. executive) overlap to produce friction, so too do their internal variants. When the State and Defense Departments have to convince each other of why their view is right, for example, better decision-making results. And when there is no neutral decision-maker within the government in cases of disagreement, the system risks breaking down. In short, the executive is the home of two different sorts of legitimacy: political (democratic will) and bureaucratic (expertise). A chief aim of this Essay's proposal is to allow each to function without undermining the other. This goal can be met without agency competition - overlapping jurisdiction is simply one catalyzing agent. Other ideas deserve consideration, alongside or independent of such competition, such as developing career protections for the civil service modeled more on the Foreign Service. Executives of all stripes offer the same rationale for forgoing bureaucracy-executive energy and dispatch. 5 Yet the Founders assumed that massive changes to the status quo required legislative enactments, not executive decrees. As that concept has broken down, the risks of unchecked executive power have grown to the point where dispatch has become a worn-out excuse for capricious activity. Such claims of executive power are not limited to the current administration, nor are they limited to politicians. Take, for example, Dean Elena Kagan's rich celebration of presidential administration. 6 Kagan, herself a former political appointee, lauded the President's ability to trump bureaucracy. Anticipating the claims of the current administration, Kagan argued that the [\*2318] President's ability to overrule bureaucrats "energizes regulatory policy" because only "the President has the ability to effect comprehensive, coherent change in administrative policymaking." 7 Yet it becomes clear that the Kagan thesis depends crucially on oversight by the coordinate legislative branch (typically controlled by a party in opposition to the President). Without that checking function, presidential administration can become an engine of concentrated power. This Essay therefore outlines a set of mechanisms that create checks and balances within the executive branch. The apparatuses are familiar - separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts. But these restraints have been informally laid down and inconsistently applied, and in the wake of September 11 they have been decimated. 8 A general framework statute is needed to codify a set of practices. In many ways, the status quo is the worst of all worlds because it creates the facade of external and internal checks when both have withered. I. THE NEED FOR INTERNAL SEPARATION OF POWERS The treacherous attacks of September 11 gave Congress and the President a unique opportunity to work together. Within a week, both houses of Congress passed an Authorization for Use of Military Force (AUMF); 10 two months later they enacted the USA PATRIOT Act to further expand intelligence and law enforcement powers. 11 But Congress did no more. It passed no laws authorizing or regulating detentions for U.S. citizens. It did not affirm or regulate President Bush's decision to use military commissions to try unlawful belligerents. 12 It stood silent when President Bush accepted thinly reasoned legal views of the Geneva Conventions. 13 The administration was content to rely on vague legislation, and Congress was content to enact little else. 14 There is much to be said about the violation of separation of powers engendered by these executive decisions, but for purposes of this Essay, I want [\*2320] to concede the executive's claim - that the AUMF gave the President the raw authority to make these decisions. A democratic deficit still exists; the values of divided government and popular accountability are not being preserved. Even if the President did have the power to carry out the above acts, it would surely have been wiser if Congress had specifically authorized them. Congress's imprimatur would have ensured that the people's representatives concurred, would have aided the government's defense of these actions in courts, and would have signaled to the world a broader American commitment to these decisions than one man's pen stroke. Of course, Congress has not passed legislation to denounce these presidential actions either. And here we come to a subtle change in the legal landscape with broad ramifications: the demise of the congressional checking function. The story begins with the collapse of the nondelegation doctrine in the 1930s, which enabled broad areas of policymaking authority to be given to the President and to agencies under his control. That collapse, however, was tempered by the legislative veto; in practical terms, when Congress did not approve of a particular agency action, it could correct the problem. But after INS v. Chadha, 15 which declared the legislative veto unconstitutional, that checking function, too, disappeared. In most instances today, the only way for Congress to disapprove of a presidential decree, even one chock full of rampant lawmaking, is to pass a bill with a solid enough majority to override a presidential veto. The veto power thus becomes a tool to entrench presidential decrees, rather than one that blocks congressional misadventures. And because Congress ex ante appreciates the supermajority-override rule, its members do not even bother to try to check the President, knowing that a small cadre of loyalists in either House can block a bill. 16 For example, when some of the Senate's most powerful Republicans (John McCain, Lindsay Graham, and John Warner) tried to regulate detentions and trials at Guantanamo Bay, they were told that the President would veto any attempt to modify the AUMF. 17 The result is that once a court [\*2321] interprets a congressional act, such as the AUMF, to give the President broad powers, Congress often cannot reverse the interpretation, even if Congress never intended to give the President those powers in the first place. Senator McCain might persuade every one of the other ninety-nine Senators to vote for his bill, but that is of no moment without a supermajority in the House of Representatives as well. 18 At the same time, the executive branch has gained power from deference doctrines that induce courts to leave much conduct untouched - particularly in foreign affairs. 19 The combination of deference and the veto is especially insidious - it means that a President can interpret a vague statute to give himself additional powers, receive deference in that interpretation from courts, and then lock that decision into place by brandishing the veto. This ratchet-and-lock scheme makes it almost impossible to rein in executive power. All legislative action is therefore dangerous. Any bill, like Senator McCain's torture bill, can be derailed through compromise. A rational legislator, fearing this cascading cycle, is likely to do nothing at all. This expansion of presidential power is reinforced by the party system. When the political branches are controlled by the same party, loyalty, discipline, and self-interest generally preclude interbranch checking. That reluctance is exacerbated by a paucity of weapons that check the President. Post-Chadha, Congress only has weapons that cause extensive collateral damage. The fear of that damage becomes yet another reason why Congress is plagued with inertia. And the filibuster, the last big check in periods of single-party government, is useless against the host of problems caused by Presidents who take expansive views of their powers under existing laws (such as the AUMF). Instead of preserving bicameralism, Chadha has led to its subversion and "no-cameralism." A Congress that conducts little oversight provides a veneer of legitimacy to an adventurist President. The President can appeal to the historic sense of checks and balances, even if those checks are entirely compromised by modern political dynamics. With this system in place, it is no surprise that recent calls [\*2322] for legislative revitalization have failed. No successful action-forcing mechanisms have been developed; instead we are still in John Hart Ely's world of giving a "halftime pep-talk imploring that body to pull up its socks and reclaim its rightful authority." 20 It is time to consider second-best solutions to bring separation of powers into the executive. Bureaucracy can be reformed and celebrated (instead of purged and maligned), and neutral conflict-decision mechanisms can be introduced. Design choices such as these can help bring our government back in line with the principles envisioned by our Founders. 21

# 2

**Politics is schmittian---trying to fight the executive on their own battlefield is naïve---the aff is just a liberal knee-jerk reaction that swells executive power**

**Kinniburgh, 5/27 –** (Colin, Dissent, 5-27, <http://www.dissentmagazine.org/blog/partial-readings-the-rule-of-law>)

The shamelessness of the endeavor is impressive—a far cry, in many ways, from the CIA’s secretive Cold War–era assassination plots. Obama has succeeded in anchoring a legal infrastructure for state-sponsored assassinations on foreign soil while trumpeting it, in broad daylight, as a framework for accountability. Peppered with allusions to the Constitution and to “the law” more generally, the call for transparency instead appears to provide an Orwellian foil for a remarkable expansion of executive powers. Existing laws, domestic or international, are proving a hopelessly inadequate framework with which to hold the Obama administration accountable for arbitrary assassinations abroad. No doubt it is tempting to turn to the Constitution, the Universal Declaration of Human Rights, and other relevant legal documents as a litmus test for the validity of government actions. Many progressive media outlets have a tendency to seize on international law, especially, as a straightforward barometer of injustice: this is particularly true in the case of the Israel-Palestine conflict, as an editorial in the current issue of Jacobin points out. Both domestic and international legal systems often do afford a certain clarity in diagnosing excesses of state power, as well as a certain amount of leverage with which to pressure the states committing the injustices. To hope, however, that legal systems alone can redress gross injustices is naive. Many leftists—and not just “bloodless liberals”—feel obliged to retain faith in laws and courts as a lifeline against oppression, rather than as mere instruments of that same oppression. Even Marx, when he was subjected, along with fellow Communist League exiles, to a mass show trial in Prussian courts in the 1850s, was convinced that providing sufficient evidence of his innocence would turn the case against his accuser, Wilhelm Stieber, a Prussian secret agent who reportedly forged his evidence against the communists. In his writings, Marx expressed his disillusionment with all bourgeois institutions, including the courts; in practice, he hoped that the law would serve him justice. Richard Evans highlights this tension in his insightful review of Jonathan Sperber’s Karl Marx: A Nineteenth-Century Life, published in the most recent London Review of Books. “Naively forgetting,” writes Evans, “what they had said in the Manifesto – that the law was just an instrument of class interests – Marx and Engels expected [their evidence against Stieber] to lead to an acquittal, but the jury found several of the defendants guilty, and Stieber went unpunished.” Marx’s disappointment is all too familiar. It is familiar from situations of international conflict, illustrated by Obama’s drone strikes justifications; it is evident, too, when a police officer shoots dead an unarmed Bronx teenager in his own bathroom, and the charge of manslaugher—not murder—brought against the officer is dropped for procedural reasons by the presiding judge. This is hardly the first such callous ruling by a New York court in police violence cases; the last time charges were brought against an NYPD officer relating to a fatal shooting on duty, in 2007, they were also dropped. Dozens of New Yorkers have died at the hands of the police since then, and Ramarley Graham’s case was the first that even came close to a criminal conviction—only to be dropped for ludicrous reasons. Yet New York’s stop-and-frisk opponents are still fighting their battle out in the courts. In recent months, many activists have invested their hopes for fairer policing in a civil class action suit, Floyd, et. al. vs. City of New York, which may just convict the NYPD of discrimination despite the odds. District court judge Shira Scheindlin, profiled in this week’s New Yorker, has gained a reputation for ruling against the NYPD in stop-and-frisk cases, even when it has meant letting apparently dangerous criminals off the hook. In coming weeks, she is likely to do the same for the landmark Floyd case, in what may be a rare affirmation of constitutional law as a bulwark against state violence and for civil liberties. Even if the city wins the case, the spotlight that stop-and-frisk opponents have shined on the NYPD has already led to a 51 percent drop in police stops in the first quarter of this year. Still, when the powerful choose the battlefield and write the laws of war, meeting them on their terms is a dangerous game.

**Legality is what feeds a new form of muscular liberalism where these illusions cannot see how much they sustain it which legitimizes wars for democracies and doctrines of pre-emption**

Motha 8 \*Stewart, Senior Lecturer, Kent Law School, University of Kent, Canterbury, Kent, Journal of Law, Culture, and Humanities Forthcoming 2008, Liberal Cults, Suicide Bombers, and other Theological Dilemmas

A universalist liberal ideology has been re-asserted. It is not only neo-con hawks or Blairite opportunists that now legitimise wars for democracy. Alarmingly, it is a generation of political thinkers who opposed the Nixonian logic of war (wars to show that a country can ‘credibly’ fight a war to protect its interests1), and those humbled by the anticolonial struggles of liberation from previous incarnations of European superiority that are renewing spurious civilizational discourses. This ‘muscular liberalism’ has found its voice at the moment of a global political debate about the legality and effectiveness of ‘just wars’ – so called ‘wars for democracy’ or ‘humanitarian war’. The new political alignment of the liberal left emerged in the context of discussions about the ‘use of force’ irrespective of UN Security Council endorsement or the sovereign state’s territorial integrity, such as in Kosovo – but gained rapid momentum in response to attacks in New York City and Washington on September 11, 2001. Parts of the liberal left have now aligned themselves with neoconservative foreign policies, and have joined what they believe is a new anti-totalitarian global struggle – the ‘war on terror’ or the battle against Islamist fundamentalism. One task of this essay, then, is to identify this new formation of the liberal left. Much horror and suffering has been unleashed on the world in the name of the liberal society which must endure. However, when suicide bombing and state-terror are compared, the retort is that there is no moral equivalence between the two. Talal Asad in his evocative book, On Suicide Bombing, has probed the horror that is felt about suicide bombing in contrast to state violence and terror.2 What affective associations are formed in the reaction to suicide bombing? What does horror about suicide bombing tell us about the constitution of inter-subjective relations? In this essay I begin to probe these questions about the relation between death, subjectivity, and politics. I want to excavate below the surface oppositions of good deaths and bad, justifiable killing and barbarism, which have been so central to left liberal arguments. As so much is riding on the difference between ‘our good war’ and ‘their cult of death’, it seems apt to examine and undo the opposition. The muscular liberal left projects itself as embodying the values of the ‘West’, a geo-political convergence that is regularly opposed to the ‘East’, ‘Muslims’, or the ‘Islamic World’. I undo this opposition, arguing that thanatopolitics, a convergence of death, sacrifice, martyrdom and politics, is common to left liberal and Islamist political formations. How does death become political for left liberals and Islamist suicide bombers? In the case of the latter, what is most immediately apparent is how little is known about the politics and politicization of suicide bombers. Suicide bombers are represented as a near perfect contrast to the free, autonomous, self-legislating liberal subject – a person overdetermined by her backward culture, oppressive setting, and yet also empty of content, and whose death can have no temporal political purchase. The ‘suicide bomber’ tends to be treated by the liberal left as a trans-historical ‘figure’, usually represented as the ‘Islamo-fascist’ or the ‘irrational’ Muslim.3 The causes of suicide bombing are often implicitly placed on Islam itself – a religion that is represented as devoid of ‘scepticism, doubt, or rebellion’ and thus seen as a favourable setting for totalitarianism.4 The account of the suicide bomber as neo-fascist assassin supplements a lack – that is, that the association of suicide bombing with Islam explains very little. The suicide bomber is thus made completely familiar as totalitarian fascist, or wholly other as “[a] completely new kind of enemy, one for whom death is not death”.5 So much that is written about the suicide bomber glosses over the unknown with political subjectivities, figures, and paradigms (such as fascism) which are familiar enough to be vociferously opposed. By drawing the suicide bomber into a familiar moral register of ‘evil’, political and historical relations between victim and perpetrator are erased.6 In the place of ethnographically informed research the ‘theorist’ or ‘public intellectual’ erases the contingency of the suicide bomber and reduces her death to pure annihilation, or nothingness. The discussion concludes by undoing the notion of the ‘West’, the very ground that the liberal left assert they stand for. The ‘West’ is no longer a viable representation of a geo-political convergence, if it ever was. Liberal discourse has regarded itself as the projection of the ‘West’ and its enlightenment. But this ignores important continuities between Islam, Christianity, and contemporary secular formations. The current ‘clash of monotheisms’, I argue after J-L Nancy, reveals a crisis of sense, authority, and meaning which is inherent to the monotheistic form. An increasingly globalised world is made up of political communities and juridical orders that have been ‘emptied’ of authority and certainty. This crisis of sense conditions the horror felt by the supposedly rational liberal in the face of Islamist terrorism. Horror at terrorism is then the affective bond that sustains a grouping that otherwise suffers the loss of a political project with a definite end. The general objective of this essay is to challenge the unexamined assumptions about politics and death that circulate in liberal left denunciations of Islamic fascism. The horror and fascination with the figure of the suicide bomber reveals an unacknowledged affective bond that constitutes the muscular liberal left as a political formation. This relies on disavowing the sacrificial and theological underpinnings of political liberalism itself – and ignores the continuities between what is called the ‘West’ and the theologico-political enterprise of monotheism. Monotheism is not the preserve of something called the ‘West’, but rather an enterprise that is common to all three Religions of the Book. The article concludes by describing how the writings of Jean-Luc Nancy on monotheism offer liberal left thinkers insights for rethinking the crisis of value that resulted from the collapse of grand emancipatory enterprises as well as the fragmentation of politics resulting from a focus on political identification through difference. I opened with a reference to the ‘liberal left’. Of course the ‘liberal left’ signifies a vast and varied range of political thinking and activism – so I must clarify how I am deploying this term. In this essay the terms ‘liberal left’ or ‘muscular liberal’ are used interchangeably. Paul Berman and Nick Cohen, whose writing I will shortly refer to, are exemplars of the new political alignment who self-identify as ‘democrats and progressives’, but whose writings feature bellicose assertions about the superiority of western models of democracy, and universal human rights.7 Among this liberal left, democracy and freedom become hemispheric and come to stand for the West. More generally, now, the ‘liberal left’ can be distinguished from political movements and thinkers who draw inspiration from a Marxist tradition of thought with a socialist horizon. The liberal left I am referring to would view the Marxist tradition as undervaluing democratic freedoms and human rights. Left liberals also tend to dismiss the so called post-Marxist turn in European continental philosophy as ‘postmodern relativism’.8 PostMarxists confronted the problem of the ‘collective’ – addressing the problem of masses and classes as the universal category or agent of historical transformation. This was a necessary correction to all the disasters visited on the masses in the name of a universal working class. The liberal state exploited these divisions on the left. It is true that a left fragmented through identity politics or the politics of difference were reduced to group based claims on the state. However, liberal multiculturalism was critiqued by anti-racist and feminist thinkers as early as the 1970s for ignoring the structural problems of class or as yet another nation-building device. The new formation of the muscular liberal left have only just discovered the defects of multiculturalism. The dismissal of liberal multiculturalism is now code for ‘too much tolerance’ of ‘all that difference’. The liberal left, or muscular liberal, as I use these terms, should not be conflated with the way ‘liberal’ is generally used in North America to denote ‘progressive’, ‘pro-choice’, open to a multiplicity of forms of sexual expression, generally ‘tolerant’, or ‘left wing’ (meaning socialist). It might be objected that it is not the liberal left, but ‘right wing crazies’ driven by Christian evangelical zeal combined with neo-liberal economic strategies that have usurped a post-9/11 crime and security agenda to mount a global hegemonic enterprise in the name of a ‘war on terror’. It might also be said that this is nothing new – global expansionist enterprises such as 18th and 19th century colonialism mobilised religion, science, and theories of economic development to secure resources and justify extreme violence where necessary. Global domination, it might be argued, has always been a thanatopolitical enterprise. So what’s different now? What is crucial, now, is that the entire spectrum of liberalism, including the ‘rational centre’, is engaged in the kind of mindset whereby a destructive and deadly war is justified in the name of protecting or establishing democracy, the rule of law, and human rights. It might then be retorted that this ‘rational centre’ of liberalism have ‘always’ been oriented in this way. That is partly true, but it is worth recalling that the liberal left I have in mind is the generation that came of age with opposition to the war in Vietnam, other Indo-Chinese conflagrations, and the undoing of empire. This is a left that observed the Cold War conducted through various ‘hot wars’ in Africa, Central and Latin America, and South East Asia and thus at least hoped to build a ‘new world order’ of international law and multilateralism. This is a left that was resolved, by the 1970s, not to repeat the error of blindly following a scientific discourse that promised to produce a utopia – whether this was ‘actually existing socialism’ or the purity of ‘blood and soil’. But now, a deadly politics, a thanatopolitics, is drawn out of a liberal horror and struggle against a monolithically drawn enemy called Islamic fundamentalism. What is new is that Islam has replaced communism/fascism as the new ‘peril’ against which the full spectrum of liberalism is mobilized. Islamist terrorism and suicide bombers, a clash between an apparently Islamic ‘cult of death’ versus modern secular rationality has come to be a central preoccupation of the liberal left. In the process, as Talal Asad has eloquently pointed out, horror about terrorism has come to be revealed as one way in which liberal subjectivity and its relation to political community can be interrogated and understood.9 Moreover, the potential for liberal principles to be deployed in the service of legitimating a doctrine of pre-emption as the ‘new internationalism’ is significant. The first and second Gulf Wars, according to the liberal left, are then not wars to secure control over the supply of oil, or regional and global hegemony, as others on the left might argue, but anti-fascist, anti-totalitarian wars of liberation fought in the name of ‘democracy’. Backing ‘progressive wars’ for ‘freedom and democracy’, those who self-identify as a left which is reasserting liberal democratic principles start by asking questions such as: “Are western freedoms only for westerners?”.10 In the process, freedom becomes ‘western’, and its enemy an amorphous legion behind an unidentifiable line between ‘west’ and the rest (the ‘Muslim world’). The ‘war for democracy’ waged against ‘Islamist terrorism’ and Muslim fundamentalism is the crucible on which the new alignment of the liberal left is forged.

**The alternative is to reject the 1ac in favor of reconceptualizing where authority emanates from---we need to take a step outside the legal realm and build a culture of resilience against executive power**

**Connolly, 13 –** (William E, Pf – John Hopkins U, The Contemporary Condition, 5-20)

Nonetheless, the logic of the media-electoral-corporate system does spawn a restrictive grid of power and electoral intelligibility that makes it difficult to think, experiment, and organize outside its parameters. Think of how corporations and financial institutions initiate actions in the private sector and then use intensive lobbying to veto efforts to reverse those initiatives in Congress or the courts, just as financial elites invented derivatives and then lobbied intensively to stop their regulation; think of how media talking heads concentrate on candidates rather than fundamental issues; recall the central role of scandal in the media and electoral politics; consider the decisive electoral position of inattentive “undecided voters”; note how states under Republican rule work relentlessly to reduce the minority and poor vote; recall those billionaire super pacs; and so on. The electoral grid cannot be ignored or ceded to the right, but it also sucks experimental pursuits and bold ventures out of politics. Can we renegotiate the dilemma of electoral politics? That is the problematic within which I am working. I do not have a perfect response to it. Perfect answers are suspect. Perhaps it is wise to forge multimodal strategies that start outside the electoral grid and then return to it as one venue among others. Strategic role experimentations at multiple sites joined to the activation of new social movements provide possibilities. Indeed, these two modes are related. Consider merely a few examples of role experimentation tied to climate change and consumption available to many people in the shrinking middle class. We may support the farm-to-table movement in the restaurants we visit; we may participate in the slow food movement; we may frequent stores that offer food based on sustainable processes; we may buy hybrid cars, or, if feasible, join an urban zip-car collective, explaining to friends, family, and neighbors the effects such choices could have on late modern ecology if a majority of the populace did so; we may press our workplace to install solar panels and consider them ourselves if we can afford to do so; we may use writing and media skills to write graffiti, or produce provocative artistic installations, or write for a blog; we may shift a large portion of our retirement accounts into investments that support sustainable energy, withdrawing from aggressive investments that presuppose unsustainable growth or threaten economic collapse; we may bring new issues and visitors to our churches, temples, or mosques to support rethinking interdenominational issues and the contemporary fragility of things; we may found, join, or frequent repair clubs, at which volunteers collect and repair old appliances, furniture, and bikes to cut back on urban waste, to make them available to low income people and to increase the longevity of the items; we may probe and publicize the multimodal tactics by which twenty-four-hour news stations work on the visceral register of viewers, as we explain on blogs how to counter those techniques; we may travel to places where unconscious American assumptions about world entitlement are challenged on a regular basis; we may augment the pattern of films and artistic exhibits we visit to stretch our habitual powers of perception and to challenge some affect-imbued prejudgments embedded in them. A series of intercalated role experiments, often pursued by clusters of participants together. But don’t such activities merely make the participants “feel better”? Well, many who pursue such experiments do feel good about them, particularly those who accept a tragic image of possibility in which there is no inevitability that either large scale politics, God, or nature will come to our rescue. Also, could such role experiments ever make a sufficient difference on their own? No. These, however, may be the wrong questions to pose. What such experiments can do as they expand is to crack the ice in and around us. First, we may now find ourselves a bit less implicated in the practices and policies that are sources of the problems. Second, the shaky perceptions, feelings, and beliefs that authorized them may thus now become more entrenched as we act upon them. Third, we now find ourselves in more favorable positions to forge connections with larger constituencies pursuing similar experiments. Fourth, we may thus become more inspired to seed and join macropolitical movements that speak to these issues. Fifth, as we now participate in protests, slowdowns, work “according to rule” and more confrontational meetings with corporate managers, church leaders, union officials, university officers, and neighborhood leaders, we may become even more alert to the creeds, institutional pressures and options that propel these constituencies too. They, too, are both enmeshed in a web of roles and more than mere role bearers. Many will maintain an intransigence of viewpoint and insistence of interpretation that we may now be in a better position to counter by words and deeds with those outside or at the edge of the intransigent community. One advantage of forging links between role experimentations and social movements is that both speak to a time in which the drive to significant change must be pursued by a large, pluralist assemblage rather than by any single class or other core constituency. Such an assemblage must today be primed and loaded by several constituencies in diverse ways at numerous sites. It is necessary here to condense linkages that may unfold. But perhaps movement back and forth between role experiments, social movements, occasional shifts in the priorities of some strategic institutions, and a discernible shift in the contours of electoral politics will promote the emergence of a new, more activist pluralist assemblage. Now, say, a new, surprising event occurs. Some such event or crisis is surely bound to erupt: an urban uprising, a destructive storm, a wild executive overreach, a wide spread interruption in electrical service, a bank melt down, a crisis in oil supply, etc. Perhaps the conjunction of this new event with the preparatory actions that preceded it will prime a large constellation to resist the protofascist responses the intransigent Right will pursue at that very moment. Perhaps the event will now become an occasion to mobilize large scale, intensive support for progressive change on some of the fronts noted at the start of this piece. It is important to remember that the advent of a crisis does not alone determine the response to it. So waiting for the next one to occur is not enough. The Great Depression was followed by the intensification of fascist movements in several countries. Those with strong labor movements and progressive elected leaders proved best at resisting them. The most recent economic melt-down was met in many places by the self-defeating response of austerity, and worse. That is why the quality and depth of the political ethos preceding such events is important. The use of the “perhaps” in the above formulations suggests that there are no guarantees at any of these junctures. Uncertainties abound. These points, however, also apply to any radical perspective that counsels waiting for the revolution, as it surrounds its critiques of militant reform with an aura of certainty. Today the need is to curtail the aura of certainty of all perspectives on the Left. The examples posed here, of course, are focused on primarily one constituency. But others could be invoked. The larger idea is to draw energy from multiple sources and constituencies. The formula is to move back and forth between the proliferation of role experiments, forging social movements on several fronts, helping to shift the constituency weight of the heavy electoral machinery now in place, and participating in cross-country citizen movements that put pressure on states, corporations, churches, universities and unions from inside and outside simultaneously.

# 3

#### Obama has momentum for negotiations – GOP conditions failing - PC

Calmes and Weisman, 10-2-’13 (Jackie and Jonathan, “Obama Sets Conditions for Talks: Pass Funding and Raise Debt Ceiling” New York Times, http://www.nytimes.com/2013/10/03/us/politics/congress-budget-battle.html?\_r=0)

In their first meeting since a budget impasse shuttered many federal operations, President Obama told Republican leaders on Wednesday that he would negotiate with them only after they agreed to the funding needed to reopen the government and also to an essential increase in the nation’s debt limit, without add-ons. The president’s position reflected the White House view that the Republicans’ strategy is failing. His meeting with Congressional leaders, just over an hour long, ended without any resolution. As they left, Republican and Democratic leaders separately reiterated their contrary positions to waiting reporters. The House speaker, John A. Boehner, Republican of Ohio, said Mr. Obama “will not negotiate,” while the Senate majority leader, Harry Reid, Democrat of Nevada, said Democrats would agree to spending at levels already passed by the House. “My friend John Boehner cannot take ‘yes’ for an answer,” Mr. Reid said. The meeting was the first time that the president linked the two actions that he and a divided Congress are fighting over this month: a budget for the fiscal year that began on Tuesday and an increase in the debt ceiling by Oct. 17, when the Treasury Department will otherwise breach its authority to borrow the money necessary to cover the nation’s existing obligations to citizens, contractors and creditors. Only when those actions are taken, Mr. Obama said, will he agree to revive bipartisan talks toward a long-term budget deal addressing the growing costs of Medicare and Medicaid and the inadequacy of federal tax revenues. While the lack of a budget forced the government shutdown this week, failure to raise the debt limit would have worse repercussions, threatening America’s credit rating with a globe-shaking default and risking an economic relapse at home. Yet the refusal by the Republican-led House earlier this week to approve government funding until Mr. Obama agrees to delay his signature health care law — a nonnegotiable demand, he has said — raised fears from Washington to Wall Street that Republicans likewise would carry out their threat to withhold approval of an increase in the debt ceiling. In a meeting with Wall Street executives to enlist their help, and then in an interview with CNBC before his White House meeting with Congressional leaders, Mr. Obama said he needed to draw a firm line “to break that fever” in the House among hard-line conservatives who repeatedly issued fiscal ultimatums, resulting in government by crisis. “As soon as we get a clean piece of legislation that reopens the government — and there is a majority for that right now in the House of Representatives — until we get that done, until we make sure that Congress allows Treasury to pay for things that Congress itself already authorized, we are not going to engage in a series of negotiations,” Mr. Obama told CNBC, a cable business-news channel. Mr. Boehner, under pressure from Republican conservatives and outside Tea Party groups, has declined to bring a so-called clean continuing resolution to the House for a vote because it would pass mostly with Democrats’ votes and probably prompt a conservative backlash that could cost him his leadership office. Mr. Obama, in the interview, said he must resist the Republican demands this time because a precedent is at stake. “If we get in the habit where a few folks, an extremist wing of one party, whether it’s Democrat or Republican, are allowed to extort concessions based on a threat of undermining the full faith and credit of the United States, then any president who comes after me — not just me — will find themselves unable to govern effectively,” he said. Many Republicans concede that Mr. Obama has the political advantage in the current confrontation, so some in the House reacted hopefully to the president’s summons to Congressional leaders to meet late in the day. Representative Michael G. Grimm, Republican of New York, called the White House meeting “the beginning of the end of the government shutdown,” although others in Congress and the administration were less optimistic. Frustrations in Congress were mounting along with voters’ anger. Clusters of House Republicans filtered in and out of Mr. Boehner’s office, some pleading for him to stand firm, others seeking a face-saving end to the shutdown. Mr. Grimm said he was one of a half-dozen Republican pragmatists who urged the speaker to find a way to reopen the government. Lawmakers who spoke with the speaker said that Mr. Boehner broached the idea of a comprehensive deficit-reduction deal that could put to rest three years of gridlock and turmoil in the Republican-led House.

#### **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.

#### PC key to avoiding total economic collapse

Henninger, 10-2-’13 (Daniel, “Obama's Washington Colosseum” Wall Street Journal, http://online.wsj.com/article/SB10001424052702303722604579111492249901278.html)

Despite the institutional difficulties, one may still ask whether the responsibility of any president is to let this situation get worse, or to defuse it in the national interest? And it can get worse. The government shutdown may look relatively minor, but the political corrosion on view this week could drive the U.S. into a destructive debt default later this month. That catastrophe is predictable right now, but avoidable, if Mr. Obama will exercise the leadership he was elected to provide. The country Ronald Reagan "inherited" in 1981 was also beset with problems and divisions. The country he left behind after two terms was not. He "negotiated" with the opposition. The productive Ronald Reagan-Tip O'Neill relationship is now the stuff of legend and books. What counterpart has Barack Obama produced? Ted Cruz. With normal political outlets choked off for five years by Mr. Obama, Sen. Cruz and his supporters risk becoming one of the passion-driven, alienated groups that Madison and Hamilton, those famous surrender monkeys, warned against. There was a time when Washington reporters who got into this business for love of politics would have held a president to account for wrecking politics. And did. No more. Instead, they've become mostly thumb-waving spectators in the Roman Colosseum over which Barack Obama presides. Thumbs down any day now for the humiliated John Boehner. It is indeed a spectacle. Absent presidential leadership, it may engulf us all.

Collapses the global economy

VOA News, 10-3-’13 (“IMF: US Failure to Lift Debt Ceiling Could Damage World Economy” http://www.voanews.com/content/reu-us-failure-to-lift-debt-ceiling-could-damage-world-economy-says-imf-chief/1762364.html)

Failure to raise the U.S. debt ceiling could damage not only the United States but the rest of the global economy, International Monetary Fund chief Christine Lagarde said on Thursday. “It is 'mission-critical' that this be resolved as soon as possible,” she said in a speech in Washington, ahead of the IMF and World Bank annual meetings next week. Republican and Democratic leaders in the U.S. Congress so far remain at loggerheads over funding the government, keeping hundreds of thousands of federal employees off the job without pay for a third day on Thursday. Though a government shutdown would do relatively little damage to the world's largest economy in the short term, global markets could be roiled if Congress also fails to raise the United States' $16.7 trillion debt limit. The Treasury has said the United States will exhaust its borrowing authority no later than October 17. If no deal is reached in raising the debt ceiling, analysts expect the U.S. government to run out of cash to pay its bills within weeks of that date. Lagarde said growth in the United States has already been hurt by too much fiscal consolidation, and will be below two percent this year before rising by about one percentage point in 2014, assuming political standoffs are resolved. The U.S. Congress imposed a so-called sequester, or across the board government spending cuts, earlier this year after failing to agree on a broad budget package. Glimmers of optimism Turning to the rest of the world, Lagarde pointed to signs of progress in the eurozone and Japan, but said transitions to more stable growth may take a while. She said the eurozone “came up for air” in the spring after six quarters of recession, and the economy should grow almost one percent next year. The currency bloc must address debt-hobbled banks and a fragmented financial system to return to health, she said. Japan also seems to be having success with its massive monetary stimulus to boost the economy out of decades of deflation and lagging growth, boosting GDP by about one percent. “Deflation is coming to an end and a newfound optimism is in the air,” Lagarde said, adding that Japan must still implement a credible plan to bring down its debt and reform entitlements. She said emerging markets have suffered since the U.S. Federal Reserve announced plans to eventually scale back its own monetary stimulus, which prompted capital outflows as investors bet on higher rates in advanced economies. Lagarde said the turbulence could reduce GDP in major emerging markets by 0.5 to 1 percentage points. Monetary policy helped rescue the global economy after the global financial crisis. But as the United States prepares to decrease the pace of its massive bond-buying, it must be aware that its policies affect people and markets around the world, Lagarde said. ‘Special resposibility’ “The U.S. has a special responsibility: to implement [normalization] in an orderly way, linking it to the pace of recovery and employment; to communicate clearly; and to conduct a dialog with others,” she said. But Lagarde said the turmoil in the Middle East and North Africa may be the hardest to resolve, and take the most time. Syria is still in the midst of a civil war and Egypt struggles to address its fiscal deficit and structural reforms while dealing with a political transition. “To succeed, [this region] needs the unwavering support of the international community,” Lagarde said. Finally, she called on governments to better work together on reforming the financial sector, calling progress too slow, partly due to divergences among different countries. She pointed in particular to the “danger zone” of shadow banking, or the non-banking sector that can provide credit but is not under formal regulation. In the United States, shadow banking is twice the size of the banking sector, and in China half the credit given this year has come from shadow banking, she said. “Putting this all together in a globalized world is a headache,” Lagarde said about financial regulation. “And yet, it must be done - nothing less than global financial stability depends on it.”

#### Global nuclear war

Harris & Burrows 9 Mathew, PhD European History @ Cambridge, counselor of the U.S. National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” http://www.ciaonet.org/journals/twq/v32i2/f\_0016178\_13952.pdf

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the **harmful effects on fledgling democracies** and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which **the potential for** greater **conflict could grow** would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. **Terrorism**’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any **economically-induced drawdown** of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, **acquire additional weapons**, and consider pursuing their own **nuclear ambitions**. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an **unintended escalation** and **broader conflict** if clear red lines between those states involved are not well established. The close proximity of potential **nuclear rivals** combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on **preemption** rather than defense, potentially leading to **escalating crises**. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in **interstate conflicts** if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

# 4

#### Civilian interference causes backlash from the military

**Urben, 10 –** (Heidi, PhD from Georgetown, “CIVIL - MILITARY RELATIONS IN A TIME OF WAR : PARTY, POLITICS, AND THE PROFESSION OF ARMS,” <http://repository.library.georgetown.edu/bitstream/handle/10822/553111/urbenHeidi.pdf>)

Huntington’s model of objective control (1957) largely provides the foundation for one side of the debate what Cohen (2002) calls ―the normal theory‖ of civil military relations and what Feaver has termed the ―professional supremacist‖ (2010) school of thought or delegative control model (1995). Under Huntington’s objective control, the military and its civilian overseers maintain distinct, separate spheres of responsibility. The military is a professional force because it remains ―politically sterile and neutral‖ (1957, 84). And because the military is a professional, apolitical force, and civilian control of the military should never be in doubt, this model suggests that considerable deference should be given to military leaders in their realm of expertise. Professional supremacist or normal theory adherents often include senior and retired military leaders, such as Colin Powell, and its tenets are largely borne out of the lessons learned from the Vietnam War. In Michael Desch’s words, this system works best as it ― allows for substantial military autonomy in the military, technical, and tactical realms (how to fight wars) in return for complete subordination to civ ilian authority in the political realm (when and if to fight them)‖ (Myers et al. 2007). Professional surpemacists also attribute civil - military friction and even wartime failures to violations of the normal theory model. For example, Desch (2007) has argued that many of the failures in the Iraq war were a result of Secretary of Defense Donald Rumsfeld’s abrasive approach and meddling into the military’s business. Key to the normal theory or professional supremacist view is the need to maintain Hunting ton’s separate spheres and preserve the military’s autonomy over military matters. Civilian interference into the military’s domain, they argue, will almost surely lead to dysfunction

#### Backlash from the military causes them to “shirk” – turns the case by swelling executive military power and destroys civilian control

**Gurcan, 12 –** (Metin, PhD CandidateBilkent University- Department of Political Science, ARMED SERVANTS: AGENCY, OVERSIGHT AND CIVIL-MILITARY RELATIONS,” Academia)

Employing “principal-agent theory” from economics, Feaver endavours to explain how principals (elected civilian leaders in our case) gets the agent (the military) carry out orders, using the degree of monitoring as the variable. According to him, the main problem of CMR in mature democracies is a military that “shirks.” Based on their expectations of whether shirking will be detected or not, the military decides whether to obey the civilian leaders or not. These expectations, for Feaver, are a function of many factors, the primary of which is the cost of monitoring. In fact, for the military, the outcome of working with non-intrusive monitoring (the cases of 1 and 3 correspond to Huntington’s prescription of “objective control,” which can only be established by recognizing an autonomous, politically neutral and sterile military through professionalization. Likewise, the case of 2 is the Huntington’s nightmare scenario that implies the systemic violation of the autonomy of professional the “” military by the civilians. It is case 4, characterized by relatively high civil-military friction, the gap of which is filled by Feaver’s theory. Feaver uses the term “shirking” to refer to activities of militaries that are contrary to the “functional goal” or the “relational goal” of civilians. The functional goal includes whether the military is doing what civilians asked it to do in a style that civilians direct, whether the military is using its full capacity to implement the civilians’ orders and whether the military is capable of implementing its tasks. As for the relational goal, it includes whether key policy decisions belong to civilians or the military, whether civilians decide which decisions should be given by the military, and whether the military avoids any action that may undermine civilian supremacy. Feaver presents some features (or problems) that have important influences on principal-agent relationships. First of all, there is an information asymmetry between the principal and the agent. In the CMR, the advantage of information is on the side of the military. As stated by Feaver, in the case of operations and war, the information asymmetry increases in favor of the military because of difficulties in monitoring . Moreover, confidentiality restrictions that are common in defense matters reinforce the tendency of the military to hide information. Information asymmetry provides the military important power to pursue its own institutional interests. Second, adverse selection is one of the main problems of principal-agency relations. According to Feaver, adverse selection is the uncertainty of principal about the capability and qualifications of its agents . The final problem is moral hazard. In Feaver’s words, “moral hazard refers at a general level to the problem that principals cannot completely observe the true behavior of the agent and so cannot be certain whether the agent is working or shirking .” As stated by Feaver, agents or employees have incentives to do less, if they can get paid the same amount for doing so . Moreover, Feaver presents two main requirements to prevent the military from shirking: monitoring mechanisms and punishment mechanisms. He states that “Civilians still have means available with which to direct the military and thereby mitigate the adverse selection and moral hazard problems inherent in delegation. In essence, control or monitoring mechanisms are ways of overcoming the information problems perhaps by getting the agent to reveal information or perhaps by adjusting the incentives of the agent so that the principal can ‘know’ that the agent wants what the principal wants.”

**Civilian control and cooperation between the two is necessary for have an effective military which solves a host of problems**

**Owens, 12 –** (Mackubin, Associate Dean of Academics for Electives and Directed Research and Professor of Strategy and Force Planning at the U.S. Naval War College, “What military officers need to know about civil-military relations,” <http://www.thefreelibrary.com/What+military+officers+need+to+know+about+civil-military+relations.-a0287635112>)

The combination of civil-military relations patterns and service doctrines affect military effectiveness. In essence, the ultimate test of a civil-military relations pattern is how well it contributes to the effectiveness of a state's military, especially at the level of strategic assessment and strategy making. (50) However, Richard Kohn has explicitly called into question the effectiveness of the American military in this realm, especially with regard to the planning and conduct of operations other than those associated with large-scale conventional war. "Nearly twenty years after the end of the Cold War, the American military, financed by more money than the entire rest of the world spends on its armed forces, failed to defeat insurgencies or fully suppress sectarian civil wars in two crucial countries, each with less than a tenth of the U.S. population, after overthrowing those nations' governments in a matter of weeks." (51) He attributes this lack of effectiveness to a decline in the military's professional competence with regard to strategic planning. "In effect, in the most important area of professional expertise--the connecting of war to policy, of operations to achieving the objectives of the nation--the American military has been found wanting. The excellence of the American military in operations, logistics tactics, , weaponry, and battle has been manifest for a generation or more. Not so with strategy." (52) This phenomenon manifests itself, he argues, in recent failure to adapt to a changing security environment in which the challenges to global stability are "less from massed armies than from terrorism; economic and particularly financial instability; failed states; resource scarcity (particularly oil and potable water); pandemic disease; climate change; and international crime in the form of piracy, smuggling, narcotics trafficking, and other forms of organized lawlessness." He observes that this decline in strategic competence has occurred during a time in which the U.S. military exercises enormous influence in the making of foreign and national security policies. He echoes the claim of Colin Gray: "All too often, there is a black hole where American strategy ought to reside." (53) Is there something inherent in current U.S. civil-military affairs that accounts for this failure of strategy? The failure of American civil-military relations to generate strategy can be attributed to the confluence of three factors. The first of these is the continued dominance within the American system of what Eliot Cohen has called the "normal" theory of civil-military relations, the belief that there is a clear line of demarcation between civilians who determine the goals of the war and the uniformed military who then conduct the actual fighting. Until President George W. Bush abandoned it when he overruled his commanders and embraced the "surge" in Iraq, the normal theory has been the default position of most presidents since the Vietnam War. Its longevity is based on the idea that the failure of Lyndon Johnson and Robert McNamara to defer to an autonomous military realm was the cause of American defeat in Vietnam. The normal theory can be traced to Samuel Huntington's The Soldier and the State, in which he sought a solution to the dilemma that lies at the heart of civil-military relations--how to guarantee civilian control of the military while still ensuring the ability of the uniformed military to provide security. His solution was a mechanism for creating and maintaining a professional, apolitical military establishment, which he called "objective control." Such a professional military would focus on defending the United States but avoid threatening civilian control. (54) But as Cohen has pointed out, the normal theory of civil-military relations often has not held in practice. Indeed, such storied democratic war leaders as Winston Churchill and Abraham Lincoln "trespassed" on the military's turf as a matter of course, influencing not only strategy and operations but also tactics. The reason that civilian leaders cannot simply leave the military to its own devices during war is that war is an iterative process involving the interplay of active wills. What appears to be the case at the outset of the war may change as the war continues, modifying the relationship between political goals and military means. The fact remains that wars are not fought for their own purposes but to achieve policy goals set by the political leadership of the state. The second factor, strongly reinforced by the normal theory of civil-military relations, is the influence of the uniformed services' organizational cultures. Each military service is built around a "strategic concept" that, according to Samuel Huntington, constitutes "the fundamental element of a military service," the basic "statement of [its] role ... or purpose in implementing national policy." (55) A clear strategic concept is critical to the ability of a service to organize and employ the resources that Congress allocates to it. It also largely determines a service's organizational culture. Some years ago, the late Carl Builder of the RAND Corporation wrote The Masks of War, in which he demonstrated the importance of the organizational cultures of the various military services in creating their differing "personalities," identities, and behaviors. His point was that each service possesses a

# Solvency

#### Executives will block information – preventing litigation. Courts will defer because of SSP and qualified immunity – only the most egregious cases will succeed

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The state-secrets privilege poses another barrier to Bivens-style actions. This privilege allows the government to block the disclosure of information in court that would damage national security. 217 It could prevent a case from proceeding in any number of ways. For instance, the government could block plaintiffs from accessing or using information needed to determine whether a Predator attack had a sound basis through human or technical sources of intelligence. 218 By this trump card, the government could prevent litigation from seriously compromising intelligence sources and methods. 219 In addition, the doctrine of qualified immunity requires dismissal of actions against officials if a court determines they reasonably believed they were acting within the scope of their legal authority. 220 Defendants would satisfy this requirement so long as they reasonably [\*444] claimed they had authority under the laws of war (assuming their applicability). These standards are hazy, and a court applying them would tend to defer to the executive on matters of military judgment. 221 In view of so many practical and legal hurdles, some courts and commentators might be inclined to categorically reject all Bivens-style challenges to targeted killings. In essence, they might view lawsuits related to targeted killing as a political question left to the executive. 222 This view parallels Justice Thomas's that courts should not second-guess executive judgments as to who is an enemy combatant. 223 Contrary to Justice Thomas's view, the potency of the government's threshold defenses means that targeted-killing cases that make it to the merits would likely involve the most egregious conduct - for example, killing an unarmed Jose Padilla at O'Hare Airport on a shoot-to-kill order. For these egregious cases, a judicial check on executive authority is most necessary.

#### Drone court is rolled back—this card assumes fiat and multiple agents acting, evidence supersedes durability

Arend 13 (Anthony Clark Arend is Professor of Government and Foreign Service at Georgetown University and the Director of the Master of Science in Foreign Service in the Walsh School of Foreign Service. “Judicial Oversight of Drones?” <http://anthonyclarkarend.com/humanrights/judicial-oversight-of-drones/>)

So, if the Constitution delegates the war powers to Congress and the President. And if it would seem that the President has the sole authority to determine who a combatant is, how could there be a legitimate role for the the Judiciary? In fact, courts have traditionally kept out of disputes between Congress and the President about the extent of the war powers. In case after case, courts have typically ruled that such cases are nonjusticiable– using either the political question doctrine or some other justiciabilty doctrine. But what if there were a legislative act– approved by the President– establishing a specific arrangement for judicial review? I am still inclined to think that if such act were subject to judicial testing it would be found unconstitutional because it would be involving the courts in something that is inherently within the realm of the political branches– who is a combatant in an armed conflict. Of course- this is not to say that I favor the current use of drones as a matter of policy, nor that I don’t worry about whether the drones are being used in a manner that complies with the laws of war. But those are concerns are different from the question of whether judicial review of drone use is constitutional.

#### Plan is worse because it spreads responsibility, undercutting accountability

Johnston 13 Steven, Neal A. Maxwell Chair in Political Theory, Public Policy, and Public Service, University of Utah, The Contemporary Condition, 2-15

Thanks to the nomination of John Brennan as C.I.A. director, the United States is finally conducting a national conversation about President Obama’s dangerous expansion of presidential power. Going Bush and Cheney one better, the Obama Administration insists that the president can order the targeted killing, that is, the legalized murder, of American citizens abroad if they pose a threat to American interests. The so-called white paper obtained by NBC News in early February ostensibly narrows the range of executive action by limiting it to high level al Qaeda officials posing “an imminent threat of violent attack against the United States,” but the definition of imminent is so broad that it allows targeting anyone deemed a terrorist (read: enemy of the United States). The official conversation, not surprisingly, is rather dismal. One idea, floated by Senators and supported by Obama, has developed some traction: establish a secret judicial review process to sanction the killings. The problem here is not just that proponents of this idea model it after the Foreign Intelligence Surveillance Act court, a clandestine body that “monitors” government eavesdropping in the United States and rarely if ever denies the state the warrants it seeks; the problem is that Obama and others want to normalize the practice of presidential killing, give it both a Congressional and official judicial seal of approval. The proposal, in other words, seeks to disseminate responsibility—and thus, ironically, preempt accountability—for a “process” that has no place in a democratic society. Remarkably, while a handful of politicians express some concern or unease about executive overreach (how can the president play the role of prosecutor, judge, jury, and executioner?), there is little or no indignation, at least not in the mainstream. What’s more, even proponents of the idea of a supervisory court worry that it might impinge on the president’s prerogatives as commander-in-chief. Thus the very reason for a court also turns out to be an objection to it. What’s worse, the president, perhaps too busy skeet shooting to exercise the authority he claims to possess, has distanced himself from active involvement in the targeting process, preferring to unleash a rejuvenated C.I.A. that effectively answers to no one. Obama may ridicule Republicans for wanting to live in the 1950s, but he has already returned government to that lawless era of coups and assassinations. The lack of outcry should come as no surprise to any close observer of American politics. The United States loves executive power and wants to see it deployed, including in spectacular fashion, on behalf of American interests. Obama has been waging a vicious drone campaign for years in Pakistan, Yemen, and elsewhere, producing hundreds of civilian casualties, without official dissent. Republicans who profess to believe in small government, who foam at the mouth at the prospect of the state playing a supporting role in providing health insurance to tens of millions of fellow citizens, fall silent in the face of Obama Administration’s happy trigger finger. The country’s love affair with executive power was on full display during last month’s inauguration. Nationally televised, commentators universally celebrated the event as American democracy’s finest moment: the pageantry of the peaceful transfer (or reaffirmation) of political power. No prospect of coups, no violence in the streets, nothing untoward mars America’s political system. What a sight to behold, we were told over and over again. What were we actually looking at while being tutored in American political ritual by the likes of Diane Sawyer? Our attention is riveted on a large black SUV with tinted windows, containing the president and first lady, making its way slowly on the streets of Washington, D.C. from the Capitol to the White House. When will the SUV stop, Sawyer asks breathlessly? When will the brave president leave the secure confines of his armored vehicle, alas necessary in the age of terrorism, an age which makes him a target wherever he goes? At long last Obama deigns to appear before the American people. This is the moment we have been waiting for. Ooh, look at the thickness of the door frame, Sawyer gushes. No one knows just how thick it is, she claims (it looks to be about six inches). There he is! President Obama waves to the people, to his most ardent supporters, to federal employees who have the day off. He’s a veritable rock star. Jonathan Karl offers some firsthand reporting about the electric atmosphere, but it’s so loud he can’t hear a thing! I hope you can hear me, Diane! As Obama walks a few blocks on Pennsylvania Avenue, he carries on a tradition started by Jimmy Carter in 1977 to make the presidency seem a little less imperial. By displaying himself in this way, the school lesson continues, Obama shows us that he is the American people’s president. He represents us. It’s a moment for people and president to bond in celebration of the exceptional American political system (as if other democracies don’t routinely transfer power without incident). That this same smiling, beaming man might also have to wield terrible destructive power is the farthest thing from anyone’s mind. Besides, that’s not the face of a killer, is it? Look, he’s waving to me! He’s saluting us! Two thumbs up! Still, Obama’s inaugural address emphasized the indispensable role of citizens in the American democracy. It’s “we, the people” who ultimately matter and decide the country’s future. If we act together, our best days lie ahead of us. Thank you for this reminder, Mr. President. Perhaps we should start by raising the question of impeachment for the blood on Obama’s hands. Not because I have concluded that Obama can or should necessarily be impeached, but to give the drone question the proper political, juridical, and rhetorical context. True, Obama accelerated withdrawals from Iraq and Afghanistan, but the price has been high and paid largely by others (Pakistani and Yemeni civilians). After all, might not the arbitrary assassination of American citizens (not so-called citizens, Diane Feinstein’s rhetorical sleight-of-hand notwithstanding) constitute a “high crime” as delineated in the Constitution? Cornel West thinks Obama’s drone program, with hundreds, perhaps thousands of casualties, amounts to a sequence of war crimes. Let’s act on Obama’s advice and take back (some of) the power that presidents, perhaps especially the last two, have arrogated to themselves. We can start with Barack and then move on to W., who can’t be impeached, but that doesn’t mean he doesn’t belong in the dock for his personal war in Iraq. In the name of national security, our democratic security, let’s put presidents in their place. That they walk among us and wave every four years does not make them any less dangerous; if anything it enhances the awesome powers already at their disposal.

# Legitimacy

#### Drone courts hurt US democracy credibility – reinforcing perceptions of secret rules and hypocrisy

Roma 13 Gabor, international legal director at Human Rights First, 2-27, “The pro-rule of law argument against a 'drone court',” The Hill, http://thehill.com/blogs/congress-blog/judicial/285041-the-pro-rule-of-law-argument-against-a-drone-court#ixzz2W7ZqeRtN

But a “drone court” would be worse than ineffective: it would harm national security. Throughout the “war on terror,” policies that offend international law, including the broad scope of the government's claimed authority to kill, have inhibited allies from sharing essential intelligence with the United States and damaged the country’s reputation as a beacon on human rights. A secret court would only reinforce the perception that the United States concocts its own secret rules while insisting that other countries follow the international public ones.

#### The Pentagon knows your credibility arguments aren’t true – new courts won’t boost our credibility

Baron 13 Kevin, national security reporter for Foreign Policy, covering defense and military issues in Washington, Foreign Policy, 3-18, http://ering.foreignpolicy.com/posts/2013/03/18/jeh\_johnson\_drone\_court\_skeptic\_argues\_targeted\_killing\_best\_left\_to\_military

Jeh Johnson, the Pentagon’s top lawyer until three months ago, is skeptical of the need for a so-called drone court. Johnson, who personally approved the legal authority behind every major military strike ordered by the secretary of defense and President Obama until January 1, says the U.S. military is best equipped to conduct targeted killings of terrorism suspects abroad, without the need for a new court. This morning, Johnson, who has returned to private practice, is at Fordham University to deliver a speech that he bills as the first to tackle the pros and cons of such a court. Johnson directly challenges advocates of the idea, including senators calling for more oversight and transparency, such as Dianne Feinstein (D-CA), intelligence committee chairwoman, and his old boss, former Defense Secretary Robert Gates. Legal authority for targeted strikes against terrorism suspects that are conducted by the military is already in place, Johnson argues. What is needed, he offers, is more transparency around how those suspects are identified. Some secrets about targeted operations, Johnson claims, can be revealed without compromising national security. “Most people, I think, do not have a quarrel with the bottom-line conclusions and results,” Johnson says in the speech, an advance copy of which was obtained by The E-Ring. “The problem is that the American public is suspicious of executive power shrouded in secrecy.” Because U.S. officials will not confirm targeted killings even though they are widely reported by the media, the government is losing the trust and support of the public it is trying to protect, Johnson claims. But, even though an oversight court may sound like a good idea because judges are thought to be fairer than White House politicos, Johnson argues that a new court would be problematic and unnecessary -- at least for the military. “We must be realistic about the degree of added credibility such a court can provide,” he said. Those few cases that would require the court’s approval likely would be kept secret anyway, and most of those cases still would be approved. The current FISA, or foreign intelligence court, is “derided” as a rubber stamp by the same groups calling for a new drone court, he notes. Johnson analyzes three possible versions of a drone court and argues why all three would fail. A court that reviews all desired strikes away from a battlefield and against terrorists, including by the military, would be a logjam and require too much evidence to act in real time. A court that reviewed only the evidence for strikes against U.S. citizens abroad would require an impractical standard of intelligence, essentially forcing the government prove it knows the exact nationality of every target, American or not. Finally, Johnson offers his least bad option: a court that would review and approve lethal force only against terrorists known to be U.S. citizens “but only in instances not part of a congressionally-authorized armed conflict conducted by the U.S. military.” In other words, this court would review killings of Americans abroad conducted by the CIA or other non-military agencies. “In my view targeted lethal force is at its least controversial when it is on its strongest, most traditional legal foundation. The essential mission of the U.S. military is to capture or kill an enemy. Armies have been doing this for thousands of years. As part of a congressionally-authorized armed conflict, the foundation is even stronger.” “Lethal force outside the parameters of congressionally-authorized armed conflict by the military looks to the public to lack any boundaries, and lends itself to the suspicion that it is an expedient substitute for criminal justice.” Johnson also notes that courts are not equipped to decide “questions of feasibility of capture and imminence,” which can change rapidly.

#### No foreign backlash

* Secret
* Popular support from Pakistan/Yemen politicians
* Alternatives worse: team raids
* Biases samples

Byman 13 (Daniel, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, Foreign Affairs, “Why Drones Work: The Case for Washington’s Weapon of Choice”, July/August 2013)

FOREIGN FRIENDS It is also telling that drones have earned the backing, albeit secret, of foreign governments. In order to maintain popular support, politicians in Pakistan and Yemen routinely rail against the U.S. drone campaign. In reality, however, the governments of both countries have supported it. During the Bush and Obama administrations, Pakistan has even periodically hosted U.S. drone facilities and has been told about strikes in advance. Pervez Musharraf, president of Pakistan until 2008, was not worried about the drone program’s negative publicity: “In Pakistan, things fall out of the sky all the time,” he reportedly remarked. Yemen’s former president, Ali Abdullah Saleh, also at times allowed drone strikes in his country and even covered for them by telling the public that they were conducted by the Yemeni air force. When the United States’ involvement was leaked in 2002, however, relations between the two countries soured. Still, Saleh later let the drone program resume in Yemen, and his replacement, Abdu Rabbu Mansour Hadi, has publicly praised drones, saying that “they pinpoint the target and have zero margin of error, if you know what target you’re aiming at.” As officials in both Pakistan and Yemen realize, U.S. drone strikes help their governments by targeting common enemies. A memo released by the antisecrecy website WikiLeaks revealed that Pakistan’s army chief, Ashfaq Parvez Kayani, privately asked U.S. military leaders in 2008 for “continuous Predator coverage” over antigovernment militants, and the journalist Mark Mazzetti has reported that the United States has conducted “goodwill kills” against Pakistani militants who threatened Pakistan far more than the United States. Thus, in private, Pakistan supports the drone program. As then Prime Minister Yousaf Raza Gilani told Anne Patterson, then the U.S. ambassador to Pakistan, in 2008, “We’ll protest [against the drone program] in the National Assembly and then ignore it.” Such concerns are valid, but the level of local anger over drones is often lower than commonly portrayed. Many surveys of public opinion related to drones are conducted by anti-drone organizations, which results in biased samples. Other surveys exclude those who are unaware of the drone program and thus overstate the importance of those who are angered by it. In addition, many Pakistanis do not realize that the drones often target the very militants who are wreaking havoc on their country. And for most Pakistanis and Yemenis, the most important problems they struggle with are corruption, weak representative institutions, and poor economic growth; the drone program is only a small part of their overall anger, most of which is directed toward their own governments. A poll conducted in 2007, well before the drone campaign had expanded to its current scope, found that only 15 percent of Pakistanis had a favorable opinion of the United States. It is hard to imagine that alternatives to drone strikes, such as seal team raids or cruise missile strikes, would make the United States more popular.

**Credibility impacts are empirically false and unsupported by any research**

**Fettweis, 10** – assistant professor of political science at Tulane University (Christopher, “The Remnants of Honor: Pathology, Credibility and U.S. Foreign Policy," August, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1657460)

If credibility kept a state safe in a dangerous world, then the occasional war to bolster it would be a small price to pay. There are good reasons to believe that this is not the case. In order for credibility to be a useful, rational motivation for action, two criteria must be met: There must be actors in society with the desire and capability to take advantage of perceived low credibility; and second, there must be good reason to believe that they can be deterred by a reputation for resolve. For the United States in the twenty-first century, neither of these is fulfilled. The current international system does not resemble the kind of dangerous, anarchic world where honor and credibility can deter aggression. A concern for credibility is irrational when there are no major enemies poised to take advantage of irresolution. Furthermore, decades of research cast doubt upon the deterrent ability of honor in the international system, suggesting that its benefits are illusory. Target states rarely learn the lessons we try to teach them. Credibility never kept a country safe; fortunately, in today’s world, the United States is safe with or without it.

# Prolif

#### Executive lawyers will teach the Executive how to blow off the plan

Shane 12 \*Peter M. Jacob E. Davis and Jacob E. Davis II Chair in Law, The Ohio State University Moritz School of Law. From 1978 to 1981, served in the Office of Legal Counsel, U.S. Department of Justice. Journal of National Security Law & Policy, 5 J. Nat'l Security L. & Pol'y 507

Yet, the ideological prism of presidentialism can bend the light of the law so that nothing is seen other than the claimed prerogatives of the sitting chief executive. Champions of executive power - even skilled lawyers who should know better - wind up asserting that, to an extraordinary extent, the President as a matter of constitutional entitlement is simply not subject to legal regulation by either of the other two branches of government. [\*511] Government attorneys must understand their unique roles as both advisers and advocates. In adversarial proceedings before courts of law, it may be fine for each of two contesting sides, including the government, to have a zealous, and not wholly impartial, presentation, with the judge acting as a neutral decisionmaker. But in their advisory function, government lawyers must play a more objective, even quasi-adjudicative, role. They must give the law their most conscientious interpretation. If they fail in that task, frequently there will be no one else effectively situated to do the job of assuring diligence in legal compliance. Government lawyers imbued with the ideology of presidentialism too easily abandon their professional obligations as advisers and too readily become ethically blinkered advocates for unchecked executive power. Jack Goldsmith headed the Office of Legal Counsel (OLC) for a little less than ten months in 2003-2004. Of the work done by some government attorneys and top officials after 9/11, he said they dealt with FISA limitations on warrantless surveillance by the National Security Agency (NSA) "the way they dealt with other laws they didn't like: they blew through them in secret based on flimsy legal opinions that they guarded closely so no one could question the legal basis for the operations." 7 He describes a 2003 meeting with David Addington, who was Counsel and later Chief of Staff to Vice President Dick Cheney, in which Addington denied the NSA Inspector General's request to see a copy of OLC's legal analysis in support of the NSA surveillance program. Before Goldsmith arrived at OLC, "not even NSA lawyers were allowed to see the Justice Department's legal analysis of what NSA was doing." 8

# Terror

#### Oversight makes the president less responsible

Nzelibe & Stephenson 10 Jide O. Nzelibe\* Professor of Law, Northwestern University Law School, and Matthew C. Stephenson\*\* Assistant Professor of Law, Harvard Law School. Harvard Law Review, January, 123 Harv. L. Rev. 617

The preceding section focused on one critique of the separation of powers: that it is ineffective because presidents have both the ability and the incentive to arrogate more power to themselves. Our analysis suggests that concern may be exaggerated because rational voters can give presidents an electoral incentive to share decisionmaking authority with Congress. That observation, though, might raise a different concern about the separation of powers that is also prominent in the literature: that U.S.-style separation of powers undermines democratic accountability by obscuring responsibility for policy outcomes. 41 According to one variant of this hypothesis, politicians have both the opportunity and the incentive to exploit the separation of powers to confuse or obscure responsibility for difficult decisions, enabling the politicians to claim credit for policy successes and to avoid blame for policy failures. 42 Thus, Congress might seek to delegate to the courts or to administrative agencies, 43 or (as suggested in the preceding section) [\*640] the President might seek congressional authorization as political insurance for some of his high-risk policy initiatives. 44

#### Congressional oversight means more secrecy – empirically Senators use oversight to do the opposite

Greenwald 12THURSDAY, JUN 7, 2012 03:05 AM PDT Probing Obama’s secrecy games Will high-level Obama officials who leak for political gain be punished on equal terms with actual whistleblowers? BY GLENN GREENWALD

What all of this reflects is the wildly excessive, anti-democratic secrecy behind which the U.S. Government operates, and the solution in the face of this growing controversy ought to be serious attempts to increase transparency and dilute the wall of secrecy. But that’s highly unlikely to happen. When people like Dianne Feinstein, Carl Levin and John McCain start digging their hands into these controversies, they reflexively do the opposite: they are devoted to always-increasing levels of government secrecy. For Security State servants like these, secrecy is the currency on which their power, influence and self-importance depends: the more government actions which they know about but which are concealed from the citizenry, the more influential and unaccountable they are. So as is usually true when bipartisan groups of self-important Senators gather in common cause, they’re certain to make the core problem worse. In response to the genuine problem of selective leak-punishment by the Executive Branch, they will not try to increase transparency but will do the opposite: attempt to plug leaks, punish whistleblowers, and fortify U.S. Government secrecy powers even beyond where they are now.

#### Court proceedings lead to compromising intelligence AND freezes future cooperation

Friedman et al 9, National Strategy Forum president and chair, 2009 (Richard, “Trying Terrorists in Article III Courts Challenges and Lessons Learned”, July, <http://prawfsblawg.blogs.com/files/trying-terrorists-art-iii-report-final.pdf>, ldg)

There was substantial agreement among the workshop participants that the government faces unique foreign relations and intelligence issues when using classified and sensitive evidence obtained through foreign liaison relations for terrorism trials in a public Article III court. Some discussants agreed that these issues were partly legal and partly political, and that all of these issues have the potential to threaten either successful prosecution or important intelligence relations. The following is a brief account of many discussants’ concerns with the foreign relations and intelligence challenges of trying terrorists in Article III courts. First, the disclosure of evidence in some terrorism trials may force a decision about whether to expose important intelligence gathering priorities, methods, and sources. This exposure may lead to conflicting interests between U.S. intelligence and law enforcement agencies; the risk of conflict is no less substantial when using sensitive evidence as opposed to classified evidence.17 In addition, it is not always clear at the outset which intelligence information will be valuable in the future, meaning that intelligence agencies are resistant to disclosing any intelligence information unless its secrecy can be adequately safeguarded and its use will result in meaningful benefits to the government. Second, the use of classified and sensitive evidence obtained from the intelligence arm of a foreign government can pose an obstacle to future cooperation between the United States and the foreign government. Intelligence information is often shared between governments with the express understanding that such cooperation will remain secret. In terrorism trials, the prosecution may face the dilemma of either (i) turning over the evidence of foreign cooperation and thereby undermining the trust of the foreign government, (ii) proceeding with litigation on a more restricted set of evidence, or, in some rare cases, (iii) withdrawing some charges against the defendant. Third, where a secret informant only cooperates with U.S. intelligence under assurances that she will never be identified or have to testify in an American courtroom, prosecutors and intelligence officials may be faced with losing a valuable intelligence source for the purpose of prosecuting a single (or a small group of) terrorist suspect(s). The higher value the informant, the less likely the intelligence service will agree to such disclosure, meaning that the prosecution may be forced to proceed on significantly less evidence. This problem also arises where the source is a foreign intelligence agent barred from testifying in an American courtroom by her own government. A few discussants argued, however, that these were merely practical barriers for the prosecution that can be, and in past cases have been, overcome, for example, by renegotiating with an intelligence source or engaging in diplomacy with a foreign government on a case-bycase basis. Some discussants urged that criminal prosecutors often handle issues pertaining to reluctant and secret witnesses, meaning that prosecutors can continue to do so in terrorism trials. However, other discussants disagreed, asserting that the national security, intelligence, and foreign relations implications of handling secret witnesses in terrorism trials are different and more complex than secrecy considerations typically at issue in traditional criminal trials.

# \*\*\*2NC Case

# 2NC States Secret

#### Resistance. The law is not the problem. The President is already required – BY LAW - to keep committees FULLY INFORMED and yet the committee complains about lack of access and the executive CONCEALS deaths

Ross 13 Alice K, The Bureau of Investigative Journalism, 8-1, http://www.thebureauinvestigates.com/2013/08/01/is-congressional-oversight-tough-enough-on-drones/

By law, the President is required to ensure that the committee is kept “fully and currently informed” of intelligence activities.’ Senate intelligence committee But committee members have complained about being denied information – and a source with knowledge of the committees’ functioning told the Bureau: ‘It’s a serious question as to how much any elected official could possibly understand about what’s going on inside’ the intelligence agencies. In 2012 the Los Angeles Times published what it said was a detailed account of these meetings – based on anonymous briefings – outlining how committee members and aides from the House and Senate committees go to the CIA headquarters each month to watch video footage of recent drone strikes. But new findings from the Bureau’s field research differ sharply from the account of what was reportedly shown to the committees on one occasion. The LA Times reported that anonymous aides described seeing footage of a strike that took place on June 4 2012. The attack represented a major success for the agency, killing Yahya al-Libi, al Qaeda’s second-in-command. Aides reported seeing footage showing al-Libi alone being killed by a missile. But Bureau field research and multiple credible reports tell a different story, in which the day’s events appear to be significantly more complex. The BBC, CNN and other international news outlets were among those reporting that the missile that killed al-Libi was the final part of a sequence of attacks that killed between 14 and 18 people. Sources including the Washington Post reported that after an initial strike, drones returned to attack those carrying out rescue work. Related story - Bureau investigation finds fresh evidence of CIA drone strikes on rescuers If the report of what was shown to the oversight committees is accurate – and if the Bureau and other news agencies are correct – then it appears that committee members were only shown video covering the final part of the incident, giving a misleading impression that concealed over a dozen deaths. The SSCI’s website states: ‘By law, the President is required to ensure that the committee is kept “fully and currently informed” of intelligence activities.’ CIA spokesman Edward Price told the Bureau: ‘The CIA takes its commitment to Congressional oversight with the utmost seriousness. The Agency provides accurate and timely information consistent with our obligation to the oversight Committees. Any accusation alleging otherwise is baseless.’ Neither the House nor the Senate committee would comment, despite repeated requests from the Bureau. But Feinstein’s office did point the Bureau towards a five-month-old statement by the senator on oversight of the drone campaign, made shortly after the public nomination hearings for CIA director John Brennan, of which drones were a major focus. The statement briefly outlined the review process for drone strikes. But it added the Obama administration had refused to provide the committee with memos outlining the legal justifications for drone strikes, despite repeated requests from senior committee members. I’ve been on this Committee for more than 10 years, and with the exception of Mr. Panetta, I feel I’ve been jerked around by every CIA Director’ Senator Barbara Mikulski ‘I have sent three letters [between 2010 and 2013]… requesting these opinions,’ Feinstein said. ‘Last week, senators on the committee were finally allowed to review two OLC [Office of Legal Counsel] opinions on the legal authority to strike US citizens. We have reiterated our request for all nine OLC opinions – and any other relevant documents – in order to fully evaluate the executive branch’s legal reasoning, and to broaden access to the opinions to appropriate members of the committee staff.’ The challenges of oversight The Bureau has previously questioned the effectiveness of the intelligence committees’ oversight of drone strikes. In February 2013. Feinstein used opening remarks at John Brennan’s nomination hearings to claim her committee had done its ‘utmost to confirm’ low civilian casualties in CIA drone strikes. The Bureau contacted four fellow independent organisations which had carried out field investigations looking at civilian casualties in Pakistan. Each had published evidence of civilian casualties – yet none had ever been contacted by committee members or their staff in response to their findings, raising concerns the committee is too dependent on the intelligence community’s assessments. Related story – No evidence Congress does ‘utmost’ to follow up drone civilian death claims Current committee members have complained about being blocked from robust scrutiny. At Brennan’s nomination hearings, Senator Barbara Mikulski said: ‘I’ve been on this Committee for more than 10 years, and with the exception of Mr. Panetta, I feel I’ve been jerked around by every CIA Director. I’ve either been misled, misrepresented, had to pull information out – often at the most minimal kind of way… And quite frankly, during those questions, they were evaded; they were distorted, et cetera.’

# 2NC Coverts

#### OPEs. The DOD will define their activities as OPEs to escape oversight

Kibbe 12 \* Jennifer D. Associate Professor of Government, Franklin & Marshall College. Journal of National Security Law & Policy, 5 J. Nat'l Security L. & Pol'y 373

It was clear in June 2009 that some members of Congress sensed that SOF were conducting unacknowledged missions that were falling through the oversight cracks. In its report on the Intelligence Authorization Act for FY 2010, the HPSCI noted "with concern" that "in categorizing its clandestine activities, DOD frequently labels them as "Operational Preparation of the Environment' (OPE) to distinguish particular operations as traditional military activities and not as intelligence functions. The Committee observes, though, that overuse of this term has made the distinction all but meaningless." 49 HPSCI further complained that, "while the purpose of many such operations is to gather intelligence [which would mean they are not covert actions], DOD has shown a propensity to apply the OPE label where the slightest nexus of a theoretical, distant military operation might one day exist. Consequently, these activities often escape the scrutiny of the intelligence committees, and the congressional defense committees cannot be expected to exercise oversight outside of their jurisdiction." 50 Representative Rush Holt expressed similar concerns at a HPSCI Subcommittee hearing in October 2009: There is a lot that one could imagine that is going on in the world these days, whether it be remote killings or assassinations or intelligence collection that falls - or other kinds of actions - that fall somewhere between Title 10 [military authorities] and Title 50 [intelligence authorities], depending on who does them and how they are done. It has become practice here on the Hill not to brief some of these activities. It is not clear whether some of those activities are briefed to anyone. But, in any case, they are often not briefed to the Intelligence Committees when I think a reasonable person would say [those activities] are intelligence activities or [that] there are significant intelligence components of the activities. 51 One of the witnesses reinforced Holt's point that although certain operations may appear to be under the intelligence committees' jurisdiction, "because they are considered at least by the Defense Department to be a part of a military operation, they say jurisdiction belongs to the Armed Services Committee. And ... sometimes the Armed Services Committees get notice and sometimes they don't, of what is being done in preparation for a military operation ... ." 52

# 2NC Unconstitutional

#### They’ll be attacked as unconstitutional

Rosen 13 Jeffrey, professor of law at The George Washington University and the legal affairs editor of The New Republic, "Courting disaster: A new idea to limit drones could actually legitimize them,” The New Republic, 2-11, http://www.newrepublic.com/article/112392/drone-courts-congress-should-exercise-oversight-instead#

Although the Supreme Court has been most sympathetic to bold claims about executive power when they’re supported by Congress and reviewed by independent judges, a congressionally created drone court would be open to a series of practical and constitutional objections. On the practical side, there’s the question of what, precisely, the court would be reviewing. The administration claims the power to order targeted assassinations when three conditions are met: 1) a high level U.S. officials decides the target is a “senior operational leader of Al-Qaida” who “poses an imminent threat of violent attack against the United States”; 2) “capture is infeasible”; and 3) the operation would be conducted according to the laws of war. But it’s infeasible for judges to make split second decisions about whether or not an attack is, in fact, imminent or capture is feasible. For that reason, the most likely focus of a drone court would be the administration’s decision to put a suspect on the targeted killing list in the first place. But, as Steve Vladek of American University has argued, it’s not clear that judges have the constitutional power to issue warrants that can’t be challenged by the targets in a future judicial proceeding. And there are also serious questions about whether or not Congress has the constitutional power to forbid the president from exercising his war powers without getting judicial approval in advance.

# 2NC Rubber Stamp

#### Executive backlash will turn drone courts into ceremonies

Ruppert 13 Madison, Editor of End the Lie, Support and opposition arises for FISA-style secret court to oversee drone assassinations, 2-9, http://EndtheLie.com/2013/02/09/support-and-opposition-arises-for-fisa-style-secret-court-to-oversee-drone-assassinations/#ixzz2TyHUp5Cv

While the Obama administration claimed they were going to release the contested legal memos to intelligence committees outlining the justification for the so-called targeted killing program carried out by drones in Yemen (via a base in Saudi Arabia) and elsewhere, these memos have not been released for scrutiny in the court system. The response to what the New York Times calls “the hidden bureaucracy directing lethal drone strikes” appears to be even more hidden bureaucracy in the style of the secret Foreign Intelligence Surveillance Court (FISC), built upon the Foreign Intelligence Surveillance Act (FISA). While it is claimed that having a court approve the adding of names to a kill list, at least for American citizens, “is no longer beyond the realm of political possibility,” according to Robert Chesney, a law professor at the University of Texas, this proposal is still problematic. The idea has been promoted by legislators like Senator Dianne Feinstein, according to the Washington Post, and yet it faces significant obstacles like the “almost-certain opposition from the executive branch to a dilution of the president’s authority to protect the country against looming threats.” Other obstacles “include the difficulty of putting judges in a position to approve the killing of individuals — possibly including American citizens — even if they have not been convicted of a crime,” according to the Post. The American Civil Liberties Union (ACLU) opposes the move, according to the Times, because it is just judicial review in a new secret court. Hina Shamsi, director of the ACLU’s national security project, argued that extradition and criminal prosecution of terrorists is a much better option. “I strongly agree that judicial review is crucial,” Shamsi told the Times. “But judicial review in a new secret court is both unnecessary and un-American.” Judges don’t appear all that excited about approving the killing of Americans without actually being convicted of any crimes. James Robertson, a retired FISC judge rejected the notion that judges should sign off on “death warrants” at an American Bar Association meeting in November of last year. “My answer is, that’s not the business of judges to decide without an adversary party to sign a death warrant for somebody,” Robertson said. While Senator Angus King, a Maine Independent, recently endorsed the idea of a special court, King ignored some crucial facts. “Having the executive being the prosecutor, the judge, the jury and the executioner all in one is very contrary to the traditions and the laws of this country,” King said. However, if this is really going to be an “analogue of the Foreign Intelligence Surveillance Court” as Feinstein proposed, it would be little more than ceremonial. When former Attorney General John Ashcroft filed an appeal in 2002, it was “the first formal challenge to the FISC in its 23-year history. Until this incident, the FISC has approved all but one FISA application sought by the government since the court’s inception,” according to the Electronic Privacy Information Center (EPIC). Similarly, Wired’s Threat Level reported in 2011, “The secretive Foreign Intelligence Surveillance Court approved all 1,506 government requests to electronically monitor suspected “agents” of a foreign power or terrorists on U.S. soil last year, according to a Justice Department report released under the Freedom of Information Act.” “The FISC did not deny any applications in whole, or in part,” the report to Senator Majority Leader Harry Reid stated. Why would we believe that another secret court would perform any differently? Jack Goldsmith, a Harvard Law School professor writing for Lawfare, doesn’t seem all that enthusiastic about the proposition. “To my mind the ex post damages action has fewer constitutional problems than ex ante vetting by a secret court,” Goldsmith writes. “But I think that, to satisfy presidential prerogatives and the demands of classified information, it much more likely that what we end up with (if we end up with anything new in this area) is a weak-tea FISC-like ex ante vetting system without ex post damages review.” For those unfamiliar with the terms, ex ante means before the event and essentially looks at future implications of a decision whereas ex post means after the event and reflects on what has already happened. A quick overview of the terms can be read here. “If I am right, we are at the beginning of a movie we have seen before, with the [Guantanamo Bay] habeas litigation: a human rights NGO brings lawsuits that aim to stop a practice but that end up narrowing it a bit but also putting it on a firmer and more legitimate legal foundation that enables it to continue with less political or legal controversy,” Goldsmith writes. In other words, if such a secret court is created, it seems like it likely won’t result in anything all that positive.

The plan forces the court to issue death warrants—cracks their legitimacy, the CP is less precedent shift which preserves it

Taylor 13 (Paul, is a Senior Fellow, Center for Policy & Research. Focus on national security policy, international relations, targeted killings, and drone operations. “Former DOD Lawyer Frowns on Drone Court,” http://centerforpolicyandresearch.com/2013/03/23/former-dod-lawyer-frowns-on-drone-court/)

First, Johnson notes, as others have, that judges would be loath to issue the equivalent of death warrants, first of all on purely moral grounds, but also on more political grounds. Courts enjoy the highest approval ratings of the three branches of government, yet accepting the responsibility to determine which individuals may live or die, without that individual having an opportunity to appear before the court would simply shift some of the public opprobrium from the Executive to the Judiciary. However, if the court exercised ex post review, it instead would be in its ordinary position of approving or disapproving the Executive’s decisions, not making its decisions for it. Another concern raised by Johnson is that the judges would be highly uncomfortable making such decisions because they would be necessarily involve a secret, purely ex parte process. While courts do this on a daily basis, as when they issue search or arrest warrants, the targeted killing context stands apart in that the judge’s decision would be effectively irreversible. Here again, the use of ex post process would free the courts from this problem, and place it in the executive (which includes the military, incidentally, an organization which deals with this issue as a matter of course).

Oversight increases misinformation

Beutler 13 Brian, senior congressional reporter for Talking Points, TPM, 6-19, http://tpmdc.talkingpointsmemo.com/2013/06/snowden-revelations-cast-new-doubts-on-intelligence-oversight-process.php

TPM first reached out to Nadler’s staff seeking clarification about the discrepancy on Thursday evening. Over the weekend, other news outlets reported on the exchange prior to any clarification, suggesting Nadler had revealed the existence of a warrantless wiretapping program. As it turns out, the exchange was actually a real-life example of how misinformation can flourish when hearings are conducted in secret and staffers with issue expertise are forbidden from participating. “I am pleased that the administration has reiterated that, as I have always believed, the NSA cannot listen to the content of Americans’ phone calls without a specific warrant,” Nadler said on Sunday, after the confusion had apparently been resolved. This is a problem Senate intelligence committee Chair Dianne Feinstein (D-CA) addressed herself in a recent appearance on ABC News. “We had an intelligence committee meeting on Thursday [June 6], which I opened up to everybody and 27 senators came,” she said. ” You know, we informed them that every senator, the material is available. They can come and see it. One of the strictures with how they classified stuff is no staff. I think that should be changed so that intelligence committee staff can come in with the member and go over and review the material.” At an October 2009 public hearing of the House Intelligence Subcommittee on Intelligence Community Management, Britt Snider, a former CIA inspector general, explained the pitfalls of Congressional subservience to the executive branch when it comes to the most sensitive intelligence issues. “[I]n especially sensitive cases, the president has the option of providing notice of covert actions to a smaller group. It doesn’t say what this group of — this smaller group may do with the information that the executive branch has told them. In fact, it’s told them they can’t do anything with the information. And over the years, the gang of eight has acquiesced in what the executive branch has told them,” he said. I think personally this has been a mistake because when — what has happened, it has effectively marginalized congressional oversight. It’s meant the eight congressional leaders can only react to what they hear, without the advice of their professional staffs, without the advice of knowledgeable colleagues. And I think this is difficult for them to do, coming at it cold, having it presented to them in the most benign way possible. If they decide they have a problem, they have to be able to articulate on the spot what that problem is in a convincing way. If they later decide that they have a concern, then they have to take it upon themselves to go back and raise it with the administration. Again, they’re going to have to rely on their own memory because they weren’t allowed to take notes at the briefings and there is no record of the — of what they were told that they have access to. And so it’s — it’s just — very few, I think, congressional leaders are going to be willing or able to do this. But rest assured, if — if whatever program they’ve been briefed about subsequently goes south, their buy-in will be touted by the administration very prominently. I just simply don’t think this is fair to the members involved. This can breed mistrust and uncertainty. Since Edward Snowden’s disclosures appeared in The Guardian and the Washington Post, we’ve heard a variety of accounts both from members who were aware of the programs previously, and those who’ve learned about them in subsequent briefings. We’ve heard both that the programs aren’t nearly as expansive as portrayed in the press and also that they’re just “the tip of the iceberg.”

# 2NC Circumvention

#### Resistance. The law is not the problem. The President is already required – BY LAW - to keep committees FULLY INFORMED and yet the committee complains about lack of access and the executive CONCEALS deaths

Ross 13 Alice K, The Bureau of Investigative Journalism, 8-1, http://www.thebureauinvestigates.com/2013/08/01/is-congressional-oversight-tough-enough-on-drones/

By law, the President is required to ensure that the committee is kept “fully and currently informed” of intelligence activities.’ Senate intelligence committee But committee members have complained about being denied information – and a source with knowledge of the committees’ functioning told the Bureau: ‘It’s a serious question as to how much any elected official could possibly understand about what’s going on inside’ the intelligence agencies. In 2012 the Los Angeles Times published what it said was a detailed account of these meetings – based on anonymous briefings – outlining how committee members and aides from the House and Senate committees go to the CIA headquarters each month to watch video footage of recent drone strikes. But new findings from the Bureau’s field research differ sharply from the account of what was reportedly shown to the committees on one occasion. The LA Times reported that anonymous aides described seeing footage of a strike that took place on June 4 2012. The attack represented a major success for the agency, killing Yahya al-Libi, al Qaeda’s second-in-command. Aides reported seeing footage showing al-Libi alone being killed by a missile. But Bureau field research and multiple credible reports tell a different story, in which the day’s events appear to be significantly more complex. The BBC, CNN and other international news outlets were among those reporting that the missile that killed al-Libi was the final part of a sequence of attacks that killed between 14 and 18 people. Sources including the Washington Post reported that after an initial strike, drones returned to attack those carrying out rescue work. Related story - Bureau investigation finds fresh evidence of CIA drone strikes on rescuers If the report of what was shown to the oversight committees is accurate – and if the Bureau and other news agencies are correct – then it appears that committee members were only shown video covering the final part of the incident, giving a misleading impression that concealed over a dozen deaths. The SSCI’s website states: ‘By law, the President is required to ensure that the committee is kept “fully and currently informed” of intelligence activities.’ CIA spokesman Edward Price told the Bureau: ‘The CIA takes its commitment to Congressional oversight with the utmost seriousness. The Agency provides accurate and timely information consistent with our obligation to the oversight Committees. Any accusation alleging otherwise is baseless.’ Neither the House nor the Senate committee would comment, despite repeated requests from the Bureau. But Feinstein’s office did point the Bureau towards a five-month-old statement by the senator on oversight of the drone campaign, made shortly after the public nomination hearings for CIA director John Brennan, of which drones were a major focus. The statement briefly outlined the review process for drone strikes. But it added the Obama administration had refused to provide the committee with memos outlining the legal justifications for drone strikes, despite repeated requests from senior committee members. I’ve been on this Committee for more than 10 years, and with the exception of Mr. Panetta, I feel I’ve been jerked around by every CIA Director’ Senator Barbara Mikulski ‘I have sent three letters [between 2010 and 2013]… requesting these opinions,’ Feinstein said. ‘Last week, senators on the committee were finally allowed to review two OLC [Office of Legal Counsel] opinions on the legal authority to strike US citizens. We have reiterated our request for all nine OLC opinions – and any other relevant documents – in order to fully evaluate the executive branch’s legal reasoning, and to broaden access to the opinions to appropriate members of the committee staff.’ The challenges of oversight The Bureau has previously questioned the effectiveness of the intelligence committees’ oversight of drone strikes. In February 2013. Feinstein used opening remarks at John Brennan’s nomination hearings to claim her committee had done its ‘utmost to confirm’ low civilian casualties in CIA drone strikes. The Bureau contacted four fellow independent organisations which had carried out field investigations looking at civilian casualties in Pakistan. Each had published evidence of civilian casualties – yet none had ever been contacted by committee members or their staff in response to their findings, raising concerns the committee is too dependent on the intelligence community’s assessments. Related story – No evidence Congress does ‘utmost’ to follow up drone civilian death claims Current committee members have complained about being blocked from robust scrutiny. At Brennan’s nomination hearings, Senator Barbara Mikulski said: ‘I’ve been on this Committee for more than 10 years, and with the exception of Mr. Panetta, I feel I’ve been jerked around by every CIA Director. I’ve either been misled, misrepresented, had to pull information out – often at the most minimal kind of way… And quite frankly, during those questions, they were evaded; they were distorted, et cetera

Emergencies!

Vermeule 9 \*Adrian, John H. Watson, Jr. Professor of Law, Harvard Law School. Harvard Law Review, 122 Harv. L. Rev. 1095, February

In the modest version, once the layers of interpretive dross and continental conceptualisms are cleaned off of Schmitt's thinking, what remains are several important mid-sized and largely institutional or [\*1101] empirical insights. Emergencies cannot realistically be governed by ex ante, highly specified rules, but at most by vague ex post standards; it is beyond the institutional capacity of lawmakers to specify and allocate emergency powers in all future contingencies; practically speaking, legislators in particular will feel enormous pressure to create vague standards and escape hatches - for emergencies and otherwise - in the code of legal procedure that governs the mine run of ordinary cases in the administrative state, because legislators know they cannot subject the massively diverse body of administrative entities to tightly specified rules, and because they fear the consequences of lashing the executive too tightly to the mast in future emergencies. As we will see, all of these institutional features are central to our administrative law, and they create the preconditions for the emergence of the legal black holes and legal grey holes that are integral to its structure.

# AT: Follow

Driesen 9 \* David M. University Professor, Syracuse University; Fordham Law Review, October, 78 Fordham L. Rev. 71

The executive branch often interprets the vast body of law it administers unilaterally. In some areas, courts have no opportunity to review its decisions. 217 Even when reviewable, the courts usually approach executive branch decisions deferentially and often correct errors in ways that leave continuing latitude for executive branch shaping of the law. 218 Because of the awkwardness of impeachment and funding cutoffs, congressional oversight provides only a very limited remedy for executive excess, and executive decisions to withhold information can further weaken oversight's effectiveness. 219 Because modern Presidents are so profoundly political, a danger exists that they will interpret the law opportunistically, to increase their own power and advance their faction's political agenda, rather than faithfully execute the laws Congress has publicly passed. 220 The opportunities for abuse have recently multiplied, because of the specter of terrorism, which tends to drive the executive toward secret policy making of his own largely unrestrained by law. 221

# \*\*\*2NC K

# 2NC Overview

**---national security utilitarianism---the public has been subdued into believing the government overreach and means-end rationality logic that seeks to control and dominate the world around us is pushing us on the brink of extinction**

Williams 8 \*Daniel R, Associate Professor of Law, Northeastern University School of Law.

Penn State Law Review, Summer, 113 Penn St. L. Rev. 55

B. The Underbelly of the Enlightenment Heritage - the Weberian Nightmare What has heretofore given a patina of acceptability to this modern-day Foucauldian "political dream of the plague" is the narrative idea of a wounded and vulnerable nation gripped in an existential crisis, seeking to protect itself against human "missiles of destruction." The descriptive (a threatened wounded nation) produces in this story the normative (the adjudicative assembly line for enemy combatants). The Foucauldian "political dream of the plague" is the Weberian nightmare. In Dialectic of the Enlightenment, Frankfurt School theorists Horkheimer and Adorno identify the Weberian nightmare of obsessive instrumental rationality as the dominant cognitive orientation in Western culture. 147 Whereas most Americans see as features of this means-ends orientation the awesome feats of science (the amazing technological prosthetics that drives humanity closer to becoming a God, as Freud observed), critical theorists like Horkheimer and Adorno saw what Weber saw 148 - a cognitive orientation that feeds into and fuels our obsessive drive to dominate and control all that surrounds us. 149 The salient point in the Dialectic of the Enlightenment, for our purposes, is that the instrumentalist orientation has been unleashed to devour the very idea of the "sacred" in life. 150 September 11th and the war on terror has only hastened a movement along an already existing trajectory. What we experience in our alienated, gadget-filled, but spiritually vacant existence - what Max Weber termed our "disenchantment with the world" 151 - is a reflection of what Horkheimer and Adorno diagnosed, and of how badly our capacity for reason has been corrupted by a fetish for means-ends rationality. 152 That corruption, which is on [\*91] full display in the overt means-ends reasoning of Hamdi itself, has led to what philosopher Albert Borgmann calls a "crucial debility" in our culture, characterized by the "expatriate quality of public life" where we "live in self-imposed exile from communal conversation and action." 153 There is, then, a certain blowback effect, where a mode of thinking that was supposed to lead to humanity's flourishing has been whipsawed back upon us as a powerful corrupting, even imprisoning, force. Whereas the Enlightenment, as exemplified by Rousseau, Voltaire, and Kant, promised freedom from irrationality and darkness, it has instead denuded the public sphere and bequeathed to us a technocratic language that debilitates the ability to conceptualize our way out of a disastrous course (ecologically and otherwise) on which our technocratic means-ends orientation has put us. 154 The quest for domination and control immanent within Enlightenment's fetish for means-ends reasoning, which supposedly promised a world of flourishing human rights (though pursued through the blood of ancient cultures, such as the native peoples in the Americas), drained modernity of the very vitality that modernist thinkers insisted [\*92] was distinctive about Enlightenment society. 155 It has instead taken us to the brink of annihilation in a world where the disparities of wealth are grossly appalling and human behavior slides so easily into barbarism and violence, usually in the service of preserving or further deepening those disparities. Whereas the Enlightenment broke the bondage of atrophied tradition, it has wrought a world where little is sacred, and what little remains is rapidly dwindling, where "what holds us all together is a cold and impersonal design." 156 We slaughtered cultures within our own country - Native American cultures that we still do not fully appreciate and comprehend - with the quintessential Enlightenment slogan, Manifest Destiny, only to bring about an ennui and despair that produces a nostalgic yearning for the sacred upon which those slaughtered cultures built their now-defunct way of life.

**---all of our solvency arguments are *net offense*---legalism creates the façade that the executive is being constrained but allowing the government to do as it pleases under the guise of constraint---this swells executive power and turns the case**

Osborn 8 Timothy Kaufman is the Baker Ferguson Professor of Politics and Leadership at Whitman College; from 2002-06 as president of the American Civil Liberties of Washington; and he recently completed a term on the Executive Council of the American Political Science Association. Theory & Event > Volume 11, Issue 2

The examples cited in this section suggest not the formation of an utterly lawless regime, but, rather, within an order that continues to understand itself in terms of the categories provided by liberal contractarianism, the more insidious creation, multiplication, and institutionalization of what David Dyzenhaus calls "grey holes." Such holes are "spaces in which there are some legal constraints on executive action...but the constraints are so insubstantial that they pretty well permit government to do as it pleases."40 As such, they are more harmful to the rule of law than are outright dictatorial usurpations, first, because the provision of limited procedural protections masks the absence of any real constraint on executive power; and, second, because location of the authority to create such spaces within the Constitution implies that, in the last analysis, they bear ex ante authorization by the people. When created, in other words, they may receive but they do not require ratification, whether by Congress or by those whom its members are said to represent. What this means in effect is that the second Bush administration has dispensed with Jefferson's stipulation that extra-constitutional executive acts (or, rather, acts that Jefferson deemed to be outside those constitutionally permitted) require ex post facto ratification; and, in addition, that it has dispensed with Locke's contention that, however unlikely, at least in principle, specific exercises of extra-legal prerogative power (or, rather, acts that Locke deemed to be outside those legally permitted) are properly subject to revolutionary rejection. What one finds in the second Bush administration, then, is a denial of both models of accountability, combined with an aggressive commitment to the constitution of a security state that is liberal only in name. As it extends its reach, perfection of that state renders the prospect of popular repudiation of prerogative power ever more chimerical, and, indeed, renders recognition of the problematic character of its exercise ever less likely.

# 2NC AT: Permutation

**(3) sequencing disad---alt key to come before the plan otherwise movements get *sapped***

Nagin 5 Tomiko Brown, Visiting Associate Professor, University of Virginia School of Law, “ELITES, SOCIAL MOVEMENTS, AND THE LAW: THE CASE OF AFFIRMATIVE ACTION,” Columbia Law Review, 105 Colum. L. Rev. 1436

Those seeking to have an impact on the political and legal orders should not root a mass movement in the courts;instead, affirmative litigation about constitutional rights should be anchored upon and preceded by a mass movement.Efforts to achieve fundamental change **should** begin with the target constituency and be waged initially outside of the confines of institutionalized politics.Law should be understood as a tactic in an ongoing political struggle, where the struggle is the main event and favorable legal outcomes are its byproducts. There is **a crucially important temporal component** to this view. Legal claims can be tactically useful in a political strategy for achieving change - **but** only after social movements lay the groundwork **for legal change**. Social movements **must first create political pressure that frames issues in a favorable manner**, creates cultural norm shifts, and affects public opinion; these norm shifts then increase the likelihood that courts will reach outcomes favored by lawyers. [437](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n437) Again, my claims find support in the history of the mid-twentieth-century civil rights movement. This narrative posits an intimate relationship between the sociopolitical dynamics within black client communities and the success (or failure) of civil rights lawyers' litigation campaigns for rights. The postwar civil rights movement confirms that the moral suasion of participatory democratic groups of nonlawyers, and typically nonelites, was integral to law's movement from a Jim Crow regime to a [\*1523] constitutional order in which formal equality was the norm. During the past three decades, historians who have analyzed social change have discovered that small groups of inexpert individuals can be the leading edge of a social movement, especially when they work in coalition with those who traditionally wield influence in society. [438](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n438)Through their commitment to a social cause, ordinary people with no insider knowledge of the technical aspects of the broad issue on which they are mobilizing can create circumstances in which those with actual power (political, economic, and, ultimately, legal power) are persuaded to act in their favor.

**(8) hijacking disad---the state is hijacked by the military industrial complex-and elites who control the process of decision-making that normalizes and cements in an authoritarian state that wages war on its populations and populations around the world---working through these institutions means they get crushed---only the public sphere can solve**

Giroux 13 Henry A. is a social critic and educator, and the author of many books. He currently holds the Global Television Network Chair in English and Cultural Studies at McMaster University, Ontario, Monthly Review, Volume 65, Issue 01 (May)

In addition, as the state is hijacked by the financial-military-industrial complex, the “most crucial decisions regarding national policy are not made by representatives, but by the financial and military elites.”53 Such massive inequality and the suffering and political corruption it produces point to the need for critical analysis in which the separation of power and politics can be understood. This means developing terms that clarify how power becomes global even as politics continues to function largely at the national level, with the effect of reducing the state primarily to custodial, policing, and punishing functions—at least for those populations considered disposable. The state exercises its slavish role in the form of lowering taxes for the rich, deregulating corporations, funding wars for the benefit of the defense industries, and devising other welfare services for the ultra-rich. There is no escaping the global politics of finance capital and the global network of violence it has produced. Resistance must be mobilized globally and politics restored to a level where it can make a difference in fulfilling the promises of a global democracy. But such a challenge can only take place if the political is made more pedagogical and matters of education take center stage in the struggle for desires, subjectivities, and social relations that refuse the normalizing of violence as a source of gratification, entertainment, identity, and honor. War in its expanded incarnation works in tandem with a state organized around the production of widespread violence. Such a state is necessarily divorced from public values and the formative cultures that make a democracy possible. The result is a weakened civic culture that allows violence and punishment to circulate as part of a culture of commodification, entertainment, distraction, and exclusion. In opposing the emergence of the United States as both a warfare and a punishing state, I am not appealing to a form of left moralism meant simply to mobilize outrage and condemnation. These are not unimportant registers, but they do not constitute an adequate form of resistance .What is needed are modes of analysis that do the hard work of uncovering the effects of the merging of institutions of capital, wealth, and power, and how this merger has extended the reach of a military-industrial-carceral and academic complex, especially since the 1980s. This complex of ideological and institutional elements designed for the production of violence must be addressed by making visible its vast national and global interests and militarized networks, as indicated by the fact that the United States has over 1,000 military bases abroad.54 Equally important is the need to highlight how this military-industrial-carceral and academic complex uses punishment as a structuring force to shape national policy and everyday life. Challenging the warfare state also has an important educational component. C. Wright Mills was right in arguing that it is impossible to separate the violence of an authoritarian social order from the cultural apparatuses that nourish it. As Mills put it, the major cultural apparatuses not only “guide experience, they also expropriate the very chance to have an experience rightly called ‘our own.’”55 This narrowing of experience shorn of public values locks people into private interests and the hyper-individualized orbits in which they live. Experience itself is now privatized, instrumentalized, commodified, and increasingly militarized. Social responsibility gives way to organized infantilization and a flight from responsibility. Crucial here is the need to develop new cultural and political vocabularies that can foster an engaged mode of citizenship capable of naming the corporate and academic interests that support the warfare state and its apparatuses of violence, while simultaneously mobilizing social movements to challenge and dismantle its vast networks of power. One central pedagogical and political task in dismantling the warfare state is, therefore, the challenge of creating the cultural conditions and public spheres that would enable the U.S. public to move from being spectators of war and everyday violence to being informed and engaged citizens.Unfortunately, major cultural apparatuses like public and higher education, which have been historically responsible for educating the public, are becoming little more than market-driven and militarized knowledge factories. In this particularly insidious role, educational institutions deprive students of the capacities that would enable them not only to assume public responsibilities, but also to actively participate in the process of governing. Without the public spheres for creating a formative culture equipped to challenge the educational, military, market, and religious fundamentalisms that dominate U.S. society, it will be virtually impossible to resist the normalization of war as a matter of domestic and foreign policy. Any viable notion of resistance to the current authoritarian order must also address the issue of what it means pedagogically to imagine a more democratically oriented notion of knowledge, subjectivity, and agency and what it might mean to bring such notions into the public sphere. This is more than what Bernard Harcourt calls “a new grammar of political disobedience.”56 It is a reconfiguring of the nature and substance of the political so that matters of pedagogy become central to the very definition of what constitutes the political and the practices that make it meaningful. Critical understanding motivates transformative action, and the affective investments it demands can only be brought about by breaking into the hardwired forms of common sense that give war and state-supported violence their legitimacy. War does not have to be a permanent social relation, nor the primary organizing principle of everyday life, society, and foreign policy. The war of all-against-all and the social Darwinian imperative to respond positively only to one’s own self-interest represent the death of politics, civic responsibility, and ethics, and set the stage for a dysfunctional democracy, if not an emergent authoritarianism. The existing neoliberal social order produces individuals who have no commitment, except to profit, disdain social responsibility, and loosen all ties to any viable notion of the public good. This regime of punishment and privatization is organized around the structuring forces of violence and militarization, which produce a surplus of fear, insecurity, and a weakened culture of civic engagement—one in which there is little room for reasoned debate, critical dialogue, and informed intellectual exchange. Patricia Clough and Craig Willse are right in arguing that we live in a society “in which the production and circulation of death functions as political and economic recovery.”57 The United States understood as a warfare state prompts a new urgency for a collective politics and a social movement capable of negating the current regimes of political and economic power, while imagining a different and more democratic social order. Until the ideological and structural foundations of violence that are pushing U.S. society over the abyss are addressed, the current warfare state will be transformed into a full-blown authoritarian state that will shut down any vestige of democratic values, social relations, and public spheres. At the very least, the U.S. public owes it to its children and future generations, if not the future of democracy itself, to make visible and dismantle this machinery of violence while also reclaiming the spirit of a future that works for life rather than death—the future of the current authoritarianism, however dressed up they appear in the spectacles of consumerism and celebrity culture. It is time for educators, unions, young people, liberals, religious organizations, and other groups to connect the dots, educate themselves, and develop powerful social movements that can restructure the fundamental values and social relations of democracy while establishing the institutions and formative cultures that make it possible. Stanley Aronowitz is right in arguing that: the system survives on the eclipse of the radical imagination, the absence of a viable political opposition with roots in the general population, and the conformity of its intellectuals who, to a large extent, are subjugated by their secure berths in the academy [and though] we can take some solace in 2011, the year of the protester…it would be premature to predict that decades of retreat, defeat and silence can be reversed overnight without a commitment to what may be termed “a long march” through the institutions, the workplaces and the streets of the capitalist metropoles.58 The current protests among young people, workers, the unemployed, students, and others are making clear that this is not—indeed, cannot be—only a short-term project for reform, but must constitute a political and social movement of sustained growth, accompanied by the reclaiming of public spaces, the progressive use of digital technologies, the development of democratic public spheres, new modes of education, and the safeguarding of places where democratic expression, new identities, and collective hope can be nurtured and mobilized. Without broad political and social movements standing behind and uniting the call on the part of young people for democratic transformations, any attempt at radical change will more than likely be cosmetic.

# 2NC AT: One Arg

**lost in the details disad---they zero in on certain aspects of executive power which stop broader systemic criticisms which is necessary to check executive power**

**Saas, 12** \*\*William O. Pf Department of Communication Arts and Sciences at the Pennsylvania State University. symploke > Volume 20, Numbers 1-2

How might one critique this massive network of violence that has become so enmeshed in our contemporary geo-socio-political reality? Is there any hope for reversing the expansion of executive violence in the current political climate, in which the President enjoys minimal resistance to his most egregious uses of violence? How does exceptional violence become routine? Answers to these broad and difficult questions, derived as they are from the disorientingly vast and hyper-accelerated retrenchment of our current political situation, are best won through the broad strokes of what Slavoj Žižek calls "systemic" critique. For Žižek, looking squarely at interpersonal or subjective violences (e.g., torture, drone strikes), drawn as we may be by their gruesome and immediate appeal, distorts the critic's broader field of vision. For a fuller picture, one must pull one's critical focus back several steps to reveal the deep, objective structures that undergird the spectacular manifestations of everyday, subjective violence (Žižek 2008, 1-2). Immediately, however, one confronts the limit question of Žižek's mandate: how does one productively draw the boundaries of a system without too severely dampening the force of objective critique? For practical purposes, this essay leaves off discussion of neoliberal economic domination, vital as it may be to a full accounting for the U.S.' latest and most desperate expressions of state solvency.

# 2NC AT: 2

**complacency DA--- relying on the law create psychological cooption and satisfaction with what he we have done**

**Lobel, 7 –** Assistant Professor of Law, University of San Diego, (Orly, Harvard Law Review, 120 Harv. L. Rev. 937)

Psychological cooptation is produced by the law precisely because law promises more than it can and will deliver. At the same time, law is unlike other sets of rules or systems in which we feel as though we have more choice about whether to participate. As described earlier, law presents itself simultaneously as the exclusive source of authority in a society and as the only engine for social change. It further presents itself as objective, situated outside and above politics. Thus, social actors who enter into formal channels of the state **risk transformation into a particular hegemonic consciousness.** Relying upon the language of law and legal rights to bring change legitimates an ideological system that masks inequality. [95](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n95) When social demands are fused into legal action and the outcomes are only moderate adjustments of existing social arrangements, the process in effect **naturalizes systemic injustice.** The legal process reinforces, rather than resists, the dominant ideologies\\\ institutions, and social hierarchies of the time. For example, when a court decision declares the end of racial segregation but de facto segregation persists, individuals become blind to the root causes of injustice and begin to view continued inequalities as inevitable and irresolvable. Similarly, **rights-based discourse has a legitimation effect, since rights mythically present themselves as outside and above politics.** [96](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n96) Meanwhile, the legal framework allows the courts to implement a color blindness ideology and grant only symbolic victories rather than promote meaningful progress. [97](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n97) As such, the role of law is one that in fact ensures the [\*958] "continued subordination of racial and other minority interests," while **pacifying the disadvantaged who rely on it.** [98](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n98) Social movements **seduced by the "myth of rights" assume** a false sequence, namely "that litigation can evoke a declaration of rights from courts; that it can, further, be used to assure the realization of these rights; and, finally, that realization is tantamount to meaningful change."

# \*\*\*2NC Politics

# 2NC Turns Terrorism

#### Decline causes terrorism—removes economic outlets that enable self-empowerment—that’s Harris and Burrows—our evidence is reverse-causal

Harris and Burrows ‘9 (Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>, AM)

In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groupsinheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacksand newly emergent collections of the angry and disenfranchised that become self-radicalized, **particularly in the absence of economic outlets** that would become narrower in an economic downturn.

# 2NC Heg

#### Turning inward collapses hege—the impact is great power conflict.

Khalilzad 11 — Zalmay Khalilzad, Counselor at the Center for Strategic and International Studies, served as the United States ambassador to Afghanistan, Iraq, and the United Nations during the presidency of George W. Bush, served as the director of policy planning at the Defense Department during the Presidency of George H.W. Bush, holds a Ph.D. from the University of Chicago, 2011 (“The Economy and National Security,” *National Review*, February 8th, Available Online at http://www.nationalreview.com/articles/print/259024, Accessed 02-08-2011)

Today, economic and fiscal trends pose the most severe long-term threat to the United States’ position as global leader. While the United States suffers from fiscal imbalances and low economic growth, the economies of rival powers are developing rapidly. The continuation of these two trends could lead to a shift from American primacy toward a multi-polar global system, leading in turn to increased geopolitical rivalry and even war among the great powers.

The current recession is the result of a deep financial crisis, not a mere fluctuation in the business cycle. Recovery is likely to be protracted. The crisis was preceded by the buildup over two decades of enormous amounts of debt throughout the U.S. economy — ultimately totaling almost 350 percent of GDP — and the development of credit-fueled asset bubbles, particularly in the housing sector. When the bubbles burst, huge amounts of wealth were destroyed, and unemployment rose to over 10 percent. The decline of tax revenues and massive countercyclical spending put the U.S. government on an unsustainable fiscal path. Publicly held national debt rose from 38 to over 60 percent of GDP in three years.

Without faster economic growth and actions to reduce deficits, publicly held national debt is projected to reach dangerous proportions. If interest rates were to rise significantly, annual interest payments — which already are larger than the defense budget — would crowd out other spending or require substantial tax increases that would undercut economic growth. Even worse, if unanticipated events trigger what economists call a “sudden stop” in credit markets for U.S. debt, the United States would be unable to roll over its outstanding obligations, precipitating a sovereign-debt crisis that would almost certainly compel a radical retrenchment of the United States internationally.

Such scenarios would reshape the international order. It was the economic devastation of Britain and France during World War II, as well as the rise of other powers, that led both countries to relinquish their empires. In the late 1960s, British leaders concluded that they lacked the economic capacity to maintain a presence “east of Suez.” Soviet economic weakness, which crystallized under Gorbachev, contributed to their decisions to withdraw from Afghanistan, abandon Communist regimes in Eastern Europe, and allow the Soviet Union to fragment. If the U.S. debt problem goes critical, the United States would be compelled to retrench, reducing its military spending and shedding international commitments.

We face this domestic challenge while other major powers are experiencing rapid economic growth. Even though countries such as China, India, and Brazil have profound political, social, demographic, and economic problems, their economies are growing faster than ours, and this could alter the global distribution of power. These trends could in the long term produce a multi-polar world. If U.S. policymakers fail to act and other powers continue to grow, it is not a question of whether but when a new international order will emerge. The closing of the gap between the United States and its rivals could intensify geopolitical competition among major powers, increase incentives for local powers to play major powers against one another, and undercut our will to preclude or respond to international crises because of the higher risk of escalation.

# 2NC China

#### Economic decline causes war with China

Ockham Research, 8(“Economic Distress and Geopolitical Risks”, November,

http://seekingalpha.com/article/106562-economic-distress-and-geopolitical-risks)

China too is threatened by the global economic downturn. There is no doubt that China has emerged during the past decade as a major economic power. Parts of the country have been transformed by its meteoric growth. However, in truth, only about a quarter of the nation’s billion plus inhabitants—those living in the thriving cities on the coast and in Beijing—have truly felt the impact of the economic boom. Many of these people have now seen a brutal bear market and are adjusting to economic loss and diminished future prospects. However, the vast majority of China’s population did not benefit from the economic boom and could become increasingly restive in an economic slowdown. Enough economic hardship could conceivably threaten the stability of the regime and would more than likely make China more bellicose and unpredictable in its behavior, with dangerous consequences for the U.S. and the world.

# 2NC Iran

#### Economic decline causes iran and north korea to become aggressive

Green and Schrage, 9-

(Michael J Green is Senior Advisor and Japan Chair at the Center for Strategic and International Studies (CSIS) and Associate Professor at Georgetown University, Steven P Schrage is the CSIS Scholl Chair in International Business and a former senior official with the US Trade Representative's Office, State Department and Ways & Means Committee, March 26, “It’s Not Just the Economy, Asia Times, http://www.atimes.com/atimes/Asian\_Economy/KC26Dk01.html)

Dangerous states It is noteworthy that North Korea, Myanmar and Iran have all intensified their defiance in the wake of the financial crisis, which has distracted the world's leading nations, limited their moral authority and sown potential discord. With Beijing worried about the potential impact of North Korean belligerence or instability on Chinese internal stability, and leaders in Japan and South Korea under siege in parliament because of the collapse of their stock markets, leaders in the North Korean capital of Pyongyang have grown increasingly boisterous about their country's claims to great power status as a nuclear weapons state. The junta in Myanmar has chosen this moment to arrest hundreds of political dissidents and thumb its nose at fellow members of the 10-country Association of Southeast Asian Nations. Iran continues its nuclear program while exploiting differences between the US, UK and France (or the P-3 group) and China and Russia - differences that could become more pronounced if economic friction with Beijing or Russia crowds out cooperation or if Western European governments grow nervous about sanctions as a tool of policy. It is possible that the economic downturn will make these dangerous states more pliable because of falling fuel prices (Iran) and greater need for foreign aid (North Korea and Myanmar), but that may depend on the extent that authoritarian leaders care about the well-being of their people or face internal political pressures linked to the economy. So far, there is little evidence to suggest either and much evidence to suggest these dangerous states see an opportunity to advance their asymmetrical advantages against the international system.

# 2NC Uniqueness

#### It’ll pass now---boehner and house republicans shifting to get negotiations in budgeting---pc is key

**AT: Healtchare**

Madhani, 10-4-’13 (Aamer, “Obama hammers Boehner on shutdown, debt ceiling” USA Today, http://www.usatoday.com/story/news/politics/2013/10/03/obama-boehner-shutdown-debt-limit/2918545/)

In perhaps a small sign of progress in the impasse, Boehner signaled on Thursday that he may be willing to hold a vote to raise the debt ceiling even if Obama refuses to agree to the Republican demand of delaying implementation of the president's signature health care law by a year. Jared Bernstein, who served as top economic adviser to Vice President Biden in the first term, said that by taking the debt ceiling debate off the table. Boehner could potentially gain some negotiating leverage in the budget fight, but he does it at the risk of the Republican base "throwing him under the bus." Bernstein said the best way forward for the White House is continuing to be "very explicit" with Boehner that it remains open on long term budget issues, while standing pat on the condition that a short-term budget and debt limit vote is passed without conditions. "You essentially tell him by putting clean votes on the floor right now buys a ticket to robust negotiations on the other side," Bernstein said. "At the point, it's perfectly legitimate for him to go into any negotiation with any asks that he wants." Even as Boehner showed signs of flexibility on a debt limit vote, House Republicans continued to pursue a piecemeal shutdown strategy to pass targeted funding bills for popular government services. House Majority Leader Eric Cantor, R-Va., wrote to rank-and-file Republicans in a memo Thursday that he was confident Obama and congressional Democrats would eventually bow to negotiations if Republicans hold the line. "While no one can predict with certainty how the current shutdown will be resolved, I am confident that if we keep advancing common-sense solutions to the problems created by the shutdown that Senate Democrats and President Obama will eventually agree to meaningful discussions that would allow us to ultimately resolve this impasse," Cantor wrote, "The American people have elected a divided government and they expect us to work together and they will not countenance one party simply refusing to negotiate." The House spent much of Thursday trying to develop smaller funding bills that would pay for popular government programs closed by the shutdown. House Republicans have scheduled a meeting for Friday morning to discuss their negotiating positions. Obama, meanwhile, made clear, at least for now, he is going to use the bully pulpit to keep the pressure on Boehner. "The longer this goes on, the worse it will be," Obama said. "And it makes no sense. The American people elected their representatives to make their lives easier, not harder."

### A2 XO Solves

#### Obama WILL NOT unilaterally increase the debt limit

Montarnaro 9/28

Domenico Montanaro, Deputy Political Editor, NBC News “Obama not reconsidering ways to sidestep Congress on debt ceiling”

http://firstread.nbcnews.com/\_news/2013/09/28/20734039-obama-not-reconsidering-ways-to-sidestep-congress-on-debt-ceiling?lite

The White House says despite watching Congress careen toward a government shutdown, it isn't making President Barack Obama reconsider ways to sidestep Congress on the debt ceiling. ¶ "Only Congress can raise the debt limit. Period," a White House official told First Read. "We have said coin and 14th Amendment aren't workable."¶ The last time the country was up against its debt limit earlier this year, far-flung alternatives to having Congress raise the debt ceiling were floated by liberal Democrats, like minting a $1 trillion coin and invoking the 14th Amendment to bypass Congress.¶ Section 4 of the 14th Amendment states: "The validity of the public debt of the United States, authorized by law, including debts incurred for payments of pensions and bounties for services in suppressing insurrection or rebellion shall not be questioned." ¶ Former President Bill Clinton said in July he would invoke it if it came down to it "without hesitation and force the courts to stop me." ¶ President Obama, however, said he spoke with White House lawyers, and, "They are not persuaded that that is a winning argument." ¶ The Treasury Department says the U.S. will hit its debt limit Oct. 17. It could default on its debt soon afterward. President Obama has said he will "not negotiate when it comes to the full faith and credit of the United States."

### Link

### Delay Module

#### PC key to quick debt ceiling resolution

Pace 9/12

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.

#### A single day delay risks global market crash

NYT 9/26

http://www.nytimes.com/2013/09/26/business/treasury-warns-of-potential-default-by-mid-october.html?\_r=0

Mr. Lew warned in his letter that a single day’s net expenditures could be as high as $60 billion. After that mid-October deadline, money going out might overwhelm money coming in plus cash on hand. The Treasury could miss or be forced to delay paying some of its bills. Such an event would be unprecedented, and many financial analysts fear a possible violent market reaction with global ramifications.

#### Experts confirm 2k11 delay cost billions – this default will be unprecedented ANY further delay risks dire consequences

NYT 9/26

http://www.nytimes.com/2013/09/26/business/treasury-warns-of-potential-default-by-mid-october.html?\_r=0

If that expectation were to prove wrong, though, the effects are unknowable – and might be severe. “Any delay in raising the debt ceiling would have dire economic consequences,” said Mark Zandi of Moody’s Analytics, testifying on Capitol Hill this week. “Consumer, business and investor confidence would be hit hard, putting stock, bond and other financial markets into turmoil.”¶ In the event of a default, the United States’ borrowing costs would probably rise and continue at somewhat higher levels even after the Treasury Department returned to new issuance on the bond market, causing a direct hit to taxpayers. But financial analysts are more immediately worried about the potential for wide market gyrations as investors reassessed their pricing of trillions of dollars of debt products tied to Treasury rates and sought safety in new markets or instruments.¶ The costs from a debt-ceiling default would almost certainly dwarf the costs associated with a government shutdown, which most experts say would be relatively small if it did not continue for an extended period of time. The Bipartisan Policy Center, a Washington research group, estimated that market concern over the potential of a default in 2011 cost nearly $19 billion over 10 years, and that occurred even though the government avoided a default at the last minute.

#### Debt debate will push right up to deadline

Cowan and Lowder 9/13

Richard and David, Reuters, Analysis: House Republicans go for broke in fiscal battles, 9/13/13, http://www.reuters.com/article/2013/09/13/us-usa-congress-debt-ceiling-analysis-idUSBRE98C04620130913

There are risks for Democrats and Obama too. While polling results showed the public more upset with Republicans then Obama after the "fiscal cliff" fight that led to across-the-board budget cuts, Obama's Gallup approval rating started on a downward trend then from which it has yet to recover, with other polls suggesting that Americans hold all parties in Washington as well as the president responsible for "gridlock."¶ With the deadlines fast-approaching, the maneuvering is well underway.¶ The White House announced that Obama would speak to the Business Roundtable group of big-company chief executives next week. White House spokesman Jay Carney did not offer any details about what Obama will say, but he has used business groups in the past to pressure Congress to avoid fiscal brinkmanship.¶ "We will never accept anything that delays or defunds" Obamacare, Carney stressed again on Thursday.¶ In the U.S. Capitol, the top four Republican and Democratic leaders of the Senate and House met in the office of House of Representative Speaker John Boehner on Thursday to try to plot out a happy ending to their government spending and debt limit challenges. Afterward, Boehner told reporters "there are a million options that are being discussed by a lot of people."¶ But while Republicans control the House, Boehner does not control Republicans.¶ HIGH-STAKES MANEUVER¶ The intra-party fight on such a high-stakes maneuver as coupling Obamacare changes to the debt limit hike is seen as pushing negotiations on the legislation right up to the October or November deadline.

#### Obama has the upper hand – GOP will get the blame and precedent – holding firm against concessions is key to avert market disruptions

Maass 9/25

Harold Maass is executive editor at TheWeek.com and was a member of the team that launched The Week's U.S. print edition. He has worked for a variety of news outlets, including The Miami Herald, Fox News, and ABC News. “Why it's a mistake to think Obama will cave on the debt ceiling This time, the president won't bend” http://theweek.com/article/index/250094/why-its-a-mistake-to-think-obama-will-cave-on-the-debt-ceiling

Obama has repeatedly vowed that he won't negotiate over raising the borrowing limit, because even suggesting that the United States might not pay its bills would put the nation's credibility and financial stability at risk. "Let me say as clearly as I can," Obama said recently. "It is not going to happen."¶ Republicans, however, are wagering that he'll buckle. After all, they managed to wring spending cuts out of the debt-ceiling showdowns of 2011 and 2012 without triggering an economic meltdown. Sen. Orrin Hatch (R-Utah), in a Wall Street Journal op-ed, urged Obama to reconsider, saying Republicans have mixed budget deals with debt ceiling hikes many times before.¶ However, it is only since Republicans won the House in 2010 that a party has threatened a government default to get what it wants.¶ The prospect of a partial default is so frightening that the mere possibility is enough to rattle financial markets. Annie Lowrey points out at The New York Times that government agencies have contingency plans for a government shutdown — but not for a breach of the debt ceiling. "There is really no playbook here," she says.¶ In response, the financial markets would probably panic. They might not. Some financial experts argue that a few missed payments that spurred immediate congressional action to lift the ceiling might not be so bad. But many, many others foresee a financial tsunami that would raise the country’s borrowing costs, send investors scrambling for safety, and deeply injure the United States and global economy. [New York Times] Indeed, economists say the nail-biting negotiations over the debt ceiling in 2011 had a significant negative impact on the fledgling economic recovery.¶ Jonathan Chait says at New York that GOP leaders appear to believe that the sheer magnitude of the potential financial disaster gives Obama ample reason to eventually negotiate. "It's actually a reason to believe he won't," says Chait:¶ If Obama agrees to trade policy concessions for a debt-ceiling hike, he will permanently enshrine debt-ceiling hostage dramas in the practical functioning of American government. That means not only will unscrupulous opposition parties be able to wring concessions from himself and future presidents, but eventually a negotiating snag will trigger a real default....¶ Terrible though it may be, a default may actually be necessary to preserve the constitutional structure of American government and the rest of Obama’s presidency. [New York]¶ There's another big reason to assume Obama will stand firm. If disaster is the country's fate, polls suggest voters will pin the blame on the GOP. "The American people don't like ObamaCare," says Ezra Klein at The Washington Post. "But they dislike the Republican Party's kill-it-at-all-costs strategy even more."