## 1NC

### Schmitt K

#### Restrictions on executive war powers DO NOTHING for the state of political legal exception we live in and only gives further justification for violent intervention on the basis of legality

Dyzenhaus 05 (David, is a professor of Law and Philosophy at the University of Toronto, and a Fellow of the Royal Society of Canada, “Schmitt v. Dicey: Are States of Emergency Inside or Outside the Legal Order?” Cardozo Law Review 27)

Rossiter had in mind Lincoln's actions during the Civil War, including the proclamation by which Lincoln, without the prior authority of Congress, suspended habeas corpus. n35 Lincoln, he said, subscribed to a theory that in a time of emergency, the President could assume whatever legislative, executive, and judicial powers he thought necessary to preserve the nation, and could in the process break the "fundamental laws of the nation, if such a step were unavoidable." n36 This power included one ratified by the Supreme Court: "an almost unrestrained power to act toward insurrectionary citizens as if they were enemies of the United States, and thus place them outside the protection of the Constitution." Rossiter's difficulties here illustrate rather than solve the tensions inherent in the idea of constitutional dictatorship. On the one hand, he wants to assert that emergency rule in a liberal democracy can be constitutional in nature. "Constitutional" implies restraints and limits in accordance not only with law, but with fundamental laws. These laws are not the constitution that is in place for ordinary times; rather, they are the laws that govern the management of exceptional times - the eleven criteria that he developed for constitutional dictatorship. The criteria are either put within the discretion of the dictator - they are judgments about necessity - or are couched as limits that should be enshrined either in the constitution or in legislation. However, Rossiter does not properly address the fact that judgments about necessity are for the dictator to make, which means that these criteria are not limits or constraints but merely factors about which the dictator will have to decide. Other criteria look more like genuine limits. Moreover, they are limits that could be constitutionally enshrined - for example, the second criterion, which requires that the person who makes the decision that there is an emergency should not be the person who assumes dictatorial powers. Yet, as we have seen, Rossiter's foremost example of the modern constitutional dictator, Lincoln, not only gave himself dictatorial powers but, Rossiter supposes, had no choice but to do this. Moreover, if these criteria are constitutionally enshrined, so that part of the constitution is devoted to the rules that govern the time when the rest of the constitution might be suspended, they still form part of the constitution. So, no less than the ordinary constitution, what we can think of as the exceptional or emergency constitution - the constitution that governs the state of emergency - is subject to suspension should the dictator deem this necessary. This explains why, on the other hand, Rossiter equated emergency rule with potentially unlimited dictatorship, with Locke's idea of prerogative. And Rossiter said, "whatever the theory, in moments of extreme national emergency the facts have always been with ... John Locke." So Rossiter at one and the same time sees constitutional dictatorship as unconstrained in nature and as constrainable by principles - his eleven criteria. The upshot is that "constitutional" turns out not to mean what we usually take it to mean; rather, it is a misleading name for the hope that the person who assumes dictatorial powers does so because of a good faith evaluation that this is really necessary and with the honest and steadfast intention to return to the ordinary way of doing things as soon as possible. Giorgio Agamben is thus right to remark that the bid by modern theorists of constitutional dictatorship to rely on the tradition of Roman dictatorship is misleading. n39 They rely on that tradition in an effort to show that dictatorship is constitutional or law-governed. But in fact they show that dictatorship is in principle absolute - the dictator is subject to whatever limits he deems necessary, which means to no limits at all. As H.L.A. Hart described the sovereign within the tradition of legal positivism, the dictator is an uncommanded commander. n40 He [\*2015] operates within a black hole, in Agamben's words, "an emptiness of law." n41 Agamben thus suggests that the real analogue to the contemporary state of emergency is not the Roman dictatorship but the institution of iustitium, in which the law is used to produce a "juridical void" - a total suspension of law. n42 And in coming to this conclusion, Agamben sides with Carl Schmitt, his principal interlocutor in his book. However, it is important to see that Schmitt's understanding of the state of exception is not quite a legal black hole, a juridically produced void. Rather, it is a space beyond law, a space which is revealed when law recedes, leaving the state, represented by the sovereign, to act. In substance, there might seem to be little difference between a legal black hole and space beyond law since neither is controlled by the rule of law. But there is a difference in that nearly all liberal legal theorists find the idea of a space beyond law antithetical, even if they suppose that law can be used to produce a legal void. This is so especially if such theorists want to claim for the sake of legitimacy that law is playing a role, even if it is the case that the role law plays is to suspend the rule of law. Schmitt would have regarded such claims as an attempt to cling to the wreckage of liberal conceptions of the rule of law brought about by any attempt to respond to emergencies through the law. They represent a vain effort to banish the exception from legal order. Because liberals cannot countenance the idea of politics uncontrolled by law, they place a veneer of legality on the political, which allows the executive to do what it wants while claiming the legitimacy of the rule of law. We have seen that Rossiter presents a prominent example which supports Schmitt's view, and as I will now show, it is a depressing fact that much recent post 9/11 work on emergencies is also supportive of Schmitt's view. II. Responding to 9/11 For example, Bruce Ackerman in his essay, The Emergency Constitution, n43 starts by claiming that we need "new constitutional concepts" in order to avoid the downward spiral in protection of civil liberties that occurs when politicians enact laws that become increasingly repressive with each new terrorist attack. n44 We need, he says, to rescue the concept of "emergency powers ... from fascist thinkers like Carl Schmitt, who used it as a battering ram against liberal [\*2016] democracy." n45 Because Ackerman does not think that judges are likely to do, or can do, better than they have in the past at containing the executive during an emergency, he proposes mainly the creative design of constitutional checks and balances to ensure, as did the Roman dictatorship, against the normalization of the state of emergency. Judges should not be regarded as "miraculous saviors of our threatened heritage of freedom." n46 Hence, it is better to rely on a system of political incentives and disincentives, a "political economy" that will prevent abuse of emergency powers. He calls his first device the "supramajoritarian escalator" n48 - basically the requirement that a declaration of a state of emergency requires legislative endorsement within a very short time, and thereafter has to be renewed at short intervals, with each renewal requiring the approval of a larger majority of legislators. The idea is that it will become increasingly easy with time for even a small minority of legislators to bring the emergency to an end, thus decreasing the opportunities for executive abuse of power. n49 The second device requires the executive to share security intelligence with legislative committees and that a majority of the seats on these committees belong to the opposition party. Ackerman does see some role for courts. They will have a macro role should the executive flout the constitutional devices. While he recognizes both that the executive might simply assert the necessity to suspend the emergency constitution and that this assertion might enjoy popular support, he supposes that if the courts declare that the executive is violating the constitution, this will give the public pause and thus will decrease incentives on the executive to evade the constitution. n51 In addition, the courts will have a micro role in supervising what he regards as the inevitable process of detaining suspects without trial for the period of the emergency. Suspects should be brought to court and some explanation should be given of the grounds of their detention, not so that they can contest it - a matter which Ackerman does not regard as practicable - but in order both to give the suspects a public identity so that they do not disappear and to provide a basis for compensation once the emergency is over in case the executive turns out to have fabricated [\*2017] its reasons. He also wishes to maintain a constitutional prohibition on torture, which he thinks can be enforced by requiring regular visits by lawyers. Not only is the judicial role limited, but it is clear that Ackerman does not see the courts as having much to do with preventing a period of "sheer lawlessness." n53 Even within the section on the judiciary, he says that the real restraint on the executive will be the knowledge that the supramajoritarian escalator might bring the emergency to an end, whereupon the detainees will be released if there is no hard evidence to justify detaining them. In sum, according to Ackerman, judges have at best a minimal role to play during a state of emergency. We cannot really escape from the fact that a state of emergency is a legally created black hole, a lawless void. It is subject to external constraints, controls on the executive located at the constitutional level and policed by the legislature. But internally, the rule of law does next to no work; all that we can reasonably hope for is decency. But once one has conceded that internally a state of emergency is more or less a legal black hole because the rule of law, as policed by judges, has no or little purchase, it becomes difficult to understand how external legal constraints, the constitutionally entrenched devices, can play the role Ackerman sets out. Recall that Ackerman accepts that the reason we should not give judges more than a minimal role is the history of judicial failure to uphold the rule of law during emergencies in the face of executive assertions of a necessity to operate outside of law's rule. For that reason, he constructs a political economy to constrain emergency powers. But that political economy still has to be located in law in order to be enforceable, which means that Ackerman cannot help but rely on judges. But why should we accept his claim that we can rely on judges when the executive asserts the necessity of suspending the exceptional constitution, the constitution for the state of emergency, when one of his premises is that we cannot so rely? Far from rescuing the concept of emergency powers from Schmitt, Ackerman's devices for an emergency constitution, an attempt to update Rossiter's model of constitutional dictatorship, fails for the same reasons that Rossiter's model fails. Even as they attempt to respond to Schmitt's challenge, they seem to prove the claim that Schmitt made in late Weimar that law cannot effectively enshrine a distinction between constitutional dictatorship and dictatorship. They appear to be vain attempts to find a role for law while at the same time conceding that law has no role. Of course, this last claim trades on an ambiguity in the idea of the rule of law between, on the one hand, the rule of law, understood as the rule of substantive principles, and, on the other, rule by law, where as long as there is a legal warrant for what government does, government will be considered to be in compliance with the rule of law. Only if one holds to a fairly substantive or thick conception of the rule of law will one think that there is a point on a continuum of legality where rule by law ceases to be in accordance with the rule of law. Ackerman's argument for rule by law, by the law of the emergency constitution, might not answer Schmitt's challenge. But at least it attempts to avoid dignifying the legal void with the title of rule of law, even as it tries to use law to govern what it deems ungovernable by law. The same cannot be said of those responses to 9/11 that seem to suggest that legal black holes are not in tension with the rule of law, as long as they are properly created. While it is relatively rare to find a position that articulates so stark a view, it is quite common to find positions that are comfortable with grey holes, as long as these are properly created. A grey hole is a legal space in which there are some legal constraints on executive action - it is not a lawless void - but the constraints are so insubstantial that they pretty well permit government to do as it pleases. And since such grey holes permit government to have its cake and eat it too, to seem to be governing not only by law but in accordance with the rule of law, they and their endorsement by judges and academics might be even more dangerous from the perspective of the substantive conception of the rule of law than true black holes.

#### The alternative is to refuse to check the executive. Unchecked authority of the executive is necessary to respond to the exception.

Nagan and Haddad 12 (Winston and Aitza, "Sovereignty in Theory and Practice." San Diego International Law Journal 13)

Although Schmitt was German, his ideas about sovereignty, and the political exception have had influence on the American theory and practice of sovereignty. Carl Schmitt was a philosophic theorist of sovereignty during the Third Reich. n375 His ideas about sovereignty and its above the law placement in the political culture of the State have important parallels in the developing discourse in the United States about the scope of presidential authority and power. His views have attracted the attention of American theorists. Schmitt developed his view of sovereignty on the concept described as "the exception". n376 This idea suggests that the sovereign or executive may invoke the idea of exceptional powers which are distinct from the general theory of the State. In Schmitt's view, the normal condition of the functions of the theory of a State, rides with the existence of the idea of the "exception." The exception is in effect intrinsic to the idea of a normal State. In his view, [\*487] the normal legal order of a State depends on the existence of an exception. n377 The exception is based on the continuing existence of an existential threat to the State and it is the sovereign that must decide on the exception. n378 In short, the political life of a State comprises allies and enemies. For the purpose of Statecraft, "an enemy exists only when at least potentially, one fighting collectivity of people confronts another similar collectivity." n379 In this sense, the political reality of the State always confronts the issue of the survival of the group. This reality is explained as follows. The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping. \*\*\* As an ever present possibility [war] is the leading presupposition which determines in a characteristic way human action and thinking and hereby creates a specifically political behavior.\*\*\* A world in which the possibility of war is utterly eliminated, a completely pacified globe, would be a world without the distinction between friend and enemy and hence a world without politics. n380 Schmitt's view bases the supremacy of the exception on the supremacy of politics and power. n381 Thus, the exception, as rooted in the competence of the executive, is not dependent on law for its authority but on the conditions of power and conflict, which are implicitly pre-legal. n382 The central idea is that in an emergency, the power to decide based on the exception accepts its normal superiority over law on the basis that the suspension of the law is justified by the pre-legal right to self-preservation. n383 Schmitt's view is a powerful justification for the exercise of extraordinary powers, which he regards as ordinary, by executive authority. This is a tempting view for executive officers but it may not be an adequate explanation of the interplay of power, legitimacy, and the constitutional foundations of a rule of law State. In a later section, we draw on insights from the New Haven School, which deals empirically with the problem of power and the problem of constituting authority using the methods of contextual mapping. Nonetheless, Schmitt's view provides support for theorists who seek to enlarge executive power on the unitary presidency theory.

### Resolution CP

#### The United States Federal Government should pass a concurrent Congressional resolution expressing Congressional support for restricting the President’s war powers authority for the introduction of United States armed forces without prior Congressional authorization, including but not limited to statutory mechanisms, and expressing the intent to remove funding if the executive continues to introduce United States armed forces without prior Congressional authorization.

#### It competes – it’s non-statutory

Swaine, 10

Associate Professor, George Washington University Law School (Edward, “THE POLITICAL ECONOMY OF YOUNGSTOWN” <http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1017&context=faculty_publications>)

Furthermore, Justice Jackson’s framework also suggested that congressional will could be expressed non-statutorily – again, at least insofar as its negative was involved. Assessing Truman’s seizure, Jackson appeared to reason that the absence of circumstances qualifying for Category One or Category Two necessarily meant that Category Three applied; where “the President cannot claim that [his action was] necessitated or invited by failure of Congress to legislate,” he suggested, such an action must be incompatible with the implied will of Congress.104 That implied will might be expressed informally,105 as clarified by passages from the other concurrences to which Justice Jackson expressly subscribed.106 Justices Black and Frankfurter, in particular, each invoked congressional inaction – namely, the fact that Congress had refused amendments to the Taft-Hartley Act that would have clearly given President Truman seizure authority.107 If congressional will can be informally expressed, as by refusing to take action, it suggests the relevance of acts by a subset of Congress rather than Congress as a whole. Individual legislators, certainly, may rise in sufficient opposition to defeat a statutory initiative, and a committee may prevent a bill from making the requisite progress. Presumably other “soft law” measures – like simple resolutions passed by the majority of one house only, or concurrent resolutions passed by both houses but not presented to the President – would be even better indicia.108

#### The CP changes the allocation of authority without enforcing legal restrictions

Gersen and Posner, 8

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Soft statutes can also play an important role in the allocation of authority between Congress and the President. Consider the question of how the courts should evaluate executive action at the boundaries of Article II authority. In Youngstown Sheet & Tube Co. v. Sawyer, n113 Justice Jackson famously established a typology for understanding the borders of Article II power. "When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum ... ." n114 When Congress has said nothing or there is concurrent authority, there is a "zone of twilight" n115: When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. n116 The President is on weakest ground when Congress has disapproved of the action: "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." n117 Justice Jackson's language is instructive. He does not say "when a formal statute grants or denies presidential authority." Instead, he refers to the express or implied will of Congress, suggesting that implicit acquiescence will be enough to justify executive action in the zone of ambiguous executive authority. The soft statute should be the preferred mechanism for articulating congressional views in this setting n118 because it is a better indicator of legislative views than legislative inaction. There are dozens of reasons Congress fails to act, and negative inferences in the context of Article II powers are especially hazardous. In fact, the soft law analytic frame makes clear that Justice Jackson's typology is actually incomplete. Speaking of congressional agreement, disapproval, or silence is unnecessarily crude. The House might authorize the presidential action and the Senate might expressly disavow it (or vice versa), creating a twilight of the twilight category. In fact, Congress does sometimes use resolutions for these purposes. For example, during 2007, a concurrent resolution was introduced, "expressing the sense of Congress that the President should not initiate military action against Iran without first obtaining authorization from Congress." n119 During the same Congress, Senate Resolutions were offered to censure the President, Vice-President, and Attorney General for conduct related to the war in Iraq, detainment of enemy combatants, and wiretapping practices undertaken without warrants. n120 Another proposed resolution expressed the sense of the Senate that the President has constitutional authority to veto individual items of appropriation without additional statutory authorization. n121 These potential soft [\*604] statutes were not passed by majorities, but they are precisely the sort of information on the scope of permissible executive authority that would inform Justice Jackson's analysis. n122 In this scenario, legislative sentiments, expressed in nonbinding mechanisms, are taken as inputs in the decision-making processes of other institutions - the courts - that themselves generate binding rules, that is, hard law. Even without judicial involvement, however, resolutions that assert congressional authority or limitations on presidential authority may influence the way that the two political branches share power with each other - either as moves in a game where each side must both cooperate and compete, or as appeals to public opinion. n123

#### It avoids politics

Harvard Law Review, 11

(“A CHEVRON FOR THE HOUSE AND SENATE: DEFERRING TO POST-ENACTMENT CONGRESSIONAL RESOLUTIONS THAT INTERPRET AMBIGUOUS STATUTES” 124 Harv. L. Rev. 1507, April, lexis)

If Congress wishes to resolve a statutory ambiguity, it always has the option of passing a law via bicameralism and presentment. In reality, however, passing laws is extremely difficult, and often the legislative enactment costs are simply greater than the benefits of resolving the ambiguity correctly. n1 Indeed, these high legislative enactment costs are among the reasons that so many of our statutes set forth broad principles rather than specify concrete requirements: gaining consensus on concrete textual mandates imposes even more costs on the already difficult process of legislation. A future Congress may want to clarify these vague statutory mandates as societal, legal, or technological circumstances change, as the consequences of certain policy choices become more apparent, or as legislators simply resolve their differences of opinion. But the costs of legislating a fix are usually too high. n2 Some leading commentators argue that this problem of statutory ossification due to high legislative enactment costs requires judges to interpret statutes as living documents. Professor William Eskridge claims that a statute’s meaning changes over time, and thus judges should “dynamically” interpret statutes.3 Judge Calabresi argues that judges should “update” obsolete statutes by striking down or ignoring any statute that is “sufficiently out of phase with the whole [contemporary] legal framework so that, whatever its age, it can only stand if a current majoritarian or representative body reaffirms it.”4 However, most commentators have criticized such approaches as putting too much power in the hands of unelected and unaccountable judges.5 Instead, Congress has largely relied on administrative agencies to continually update the policies that implement various statutes. When charged with administering statutes, such agencies often have the authority to interpret the legislation's vague commands by translating them into more precise and concrete rules. n6 Moreover, courts have given great deference to agency interpretations of ambiguous statutes under Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc. n7 These agency interpretations, although the products of a more politically accountable process than judicial interpretations, nonetheless are not as publicly deliberative or as nationally representative as a congressional decision. Worse, many other statutes that are similarly indefinite are not administered by any particular agency, thus leaving courts with the primary responsibility to develop the law - and thus the policy - under these statutes, despite judges' lack of expertise and accountability. n8 But by prohibiting one house of Congress from vetoing agency actions, the Supreme Court, in INS v. Chadha, n9 limited Congress's role in administering statutes, despite its institutional advantages over courts - and, in some respects, over agencies - in developing policy. In a recent article, Professors Jacob Gersen and Eric Posner suggest that courts should pay greater attention to post-enactment congressional resolutions when interpreting statutes. n10 This Note develops their idea by proposing more modest congressional involvement than the legislative veto invalidated in Chadha: courts should defer to a [\*1509] House or Senate resolution that adopts a reasonable interpretation of an ambiguous statute. n11 For statutes not administered by any agency with interpretive authority, such deference to a congressional resolution would improve lawmaking by bringing to bear the legislature's policy expertise and democratic accountability. But even for statutes administered by agencies, this proposal would increase accountability. Further, this proposal would help to restore checks and balances and the Constitution's original allocation of power by making the House and Senate coequal with executive agencies in interpreting ambiguous statutory provisions. Whenever these institutions disagree, courts should simply adopt their own best reading of the statute, de novo. I. Statutes Without Agencies Courts should give Chevron-like deference to any resolution passed by either the House or the Senate that reasonably interprets a statutory ambiguity. When deciding whether to defer to such a congressional resolution, courts should engage in both steps of the Chevron analysis, just as they do for agency interpretations of statutes: First, the statute must be "silent or ambiguous with respect to the specific issue" addressed by the congressional resolution. n12 Second, the resolution's interpretation must be "based on a permissible construction of the statute." n13

### Debt Ceiling DA

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

Dovere, 10/1

(Edward, Politico, “Government shutdown: President Obama holds the line” <http://www.politico.com/story/2013/10/government-shutdown-president-obama-holds-the-line-97646.html?hp=f3>)

President Barack Obama started September in an agonizing, extended display of how little sway he had in Congress. He ended the month with a display of resolve and strength that could redefine his presidency. All it took was a government shutdown. This was less a White House strategy than simply staying in the corner the House GOP had painted them into — to the White House’s surprise, Obama was forced to do what he so rarely has as president: he said no, and he didn’t stop saying no. For two weeks ahead of Monday night’s deadline, Obama and aides rebuffed the efforts to kill Obamacare with the kind of firm, narrow sales pitch they struggled with in three years of trying to convince people the law should exist in the first place. There was no litany of doomsday scenarios that didn’t quite come true, like in the run-up to the fiscal cliff and the sequester. No leaked plans or musings in front of the cameras about Democratic priorities he might sacrifice to score a deal. After five years of what’s often seen as Obama’s desperation to negotiate — to the fury of his liberal base and the frustration of party leaders who argue that he negotiates against himself. Even his signature health care law came with significant compromises in Congress. Instead, over and over and over again, Obama delivered the simple line: Republicans want to repeal a law that was passed and upheld by the Supreme Court — to give people health insurance — or they’ll do something that everyone outside the GOP caucus meetings, including Wall Street bankers, seems to agree would be a ridiculous risk. “If we lock these Americans out of affordable health care for one more year,” Obama said Monday afternoon as he listed examples of people who would enjoy better treatment under Obamacare, “if we sacrifice the health care of millions of Americans — then they’ll fund the government for a couple more months. Does anybody truly believe that we won’t have this fight again in a couple more months? Even at Christmas?” The president and his advisers weren’t expecting this level of Republican melee, a White House official said. Only during Sen. Ted Cruz’s (R-Texas) 21-hour floor speech last week did the realization roll through the West Wing that they wouldn’t be negotiating because they couldn’t figure out anymore whom to negotiate with. And even then, they didn’t believe the shutdown was really going to happen until Saturday night, when the House voted again to strip Obamacare funding. This wasn’t a credible position, Obama said again Monday afternoon, but rather, bowing to “extraneous and controversial demands” which are “all to save face after making some impossible promises to the extreme right wing of their political party.” Obama and aides have said repeatedly that they’re not thinking about the shutdown in terms of political gain, but the situation’s is taking shape for them. Congress’s approval on dealing with the shutdown was at 10 percent even before the shutters started coming down on Monday according to a new CNN/ORC poll, with 69 percent of people saying the House Republicans are acting like “spoiled children.” “The Republicans are making themselves so radioactive that the president and Democrats can win this debate in the court of public opinion” by waiting them out, said Jim Manley, a Democratic strategist and former aide to Senate Majority Leader Harry Reid who has previously been critical of Obama’s tactics. Democratic pollster Stan Greenberg said the Obama White House learned from the 2011 debt ceiling standoff, when it demoralized fellow Democrats, deflated Obama’s approval ratings and got nothing substantive from the negotiations. “They didn’t gain anything from that approach,” Greenberg said. “I think that there’s a lot they learned from what happened the last time they ran up against the debt ceiling.” While the Republicans have been at war with each other, the White House has proceeded calmly — a breakthrough phone call with Iranian President Hassan Rouhani Friday that showed him getting things done (with the conveniently implied juxtaposition that Tehran is easier to negotiate with than the GOP conference), his regular golf game Saturday and a cordial meeting Monday with his old sparring partner Israeli Prime Minister Benjamin Netanyahu. White House press secretary Jay Carney said Monday that the shutdown wasn’t really affecting much of anything. “It’s busy, but it’s always busy here,” Carney said. “It’s busy for most of you covering this White House, any White House. We’re very much focused on making sure that the implementation of the Affordable Care Act continues.” Obama called all four congressional leaders Monday evening — including Boehner, whose staff spent Friday needling reporters to point out that the president hadn’t called for a week. According to both the White House and Boehner’s office, the call was an exchange of well-worn talking points, and changed nothing. Manley advised Obama to make sure people continue to see Boehner and the House Republicans as the problem and not rush into any more negotiations until public outrage forces them to bend. “He may want to do a little outreach, but not until the House drives the country over the cliff,” Manley said Monday, before the shutdown. “Once the House has driven the country over the cliff and failed to fund the government, then it might be time to make a move.” The White House believes Obama will take less than half the blame for a shutdown – with the rest heaped on congressional Republicans. The divide is clear in a Gallup poll also out Monday: over 70 percent of self-identifying Republicans and Democrats each say their guys are the ones acting responsibly, while just 9 percent for both say the other side is. If Obama is able to turn public opinion against Republicans, the GOP won’t be able to turn the blame back on Obama, Greenberg said. “Things only get worse once things begin to move in a particular direction,” he said. “They don’t suddenly start going the other way as people rethink this.”

#### The plan causes an inter-branch fight that derails Obama’s agenda

Kriner 10 Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 67-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea." 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." 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.6° 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 both 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 priorities, such as Social Security and immigration reform, failedperhaps 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. When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena

#### That consumes his capital and causes a default

Lillis, 9/7

(Mike, The Hill, “Fears of wounding Obama weigh heavily on Democrats ahead of vote”

The prospect of wounding President Obama is weighing heavily on Democratic lawmakers as they decide their votes on Syria. Obama needs all the political capital he can muster heading into bruising battles with the GOP over fiscal spending and the debt ceiling. Democrats want Obama to use his popularity to reverse automatic spending cuts already in effect and pay for new economic stimulus measures through higher taxes on the wealthy and on multinational companies. But if the request for authorization for Syria military strikes is rebuffed, some fear it could limit Obama's power in those high-stakes fights. That has left Democrats with an agonizing decision: vote "no" on Syria and possibly encourage more chemical attacks while weakening their president, or vote "yes" and risk another war in the Middle East. “I’m sure a lot of people are focused on the political ramifications,” a House Democratic aide said. Rep. Jim Moran (D-Va.), a veteran appropriator, said the failure of the Syria resolution would diminish Obama's leverage in the fiscal battles. "It doesn't help him," Moran said Friday by phone. "We need a maximally strong president to get us through this fiscal thicket. These are going to be very difficult votes."

#### Collapses the global economy

Davidson 9-10

Adam Davidson 9/10/13, economy columnist for The New York Times, co-founder of Planet Money, NPR’s team of economics reporters, “Our Debt to Society,” NYT, <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&_r=0>

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history.¶ Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.¶ Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.¶ Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.¶ While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.¶ The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

#### Collapse causes nuclear conflicts

Harris and Burrows 9

Mathew J. Burrows counselor in the National Intelligence Council and Jennifer Harris a member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” The Washington Quarterly 32:2 https://csis.org/files/publication/twq09aprilburrowsharris.pdf

Increased Potential for Global Conflict¶ 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 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 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.¶ 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.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.

### CMR DA

#### U.S. civil-military relations are on the brink; new restrictions that go against military opinion will collapse CMR

Zenko 9/29

[Micah, Sr. Fellow @ Council on Foreign Relations, <http://www.journalgazette.net/article/20130929/EDIT05/309299977/1147/EDIT07>, mg]

**Washington has found itself in a** crisis **over the proper relationship between** senior **civilian and military** officials. It’s a tension that shows little sign of abating, regardless of how the Syria issue plays out: Underlying forces seem guaranteed to make it worse. Every administration has its share of disputes with the Pentagon, but when it comes to where and how U.S. armed forces will be used, civil-military relations **have not been this** tense and precarious **since the** end of the Cold War. **Military officers are increasingly willing to express their personal opinions about interventions, while** civilian policymakers **are increasingly willing to** disregard **professional** military advice. Worse, a growing number of individuals from both “sides” seem unaware of the appropriate civilian and military roles and relationships, and their conflicts play out in public more prominently and immediately than ever before.

#### Congressional control over introduction of forces damages CMR

Yoo 2k10

(John, professor of law at the University of California, Berkeley, School of Law, served as a deputy assistant attorney general in the Office of the Legal Counsel of the U.S. Department of Justice from 2001 to 2003, where he worked on constitutional and national security matters. He also served as general counsel of the Senate Judiciary Committee, 6/24/2010, AEI, “The Growing Crisis in Civil-military Relations,” <http://www.aei-ideas.org/2010/06/the-growing-crisis-in-civil-military-relations/>, accessed 10/4/2013, BS)

I ran an op-ed today in the Wall Street Journal on the firing of General McChrystal. Over on the Ricochet.com website, I blog about the growing crisis in civil-military relations since the end of the Cold War. Another point to make is that it was almost predictable that there would be such a crisis under President Obama, not because of Obama’s obviously uncomfortable attitude toward national security matters, but because of the serious harm done to civil-military relations by Congress during the last half of the Bush years. Congressional Democrats encouraged and fed upon the resistance by officers and retired generals to Secretary Donald Rumsfeld and the Iraq war. This blurred lines of accountability in civilian control over the military, and led to greater military independence. The wider the policy differences between the military brass and the president, the more you will see appeals to Congress and efforts to undermine direct presidential control—and this should happen more often under a Democratic president than a Republican, for many reasons. This sort of thing happens all the time with regulatory agencies, which are only too happy to play off the White House against the Congress to create freedom for themselves—but the Constitution, I believe, is meant to prevent this from happening to an institution as dear as the presidency.

#### IMPACTS:

#### 1.Rollback

Owens 13

[Mackubin Owens is Editor of *Orbis,* FPRI’s quarterly journal of international affairs, and Senior Fellow at its Program on National Security, Professor of National Security Affairs at the Naval War College; July, <https://www.fpri.org/articles/2013/07/what-military-officers-need-know-about-civil-military-relations>, mg]

All too often, **US military officers seem to believe that** if the United States does not face the prospect of a Latin-American or African style military coup d’état, then **all is well in** the realm of **civil-military relations.** But this is a straw man. A number of scholars, including Richard Kohn, Peter Feaver, the late Russell Weigley, Michael Desch, and Eliot Cohen have argued that although there is no threat of a coup on the part of the US military, **American civil-military relations have** nonetheless **deteriorated over the past two decade**s.¶ ¶ For example, **the US military has “pushed back” against civilian leadership** on numerous occasions during the last two decades. **This pushback has manifested itself in** “foot dragging,” “slow rolling” and leaks to the press designed to undercut policy **or individual policy-makers**. Such actions were rampant during the Clinton presidency and during the tenure of Donald Rumsfeld as secretary of defense. **Such** pushback **is based on the claim that** civilians were making decisions without paying sufficient attention to the military point of view.

#### 2.Bad U.S. civil-military relations cause bad interventions, gets modeled globally, turns case and causes nuclear war

Cohen ’00 (Eliot A.-, Prof. @ Paul H. Nitze School of Advanced International Studies & director of the Strategic Studies department @ Johns Hopkins, worked for Dod, taught at the U.S. Naval War College, Fall, National Interest, “Why the Gap Matters - gap between military and civilian world”, http://www.24hourscholar.com/p/articles/mi\_m2751/is\_2000\_Fall/ai\_65576871/pg\_4?pi=scl //AGupta)

At the same time, the military exercises control, to a remarkable degree, of force structure and weapons acquisition. To be sure, Congress adds or trims requests at the margin, and periodically the administration will cancel a large program, such as the navy's projected replacement of the A-6 bomber. But by and large, the services have successfully protected programs that reflect ways of doing business going back for decades. One cannot explain otherwise current plans for large purchases of short-range fighter aircraft for the air force, supercarriers and traditional surface warships for the navy, and heavy artillery pieces for the army. Civilian control has meant, in practice, a general oversight of acquisition and some degree of control by veto of purchases, but nothing on the scale of earlier decisions to, for example, terminate the draft, re-deploy fleets, or develop counterinsurgency forces. The result is a force that looks very much like a shrunken version of the Cold War military of fifteen years ago- -which, indeed, was the initial post-Cold War design known as the "base force." The strength of the military voice and the weakness of civilian control, together with sheer inertia, has meant that the United States has failed to reevaluate its strategy and force structure after the Cold War. Despite a plethora of "bottom-up reviews" by official and semiofficial commissions, the force structure remains that of the Cold War, upgraded a bit and reduced in size by 40 percent. So What? WHAT WILL be the long-term consequences of these trends? To some extent, they have become visible already: the growing politicization of the officer corps; a submerged but real recruitment and retention crisis; a collapse of junior officers' confidence in their own leaders; [7] the odd antipathy between military and civilian cultures even as the two, in some respects, increasingly overlap; deadlock in the conduct of active military operations; and stagnation in the development of military forces for a geopolitical era radically different from the past one. To be sure, such phenomena have their precedents in American history. But such dysfunction occurred in a different context--one in which the American military did not have the task of maintaining global peace or a predominance of power across continents, and in which the armed forces consumed barely noticeable fractions of economic resources and decisionmakers' time. Today, the stakes are infinitely larger. For the moment, the United States dominates the globe militarily, as it does economically and culturally. It is doubtful that such predominance will long go unchallenged; were that to be the case it would reflect a change in the human condition that goes beyond all human experience of international politics over the millennia. Already, some of the signs of those challenges have begun to appear: increased tension with the rising power of China, including threats of force from that country against the United States and its allies; the development of modes of warfare--from terrorism through the spread of weapons of mass destruction--designed to play on American weaknesses; the appearance of problems (peacemaking, broadly defined) that will resist conventional solutions. None of these poses a mortal threat to the Republic, or is likely to do so anytime soon. Yet cumulatively, the consequences have been unfortunate enough; the inept conclusion to the Gulf War, the Somalia fiasco, and dithering over American policy in Yugoslavia may all partially be attributed to the poor state of American civil-military relations. So too may the subtle erosion of morale in the American military and the defense reform deadlock, which has preserved, to far too great a degree, outdated structures and mentalities. For now, to be sure, the United States is wealthy and powerful enough to afford such pratfalls and inefficiencies. But the full consequences will not be felt for some years, and not until a major military crisis--a challenge as severe in its way as the Korean or Vietnam War--arises. Such an eventuality; difficult as it may be to imagine today, could occur in any of a number of venues: in a conflict with China over Taiwan, in a desperate attempt to shore up collapsing states in Central or South America, or in a renewed outbreak of violence--this time with weapons of mass destruction thrown into the mix-in Southwest Asia. THE PARADOX of increased social and institutional vulnerability on the one hand and increased military influence on narrow sectors of policymaking on the other is the essence of the contemporary civil-military problem. Its roots lie not in the machinations of power hungry generals; they have had influence thrust upon them. Nor do they lie in the fecklessness of civilian leaders determined to remake the military in the image of civil society; all militaries must, in greater or lesser degree, share some of the mores and attitudes of the broader civilization from which they have emerged. The problem reflects, rather, deeper and more enduring changes in politics, society and technology.

### SOP

#### Congressional restrictions weaken president’s ability to effectively convey resolve – prevents effective negotiation and ensures conflict escalation

Howell 7

WILLIAM G. HOWELL AND JON C. PEVEHOUSE are Associate Professors at the Harris School of Public Policy at the University of Chicago, “Congressional Checks on Presidential War Powers”, 27-29, google books

**Because they are legally binding, legislation** and appropriations **passed by**¶ **Congress directly impinge on a president’s discretion to wage war**. Not¶ surprisingly, then, opponents of a president’s war typically call on Congress¶ to pass laws and cut appropriations. But the public **debates that precede**¶ **military actions** also **have important consequences for presidential power**.¶ Two stand out. **By expressing dissent, members of Congress can weaken**¶ **the president’s ability to credibly convey resolve to** foreign **allies and adversaries**, and **they can turn public opinion against him**.73 Here, we briefly¶ summarize both of these avenues of congressional influence.¶ SIGNALING RESOLVE¶ To the extent that **congressional discontent signals domestic irresolution**¶ **to other nations**, the job of **resolving a foreign crisis is made** all the more¶ **difficult**. As Kenneth Schultz shows, an “opposition party can under¶ mine the credibility of some challenges by publicly opposing them. Since¶ **this** strategy **threatens to increase the probability of resistance from the**¶ **rival state,** it forces the government to be more selective about making¶ threats —and, concomitantly, more cautious about actually using military¶ force.74 **When members of Congress openly object to a planned military**¶ **operation**, **would-be adversaries of the U**nited **S**tares **may feel emboldened,**¶ **believing** that **the president lacks** the **domestic support** required **to see a**¶ **military venture through**. **Such nations**, it stands to reason, **will be more**¶ **willing to enter conflict, and if convinced** that **the U**nited **S**tates **will back**¶ **down** once the costs of conflict are revealed, they may **fight longer and**¶ **make fewer concessions**. **Domestic political strife,** as it were, **weakens** **the**¶ **ability of presidents to bargain effectively with foreign states, while increasing the chances that military entanglements abroad will become protracted and unwieldy**.¶ A large body of work within the field of international relations supports¶ the contention that **a nation’s ability to achieve strategic military objectives** in short order **depends**, ¡n part, **on the head of state’s credibility in**¶ **conveying political resolve**. Indeed, a substantial game theoretic literature¶ underscores the importance of domestic political institutions and political¶ opinion as state leaders attempt to credibly commit to var.’5 **Confronting** widespread and vocal domestic **opposition, the president may have a**¶ **difficult time signaling his willingness to see a military campaign to its**¶ **end.** While congressional opposition may embolden foreign enemies, **the**¶ **perception on the part of allies** that **the president lacks support may make**¶ **them wary of committing** any **troops** at all.

#### Spillover – Plan ensures *broad weakening* of executive power – collapses deterrence

Muñoz 6/4/13

Carlo, “House Republican sees slippery slope in counterterrorism changes”, <http://thehill.com/blogs/defcon-hill/policy-and-strategy/303313-house-republican-sees-slippery-slope-in-counter-terrorism-changes-#ixzz2cv5PfuDH>

President Obama's plan **to revise** and ultimately repeal **the** 9/11-era **rules governing counterterror**ism **missions puts the country on a slippery slope, eventually compromising U.S. national security interests**, Rep. Randy Forbes (R-Va.) said. ¶ **Rewriting** or doing away with **those** standing **rules of war** on terrorism, known on Capitol Hill as the Authorization on the Use of Military Force (AUMF), **will do more harm than good** in the fight against al Qaeda, Forbes said. ¶ "**Every time you open it up [for debate], you do not know where you [could] end up**," Forbes, who heads up the House Armed Services Seapower subcommittee, said regarding AUMF rule changes being considered by Congress. ¶ "I think **it could end up worse than it is now**," he told reporters during a breakfast round table in Washington on Tuesday. ¶ Forbes's concern is that **counterterror**ism **missions could become** so **watered down**, as a result of the proposed changes, **their effect to deter terror groups would be** minimal, if not **nonexistent**. ¶ Michael **Sheehan**, head of special operations and low-intensity conflicts at the Pentagon, told Congress in May he **sees no need to change the current rules of war**.¶ “At this point, **we're comfortable with** the **AUMF as** it is **currently structured**. Right now **it does not inhibit us from prosecuting the war against al Qaeda and its affiliates**,” he told the Senate Armed Services Committee in May.

#### Tinkering – any update to executive authority limits flexibility – invites litigation battles and conveys lack of resolve

Gerstein 11

Josh, “White House: Defense bill 'micromanages'”, 6/23, <http://www.politico.com/news/stories/0611/57650_Page2.html>

The aggressively-worded White House memorandum circulated on Capitol Hill blasts a defense bill backed by the House GOP as an unprecedented effort to “micromanage” the handling of war on terror captives and argues the measure would harm national security.¶ “**Never before has** the **Congress sought to so limit and micromanage the military and other elements of our national security community** in matters as basic as a detainee transfer; **congressional limits** like these **are a misguided setback to national security**, because **they take away options to address a continuing and evolving threat**,” the White House said in the paper.¶ The seven-page memorandum expands on the veto threat the White House issued last month regarding aspects of the FY2012 National Defense Authorization Act. The bill passed the House, 322-96, on May 26.¶ Most of the detainee and war on terror provisions were crafted by House Armed Services Committee Chairman Buck McKeon (R-Calif.). However, the bill became even more assertive on the House floor, after an amendment was adopted by Rep. Vern Buchanan (R-Fla.) aimed at requiring all terrorism suspects to be tried in military tribunals.¶ **One of the most controversial proposals** in the House bill **is** the first-ever **revision to** the **A**uthorization of the **U**se of **M**ilitary **F**orce passed by Congress three days after the attacks of September 11, 2001.¶ McKeon contends the language simply reaffirms the use-of-force authorization and adopts a definition of who may be held prisoner that was advanced by the Obama administration in court. Critics say the provision could authorize an “endless war” and give the president the green light to attack any country that contains even a small number of Al Qaeda members or supporters.¶ “**Legislative efforts to update these authorities**, however well intentioned they may be, **would change horses midstream with no discernible benefits, and** would **risk** both **inviting waves of new litigation and sending mixed messages**,” the White House said in the memo. “**Now is not the right time to reconfigure a legal framework which**, generally speaking, **has been approved by the judiciary**.”¶ The White House also took aim at claims that the bill simply restates current law. “The proposed language does not simply confirm the President’s existing authorities based on the 2001 AUMF. Rather, it seeks **to update those authorities**, and could be interpreted by the courts as an effort to override current relevant domestic and international law,” the White House position paper says. “The proposed language **could unsettle rather than clarify the law**.”

#### Confusion – congressional involvement creates murky lines of authority – undermines deterrence

Wall 12

(Andru, senior official @ Alston & Bird, Demystifying the Title 10-Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action, Harvard National Security Journal)

**Congress’s** failure to provide necessary interagency authorities and budget **authorizations threatens our ability to** prevent and **wage warfare. Congress’s stubborn insistence that military and intelligence activities inhabit separate worlds** **casts a pall of illegitimacy over interagency support, as well as unconventional and cyber warfare.** The U.S. military and intelligence agencies work together more closely than perhaps at any time in American history, yet **Congressional oversight and statutory authorities** sadly **remain mired in an obsolete paradigm.** After ten years of war, Congress still has not adopted critical recommendations made by the 9/11 Commission regarding congressional oversight of intelligence activities. **Congress’s stovepiped oversight sows confusion over statutory authorities and causes Executive Branch attorneys to waste countless hours distinguishing** distinct lines of **authority and funding. Our military and intelligence operatives work tirelessly to coordinate, synchronize, and integrate their efforts; they deserve** interagency authorities and **Congressional oversight that encourages and supports such integration.**

### Cred

#### Congress has zero credibility – ruins the signal

Cook, Editor of *The Cook Political Report*, Columnist for the *National Journal*, 2011

(Charlie, “Congress Becomes a Laughingstock,” http://cookpolitical.com/story/3210)

My wife told me recently about a Facebook post by an acquaintance that held Congress up to ridicule. Apparently, the sentiment was enthusiastically endorsed by people who spanned her entire network of friends—from the most liberal to the most conservative. My wife couldn’t recall anything else that had been so universally embraced by such a politically diverse group of people.¶ If this debt-ceiling debate is producing any political winners or beneficiaries, they have no connection to Congress or the White House. The unfavorable ratings for both parties are climbing, and President Obama’s job-approval rating in the Gallup Poll fell to 43 percent in one recent week, tied for the lowest of his presidency. (At this writing, it is at 46 percent approval/46 percent disapproval, hardly what a president seeking reelection wants to see.) The debt-ceiling debacle has become like a bomb that keeps exploding in Washington, hurting both sides and each end of Pennsylvania Avenue, effectively damaging everyone in sight.¶ Sadly, my view is that it will probably take a significant stock-market plunge of 500 or 1,000 points in the Dow Jones industrial average, perhaps triggered by a bond-ratings downgrade, to focus minds and cut through the political posturing. The stock and bond markets, neurotic and skittish under the best of circumstances, have been remarkably patient, looking the other way and quietly assuming that everything will work out. They may reach the end of their patience any day. Even a modest deal on deficit reduction and a short-term increase in the debt ceiling may not bring enough confidence to the markets.¶ A significant market plunge would cause great pain to 401(k) retirement plans, other personal savings, and the economy in general. The negative wealth effect would be great, but another type of loss would be just as bad—just not as obvious.¶ Washington is now sullying America’s long-deserved reputation as the leading country in the world to such an extent that we are becoming a laughingstock. The renowned, late journalist A.J. Liebling, a fixture for many years in The New Yorker and a chronicler of then-Louisiana Gov. Earl Long, once wrote that the home state I share with Long was “the northernmost of the banana republics.” If Liebling were alive today, he might expand his “northernmost” banana republic to include the whole United States, with Washington as its sorry capital. My guess is that most members of Congress and their aides are too close to the process and don’t fully appreciate what they are doing to themselves, the institution, and the nation’s political process. The Pictorial Directory test will determine if I’m right.

#### Hegemony isn’t key to peace

Fettweis, 11
Christopher J. Fettweis, Department of Political Science, Tulane University, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the U**nited** S**tates** cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

#### Heg is unsustainable

Layne 10

(Christopher Layne, Professor and Robert M. Gates Chair in National Security at Texas A&M's George H.W. Bush School of Government & Public Service. "Graceful decline: the end of Pax Americana". The American Conservative. May 2010. http://findarticles.com/p/articles/mi\_7060/is\_5\_9/ai\_n5422359

China's economy has been growing much more rapidly than the United States' over the last two decades and continues to do so, maintaining audacious 8 percent growth projections in the midst of a global recession. Leading economic forecasters predict that it will overtake the U.S. as the world's largest economy, measured by overall GDP, sometime around 2020. Already in 2008, China passed the U.S. as the world's leading manufacturing nation--a title the United States had enjoyed for over a century--and this year China will displace Japan as the world's second-largest economy. Everything we know about the trajectories of rising great powers tells us that China will use its increasing wealth to build formidable military power and that it will seek to become the dominant power in East Asia. Optimists contend that once the U.S. recovers from what historian Niall Ferguson calls the "Great Repression"--not quite a depression but more than a recession--we'll be able to answer the Chinese challenge. The country, they remind us, faced a larger debt-GDP ratio after World War II yet embarked on an era of sustained growth. They forget that the postwar era was a golden age of U.S. industrial and financial dominance, trade surpluses, and persistent high growth rates. Those days are gone. The United States of 2010 and the world in which it lives are far different from those of 1945. Weaknesses in the fundamentals of the American economy have been accumulating for more than three decades. In the 1980s, these problems were acutely diagnosed by a number of writers--notably David Calleo, Paul Kennedy, Robert Gilpin, Samuel Huntington, and James Chace--who predicted that these structural ills would ultimately erode the economic foundations of America's global preeminence. A spirited late-1980s debate was cut short, when, in quick succession, the Soviet Union collapsed, Japan's economic bubble burst, and the U.S. experienced an apparent economic revival during the Clinton administration. Now the delayed day of reckoning is fast approaching. Even in the best case, the United States will emerge from the current crisis with fundamental handicaps. The Federal Reserve and Treasury have pumped massive amounts of dollars into circulation in hope of reviving the economy. Add to that the $1 trillion-plus budget deficits that the Congressional Budget Office (CBO) predicts the United States will incur for at least a decade. When the projected deficits are bundled with the persistent U.S. current-account deficit, the entitlements overhang (the unfunded future liabilities of Medicare and Social Security), and the cost of the ongoing wars in Iraq and Afghanistan, there is reason to worry about the United States' fiscal stability. As the CBO says, "Even if the recovery occurs as projected and the stimulus bill is allowed to expire, the country will face the highest debt/GDP ratio in 50 years and an increasingly unsustainable and urgent fiscal problem**."** The dollar's vulnerability is the United States' geopolitical Achilles' heel. Its role as the international economy's reserve currency ensures American preeminence, and if it loses that status, hegemony will be literally unaffordable. As Cornell professor Jonathan Kirshner observes, the dollar's vulnerability "presents potentially significant and underappreciated restraints upon contemporary American political and military predominance." Fears for the dollar's long-term health predated the current financial and economic crisis. The meltdown has amplified them and highlighted two new factors that bode ill for continuing reserve-currency status. First, the other big financial players in the international economy are either military rivals (China) or ambiguous allies (Europe) that have their own ambitions and no longer require U.S. protection from the Soviet threat. Second, the dollar faces an uncertain future because of concerns that its value will diminish over time. Indeed, China, which has holdings estimated at nearly $2 trillion, is worried that America will leave it with huge piles of depreciated dollars. China's vote of no confidence is reflected in its recent calls to create a new reserve currency. In coming years, the U.S. will be under increasing pressure to defend the dollar by preventing runaway inflation. This will require it to impose fiscal self-discipline through some combination of budget cuts, tax increases, and interest-rate hikes**.** Given that the last two options could choke off renewed growth, there is likely to be strong pressure to slash the federal budget. But it will be almost impossible to make meaningful cuts in federal spending without deep reductions in defense expenditures. Discretionary non-defense domestic spending accounts for only about 20 percent of annual federal outlays. So the United States will face obvious "guns or butter" choices. As Kirshner puts it, the absolute size of U.S. defense expenditures are "more likely to be decisive in the future when the U.S. is under pressure to make real choices about taxes and spending. When borrowing becomes more difficult, and adjustment more difficult to postpone, choices must be made between raising taxes, cutting non-defense spending, and cutting defense spending." Faced with these hard decisions, Americans will find themselves afflicted with hegemony fatigue.

Decline of hegemony forces US retrenchment – solves war.

MacDonald and Parent 11 – Asst Prof. of PoliSci @ Williams College and Parent, Asst Prof. PoliSci @ U of Miami, Paul and Joseph, “Graceful Decline?” International Security, 35.4, Project MUSE

Paul and Joseph, “Graceful Decline?”, International Security, 35.4, Project MUSE

In this article, we question the logic and evidence of the retrenchment pessimists. To date there has been neither a comprehensive study of great power retrenchment nor a study that lays out the case for retrenchment as a practical or probable policy. This article fills these gaps by systematically examining the relationship between acute relative decline and the responses of great powers. We examine eighteen cases of acute relative decline since 1870 and advance three main arguments. First, we challenge the retrenchment pessimists' claim that domestic or international constraints inhibit the ability of declining great powers to retrench. In fact, when states fall in the hierarchy of great powers, peaceful retrenchment is the most common response, even over short time spans. Based on the empirical record, we find that great powers retrenched in no less than eleven and no more than fifteen of the eighteen cases, a range of 61-83 percent. When international conditions demand it, states renounce risky ties, increase reliance on allies or adversaries, draw down their military obligations, and impose adjustments on domestic populations. Second, we find that the magnitude of relative decline helps explain the extent of great power retrenchment. Following the dictates of neorealist theory, great powers retrench for the same reason they expand: the rigors of great power politics compel them to do so.12 Retrenchment is by no means easy, but [End Page 9] necessity is the mother of invention, and declining great powers face powerful incentives to contract their interests in a prompt and proportionate manner. Knowing only a state's rate of relative economic decline explains its corresponding degree of retrenchment in as much as 61 percent of the cases we examined. Third, we argue that the rate of decline helps explain what forms great power retrenchment will take. How fast great powers fall contributes to whether these retrenching states will internally reform, seek new allies or rely more heavily on old ones, and make diplomatic overtures to enemies. Further, our analysis suggests that great powers facing acute decline are less likely to initiate or escalate militarized interstate disputes. Faced with diminishing resources, great powers moderate their foreign policy ambitions and offer concessions in areas of lesser strategic value. Contrary to the pessimistic conclusions of critics, retrenchment neither requires aggression nor invites predation. Great powers are able to rebalance their commitments through compromise, rather than conflict. In these ways, states respond to penury the same way they do to plenty: they seek to adopt policies that maximize security given available means. Far from being a hazardous policy, retrenchment can be successful. States that retrench often regain their position in the hierarchy of great powers. Of the fifteen great powers that adopted retrenchment in response to acute relative decline, 40 percent managed to recover their ordinal rank. In contrast, none of the declining powers that failed to retrench recovered their relative position

Heg fails causes nuclear war with china.

Layne 6 CHRISTOPHER LAYNE, PROF INTL RELATIONS AT TEXAS A&M, 2006

THE PEACE OF ILLUSIONS,. 167-8

As China’s military power—conventional and nuclear—increases, the potential risks to the United States of coming to Taiwan’s (or Japan’s) defense also are increasing. The spring 1996 crisis between China and Taiwan is illustrative. During the crisis—which China provoked by conducting intimidating military exercises in an attempt to influence Taiwan’s presidential elections—a Chinese official said that unlike the Formosa Strait crises during the 1 950s, China now was a nuclear power, and the U.S. nuclear deterrent therefore could not prevent Beijing from using force against Taiwan, because U.S. decision makers “care more about Los Angeles than they do about Taiwan.”29 This comment illustrates an important point: Taiwan matters more to China than it does to Washington (and one hopes Los Angeles matters more to U.S. officials than does Taipei). In a showdown over Taiwan, the United States would be engaged in extended deterrence to prevent China from attacking. Beijing, however, would he engaged in direct deterrence to prevent U1S1 intervention in what’ it regards as an internal Chinese matter. Beijing’s 1996 threat was, of course, hollow, but now that China is on the verg eof possessing a survivable nuclear retaliatory capability, it is becoming quite real. It could be argued that the United States would not have to risk involvement in a potential future conflict over Taiwan, or over Japanese interests in the East and South China Seas, because they are peripheral to America’s own vital security interests. This overlooks the fact that America’s hegemonic grand strategy requires the United States to defend its allies when they are attacked and to stand firm in the peripheries to demonstrate its credibility. As Robert Art puts it, “The defense of allies, even if infrequent, strengthens America’s reassurance role”; if the United States failed to defend its allies, its commitment in East Asia (and in Europe) “would lose its effectiveness and its beneficial effects would evaporate.” SO The paradox of America’s hegemonic grand strategy is that it compels the United States to risk war over strategically unimportant places to prove—to allies and adversaries alike—that it will fight to defend stakes that are important. Indeed, according to the perverse logic of America’s hegemonic strategy, the less important a place is to U.S. interests, the more important it is to defend it.

### Solvency

#### WPR is already dead- Obama will ignore any further restrictions

Lowry 11, Rich Lowry, writer for National Review Online, “Obama Kills the War Powers Act,” National Review Online, June 7, 2011, <http://www.nationalreview.com/articles/268973/obama-kills-war-powers-act-rich-lowry>, FM

Somewhere, Richard Nixon is smiling. In 1973, he vetoed the War Powers Act, insisting that it was unconstitutional. Congress overrode him, but almost every one of Nixon’s successors has agreed with his assessment of the resolution. ¶ It took Pres. Barack Obama, though, to rip the War Powers Act into little pieces and sprinkle it over his Libyan intervention like the confetti in a premature victory parade. ¶ The thrust of the War Powers Act is clear enough: Sixty days after reporting the start of a military intervention, the president must secure congressional authorization or a declaration of war, or remove our forces. Presidents have typically acted “consistent with,” but not “pursuant to,” the law’s provisions — basically, humoring Congress while never conceding the law’s constitutional legitimacy. President Obama is dispensing with all pretense. He’s simply ignoring the law. This is the kind of highhandedness that Dick Cheney was always accused of, although the Bush administration was old-fashioned enough to get prior congressional approval of its wars.¶ Obama launched the Libya War on his say-so, and doesn’t even want to bother to explain to Congress why the War Powers Act doesn’t apply to a conflict begun some 80 days ago. On Libya, the Obama administration is making a gigantic rude gesture to Congress and all the liberal professors and national-security experts who have made such a fetish of the War Powers Act through the years. ¶ Before tangling with Moammar Qaddafi, Obama counted himself among their number. As a senator, he maintained, “The president does not have the power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation.” ¶ President Obama joins a long list of presidents going back to Thomas Jefferson whose views of the limits of executive power didn’t survive their first contact with the presidency. President Obama isn’t doing his reputation for consistency or the legal theories of his supporters any favors, but he is paying a backhanded compliment to the Constitution. The War Powers Act is an excrescence on the American constitutional order that deserves to be the dead letter that President Obama is making it. The president’s inherent powers as commander in chief do not depend on affirmative acts of Congress.¶ What Congress can do is wield its own powers — most decisively, the appropriation of funds — to limit or end a military action. Of course, Congress usually refuses to do that, since it involves an action for which it could be held politically accountable. Predictably, the grand confrontation between the legislative and executive branches over Libya has been an instance of the cowardly fighting the disingenuous. ¶ The Obama administration implausibly pretends that the president’s posture hasn’t changed on the War Powers Act. A spokesman argues that its briefings of members of Congress constitute compliance. But the resolution doesn’t call for collegial chats after 60 days. The administration’s other possible defenses — that Libya isn’t really a war, that it’s a piddling war, that we are “leading from behind” — don’t help, either. The act doesn’t make exceptions for small, euphemistic wars waged under NATO auspices by reluctant presidents. If this were the Bush administration, Nancy Pelosi would be agitating for impeachment. Yale law professor Bruce Ackerman has written in despair that “Obama is breaking new ground, moving decisively beyond his predecessors.” At this rate, he notes, “history will say that the War Powers Act was condemned to a quiet death by a president who had solemnly pledged, on the campaign trail, to put an end to indiscriminate warmaking.” ¶ History comes full circle. In the aftermath of Vietnam and the midst of Watergate, liberal Democrats passed the War Powers Act as part of a broad assault on presidential powers. The act reached the end of the line with a liberal Democrat in the White House, who wanted to avail himself of the full sweep of his powers. No doubt, Nixon wouldn’t just relish the result, but appreciate the irony.

####  Obama will resist the plan - fights over war powers create intractable national diversions and destroys military decision making, interbranch cooperation and rule of law

Lobel**,** Pittsburgh law professor**,** 2008

(Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War”, Ohio State Law Journal, vol 69, lexis, ldg)

The critical difficulty with a contextual approach is its inherent ambiguity and lack of clarity, which tends to sharply shift the balance of power in favor of a strong President acting in disregard of congressional will. For example, the application of the Feldman and Issacharoff test asking whether the congressional restriction makes realistic sense in the modern world would yield no coherent separation of powers answer if applied to the current Administration’s confrontation with Congress. It would undoubtedly embolden the President to ignore Congress’s strictures. The President’s advisors would argue that the McCain Amendment’s ban on cruel and inhumane treatment, or FISA’s requirement of a warrant, does not make realistic sense in the context of the contemporary realities of the war on terror in which we face a shadowy, ruthless nonstate enemy that has no respect for laws or civilized conduct, a conclusion hotly disputed by those opposed to the President’s policies. Focusing the debate over whether Congress has the power to control the treatment of detainees on the President’s claim that the modern realities of warfare require a particular approach will merge the separation of powers inquiry of who has the power with the political determination of what the policy ought to be. Such an approach is likely to encourage the President to ignore and violate legislative wartime enactments whenever he or she believes that a statute does not make realistic sense—that is, when it conflicts with a policy the President embraces. 53 The contextual approach has a “zone of twilight” quality that Justice Jackson suggested in Youngstown. 54 Often constitutional norms matter less than political realities—wartime reality often favors a strong President who will overwhelm both Congress and the courts. While it is certainly correct— as Jackson noted—that neither the Court nor the Constitution will preserve separation of powers where Congress is too politically weak to assert its authority, a fluid contextual approach is an invitation to Presidents to push beyond the constitutional boundaries of their powers and ignore legislative enactments that seek to restrict their wartime authority. Moreover, another substantial problem with a contextual approach in the war powers context is that the judiciary is unlikely to resolve the dispute. 55 The persistent refusal of the judiciary to adjudicate the constitutionality of the War Powers Resolution strongly suggests that courts will often refuse to intervene to resolve disputes between the President and Congress over the constitutionality of a statute that a President claims impermissibly interferes with her conduct of an ongoing war. 56 This result leaves the political branches to engage in an intractable dispute over the statute’s constitutionality that saps the nation’s energy, diverts focus from the political issues in dispute, and endangers the rule of law. Additionally, in wartime it is often important for issues relating to the exercise of war powers to be resolved quickly. Prompt action is not usually the forte of the judiciary. If, however, a constitutional consensus exists or could be consolidated that Congress has the authority to check the President’s conduct of warfare, that consensus might help embolden future Congresses to assert their power. Such a consensus might also help prevent the crisis, chaos, and stalemate that may result when the two branches assert competing constitutional positions and, as a practical matter, judicial review is unavailable to resolve the dispute. Moreover, the adoption of a contextual, realist approach will undermine rather than aid the cooperation and compromise between the political branches that is so essential to success in wartime. In theory, an unclear, ambiguous division of power between the branches that leaves each branch uncertain of its legal authority could further compromise and cooperation. However, modern social science research suggests that the opposite occurs. 57 Each side in the dispute is likely to grasp onto aspects or factors within the ambiguous or complex reality to support its own self-serving position. This self-serving bias hardens each side’s position and allows the dispute to drag on, as has happened with the ongoing, unresolved dispute over the constitutionality of the War Powers Resolution. Pg. 407-409

#### Crisis pressure and information asymmetry means Congress will defer to the executive

Posneret al., Chicago law professor,2011(Eric, The Executive Unbound, pg 7-10, ldg)

Having defined our terms as far as possible, our main critical thesis is that liberal legalism has proven unable to generate meaningful constraints on the executive. Two problems bedevil liberal legalism: delegation and emergencies. The first arises when legislatures enact statutes that grant the executive authority to regulate or otherwise determine policy, the second when external shocks require new policies to be adopted and executed with great speed. Both situations undermine the simplest version of liberal legalism, in which legislatures themselves create rules that the executive enforces, subject to review by the courts. Delegation suggests that the legislature has ceded lawmaking authority to the executive, de facto if not de jure,14 while in emergencies, only the executive can supply new policies and real-world action with sufficient speed to manage events. The two problems are related in practice. When emergencies occur, legislatures acting under real constraints of time, expertise, and institutional energy typically face the choice between doing nothing at all or delegating new powers to the executive to manage the crisis. As we will see, legislatures often manage to do both things; they stand aside passively while the executive handles the first wave of the crisis, and then come on the scene only later, to expand the executive's de jure powers, sometimes matching or even expanding the de facto powers the executive has already assumed. A great deal of liberal legal theory is devoted to squaring delegation and emergencies with liberal commitments to legislative governance. Well before World War I, the Madisonian framework of separated powers began to creak under the strain of the growing administrative state, typically thought to have been inaugurated by the creation of the Interstate Commerce Commission in 1887. For Madisonian theorists, delegation threatened the separation of powers by effectively combining lawmaking and law-execution in the same hands, and emergencies threatened legislative primacy by requiring the executive to take necessary measures without clear legal authorization, and in some cases in defiance of existing law. (We refer to the Madisonian tradition as it has developed over time and as it exists today, not to Madison himself, whose views before the founding were less legalistic than they would become during the Washington and Adams administrations.) As to both delegation and emergencies, Madisonian liberals have repeatedly attempted to compromise with the administrative state, retreating from one position to another and attempting at every step to limit the damage. In one prominent strand of liberal legal theory and doctrine, which has nominally governed since the early twentieth century, delegation is acceptable as long as the legislature supplies an "intelligible principle"15 to guide executive policymaking ex ante; this is the so-called "nondelegation doctrine." This verbal formulation, however, proved too spongy to contain the administrative state. During and after the New Deal, under strong pressure to allow executive policymaking in an increasingly complex economy, courts read the intelligible principle test so capaciously as to allow statutes delegating to the president and agencies the power to act in the "public interest," nowhere defined.'6 Before 1935, the U.S. Supreme Court mentioned nondelegation in dictum but never actually applied it to invalidate any statutes; in 1935, the Court invalidated two parts of the National Industrial Recovery Act on nondelegation grounds;" since then, the Court has upheld every challenged delegation. Subsequently, liberal legal theorists turned to the hope that legislatures could create administrative procedures and mechanisms of legislative and judicial oversight that would enforce legal constraints on the executive ex post, as a second-best substitute for the Madisonian ideal. In American administrative law, a standard account of the Administrative Procedure Act (APA), the framework statute for the administrative state, sees it as an attempt to translate liberal legalism into a world of large-scale delegation to the executive, substituting procedural controls and judicial review for legislative specification of policies. The APA applies to administrative action in a broad range of substantive areas, but does not apply to presidential action, so Congress has also enacted a group of framework statutes that attempt to constrain executive action in particular areas. Examples are the War Powers Resolution, which regulates the presidential commitment of armed forces abroad, the National Intelligence Act, which structures the intelligence agencies and attempts to require executive disclosure of certain intelligence matters to key congressional committees, and the Inspector General Act, which installs powerful inspectors general throughout the executive branch. As to emergencies, starting at least with John Locke's discussion of executive "prerogative," liberal political and constitutional theorists have struggled to reconcile executive primacy in crises with the separation of powers or the rule of law or both. Such questions have become all the more pressing in the twentieth and twenty-first centuries, when a series of wars, economic emergencies, and other crises have multiplied examples in which the executive proceeded with dubious legal authority or simply ignored the laws. Here too, the response has been a series of legal constraints, such as the APA's restrictions on emergency administrative action, and framework statutes such as the National Emergencies Act, which regulates the president's ability to invoke grants of emergency powers granted under other laws. One of our main claims is that these approaches are palliatives that have proven largely ineffective, and that fail to cure the underlying ills of liberal legalism. The same institutional and economic forces that produce the problems of delegation and emergencies also work to undermine legalistic constraints on the executive. The complexity of policy problems, especially in economic domains, the need for secrecy in many matters of security and foreign affairs, and the sheer speed of policy response necessary in crises combine to make meaningful legislative and judicial oversight of delegated authority difficult in the best of circumstances. In emergencies, the difficulties become insuperable—even under the most favorable constellation of political forces, in which the independently elected executive is from a different party than the majority of the Congress. Liberal legalism, in short, has proven unable to reconcile the administrative state with the Madisonian origins of American government. The constitutional framework and the separation-of-powers system generate only weak and defeasible constraints on executive action. Madisonian oversight has largely failed, and it has failed for institutional reasons. Both Congress and the judiciary labor under an informational deficit that oversight cannot remedy, especially in matters of national security and foreign policy, and both institutions experience problems of collective action and internal coordination that the relatively more hierarchical executive can better avoid. Moreover, political parties, uniting officeholders within different institutions, often hobble the institutional competition on which Madisonian theorizing relies.'8 Congressional oversight does sometimes serve purely political functions—legislators, particularly legislators from opposing parties, can thwart presidential initiatives that are unpopular—but as a legal mechanism for ensuring that the executive remains within the bounds of law, oversight is largely a failure. The same holds for statutory constraints on the executive—unsurprisingly, as these constraints are the product of the very Madisonian system whose failure is apparent at the constitutional level. In the terms of the legal theorist David Dyzenhaus, the APA creates a series of legal "black holes" and "grey holes" that either de jure or de facto exempt presidential and administrative action from ordinary legal requirements, and hence from (one conception of) the rule of law.19 The scope of these exemptions waxes and wanes with circumstances, expanding during emergencies and contracting during normal times, but it is never trivial, and the administrative state has never been brought wholly under the rule of law; periodically the shackles slip off altogether.

## 2NC

### Schmitt K

#### SUBPOINT A – Univeralism effaces the us/them distinction to form a unified whole. This lack of distinctions causes global, genocidal war BECAUSE OF lashout

Reinhard 2k4

[Kenneth, Professor of Jewish Studies at UCLA, 2004, “Towards a Political Theology- Of the Neighbor,” online: <http://www.cjs.ucla.edu/Mellon/Towards_Political_Theology.pdf>]

If the concept of the political is defined, as Carl Schmitt does, in terms of the Enemy/Friend opposition, the world we find ourselves in today is one from which the political may have already disappeared, or at least has mutated into some strange new shape. A world not anchored by the “us” and “them” binarisms that flourished as recently as the Cold War is one subject to radical instability, both subjectively and politically, as Jacques Derrida points out in The Politics of Friendship: The effects of this destruction would be countless: the ‘subject’ in question would be looking for new reconstitutive enmities; it would multiply ‘little wars’ between nation states; it would sustain at any price so-called ethnic or genocidal struggles; it would seek to pose itself, to find repose, through opposing still identifiable adversaries – China, Islam? Enemies without which … it would lose its political being … without an enemy, and therefore without friends, where does one then find oneself, qua a self? (PF 77) If one accepts Schmitt’s account of the political, the disappearance of the enemy results in something like global psychosis: since the mirroring relationship between Us and Them provides a form of stability, albeit one based on projective identifications and repudiations, the loss of the enemy threatens to destroy what Lacan calls the “imaginary tripod” that props up the psychotic with a sort of pseudo-subjectivity, until something causes it to collapse, resulting in full-blown delusions, hallucinations, and paranoia. Hence, for Schmitt, a world without enemies is much more dangerous than one where one is surrounded by enemies; as Derrida writes, the disappearance of the enemy opens the door for “an unheard-of violence, the evil of a malice knowing neither measure nor ground, an unleashing incommensurable in its unprecedented – therefore monstrous –forms; a violence in the face of which what is called hostility, war, conflict, enmity, cruelty, even hatred, would regain reassuring and ultimately appeasing contours, because they would be identifiable” (PF 83).

#### And this results in extinction.

Schmitt ’63 (Carl. The Theory of the Partisan: A Commentary/Remark on the Theory of the Political. Trans. A. C. Goodson. East Lansing, MI: Michigan State University Press, 2004. 67.)

This means concretely that the supra-conventional weapon supposes¶ the supra-conventional man. It presupposes him not merely as a postulate¶ of some remote future; it intimates his existence as an already existent reality. The ultimate danger lies then not so much in the living presence of the¶ means of destruction and a premeditated meanness in man. It consists in¶ the inevitability of a moral compulsion. Men who turn these means against¶ others see themselves obliged/forced to annihilate their victims and¶ objects, even morally. They have to consider the other side as entirely criminal and inhuman, as totally worthless. Otherwise they are themselves¶ criminal and inhuman. The logic of value and its obverse, worthlessness,¶ unfolds its annihilating consequence, compelling ever new, ever deeper discriminations, criminalizations, and devaluations to the point of annihilating all of unworthy life [lebensunwerten Lebens]. In a world in which the partners push each other in this way into the¶ abyss of total devaluation before they annihilate one another physically,¶ new kinds of absolute enmity must come into being. Enmity will be so terrifying that one perhaps mustn’t even speak any longer of the enemy or of¶ enmity, and both words will have to be outlawed and damned fully before¶ the work of annihilation can begin. Annihilation thus becomes entirely¶ abstract and entirely absolute. It is no longer directed [96] against an¶ enemy, but serves only another, ostensibly objective attainment of highest¶ values, for which no price is too high to pay. It is the renunciation of real¶ enmity that opens the door for the work of annihilation of an absolute¶ enmity.

#### The affirmative purports to stand against war, but they do so in the name of humanity, security, rights and justice - They betray a universalism which can only result in imperialism and more war, turning the aff.

Rasch 2000 (William. "Conflict as a Vocation: Carl Schmitt and the Possibility of Politics." Theory Culture Society 17.1)

Schmitt would recognize these as the right questions to ask, would recognize them, in fact, as his own questions. They go to the heart of the nature and possibility of conflict (which is to say -- of politics), for wars conducted in the name of the universal normative instance are wars fought to end all wars, conflicts conducted in the name of the self-transcendence of all conflict. But what if, afterwards, we find out that the heaven of consensus and reconciliation turns out to be a realm in which conflict has been outlawed in the name of the good, the efficient, the comfortable? In a world where conflict has been outlawed, how is opposition to be staged? As uncorked agreement? It is precisely against this type of outlawry of opposition in the service of the status quo - more accurately, in the service of the unfolding and global expansion of a new type of moral and economic imperialism -- that Schmitt launches his counterattack. Since, to his mind, the non-decomposable sovereignty of the autonomous state is the only form of resistance available the fight against this seemingly relentless expansion, it is to the philosopher of state sovereignty par excellence, Hobbes, that he is drawn. Schmitt's "Kampf mit Weimar-Genf-Versailles" is quite explicitly an updated version of an older "Kampf mit Rom". In an interesting and clever move, Schmitt notices that Cole's guild-socialism, Laski's liberalism and French syndicalism all share arguments and perspectives with the social philosophers of Roman Catholicism as well as those of other Churches and sects, arguments that are aimed at relativizing the power of the state. Both the call to follow the dictates of conscience and the more explicit appeal to the higher morality as embodied in international structures (like the League or international revolutionary movements) are political weapons. The battle between "internationalism" and "nationalism", then, is not simply fought between the forces of freedom and oppression, but rather between the authority of one type of sovereign power and another. But, Schmitt warns: The Roman Catholic Church is no pluralist entity, and in its [the Church's] battle against the state, pluralism, at least since the 16th century, is on the side of the national states. A pluralist social theory contradicts itself if it wishes to remain pluralist and still play off the monism and universalism of the Roman Catholic Church, as secularized in the Second or Third International, against the state. To repeat: the battle, as he sees it, is between a sham and a true pluralism, between a pluralism in the service of a universal morality (accompanied, not so coincidentally, by a universal economy) and a pluralism in which no contestant can claim the moral high ground. It is the latter, morally neutral pluralism, based on autonomous entities, that best represents the structures and possibilities of a Schmittian form of politics. We can re-figure this debate is even more classical terms. What Schmitt argues for is a politics commensurable with the conditions found in the Earthly City, and what he argues against is the "fanaticism" of judging this terrestrial domain with standards only applicable in the City of God. Through his choice of Hobbes and the notion of state sovereignty may be deemed unfortunate and can be contested, his aim is to reconstruct a space of legitimate conflict as a space of secular politics. This space must remain immune to moral and theological infections; the Earthly City must retain a legitimacy that is autonomous from the moral but other-worldly claims of the City of God, claims that can only be redeemed at the end of history --- which is to say, not on this earth. Accordingly, his critique of the "humanism" of modern liberalism is akin to an older critique of religious fanaticism. Despite his Catholicism, Schmitt is much like the Luther who supported the princes, even though he recognized their greed and cruelty, against the prophetic iconoclasts and the Armageddon of the peasant uprisings. The eschatology of religious or secular revolutions is precisely anti-political. They advocate change to outlaw change. They oppose the order of the world in order to welcome the Messiah. Once His arrival is imminent (no matter how long imminence lasts), opposition to the order of the world becomes sin. They wage wars, repeatedly, to end war. They wage wars, but not just any wars; they wage just wars. "They", the particular instance, wage wars in the name of the universal principle, in the name of humanity, outlawing all opposition: as, for example, was attempted in the "war-guilt" clause of the Versailles Treaty, which turned a war of competing national interests into a just war against an unjust enemy; and as was attempted in the Kellogg-Briand Pact of 1928, turning wars in the national interest into crimes, and wars in the interest of the universal principle into crusades. "Imperialism does not conduct national wars", Schmitt ironically observes, referring to what he sees as the particularly modern, i.e. legal and economic, form of imperialism conducted by the Anglo-American world; "at most it conducts wars that serve international politics; it conducts no unjust, only just wars"; or, as Wyndham Lewis was to put it a few years after the Second World War: "But what war that was ever fought was an unjust war, except of course that waged by the enemy?"

#### Legal standards are always shiftable and shifting, especially where they relate to war powers. They only transform a black hole into a gray hole.

Vermeule ’09 (Adrian, February, "Our Schmittian Administrative Law." Harvard Law Review 122)

4. Standards Versus Grey Holes. - A particular clarification about grey holes is also necessary. A conventional legal perspective would hold that administrative law is, of course, composed of both "rules" and "standards" in the sense in which these terms are used in legal theory. n35 And on this perspective, it is unsurprising that where the relevant law creates standards, judges will increase deference to the executive when administrative action touches on sensitive matters of national security and foreign relations, or as emergencies arise. No one thinks that liberal legalism is inconsistent with standards, as opposed to rules, or that it prohibits all judicial deference to the executive, or that it requires judges to redecide all administrative decisions. Is the claim that our administrative law is Schmittian just a claim that it contains standards, or that judges sometimes defer to agencies? No. A "standard" in the legal theorist's sense is merely a potential grey hole, and the sort of deference that liberal-legalist judges are usually willing to afford is not enough to bring a grey hole into being either. My suggestion is that the standards inherent in administrative law are best understood as adjustable parameters, in which the intensity of review can be dialed up or down. When (and only when) it is dialed down far enough, the apparent availability of judicial review becomes a sham or facade, and a grey hole arises. It is hard to specify, in the abstract, when exactly this occurs, or how deferential review must be to create a grey hole. But it is not necessary to specify that in the abstract. If the examples in Part II are convincing - the proof must be in the pudding - then the reality is that in certain domains, and with respect to certain questions, it is an inescapable fact that judges applying the adjustable parameters of our administrative law have upheld executive or administrative action on such deferential terms as to make legality a pretense. In such cases, judicial review is itself a kind of legal fiction and the outcome of judicial review is a foregone conclusion - not something that is compatible, even in theory, with the banal liberal-legalist observations that administrative law contains standards and permits deference.

#### 4. PERM IMPOSSIBLE- we must choose between universalization of values or recognition of enmity.

Moreiras 04 [Director of European Studies at Duke, Alberto, “A God without Sovereignty. Political Jouissance. The Passive Decision”, CR: The New Centennial Review 4.3, p. 79-80, Project MUSE]

The friend/enemy division is peculiar at the highest level, at the level of the order of the political. This peculiarity ultimately destroys the under- standing of the political as based on and circumscribed by the friend/enemy division. The idea of **an order of the political presupposes that the enemies of the order as such**—that is, the enemy configuration that can overthrow a given order, or even the very idea of an order of the political—**are generated from the inside**: enemies of the order are not properly external enemies. This is so **because the order of the political**, as a principle of division, as division itself, **always already** regulates, and thus **subsumes, its** externality: **externality is produced by the order** as such, and it is a function of the order. Or rather: a principle of division can have no externality. Beyond the order, there can be enemies, if attacked, but they are not necessarily enemies of the order: they are simply ignorant of it. At the highest level of the political, at the highest level of the friend/ enemy division, there where the very existence of a given order of the political is at stake, the order itself secretes its own enmity. Enmity does not precede the order: it is in every case produced by the order. **The friend/enemy division is** therefore a division that is **subordinate to the primary ordering division**, produced from itself. The friend/enemy division is therefore not supreme: **a nomic antithesis generates it**, **and** thus **stands above** it. The order of the political rules over politics. The political ontology implied inthe notion ofan order of the political deconstructs the **political** ontology ciphered in the friend/enemy division, and vice versa. They are mutually incompatible**. Either the friend/enemy division is supreme**, for a determination of the political, **or the order of the political is** supreme**. Both** of them **cannot simultaneously be supreme. The gap between them is** strictly **untheorizable.** If the friend/enemy division obtains independently of all the other antitheses as politically primary, then there is no order of the political. If there is an order of the political, the order produces its own political divisions.

#### 4. The perm attempts to restrict the executive response to the exception, but concedes the existence of an exceptional circumstance. One cannot remain equivocal. This can only paper-over the exception to trigger the impacts.

Dysenhaus ’06 (David. The Constitution of Law: Legality in a Time of Emergency. New York: Cambridge University Press, 2006. Page 179-180)

My point here is not that the majority were wrong to defer, but that ¶ they failed to require that a proper case for deference be made. In failing ¶ so to require, they in effect conceded to Schmitt the first limb of his claim ¶ about states of emergency - that it is for the executive to decide when ¶ there is a state of exception. Moreover, they concede that limb in the ¶ way which, as I have argued throughout this book, makes things worse ¶ from the perspective of the rule of law. They still adopt the regulative ¶ assumption that all exercises of public power are legally constrained. But ¶ their understanding of constraint is so thin that it becomes merely formal, ¶ with the result that they claim that the declaration of the state of emergency ¶ has met the test of legality, even as they empty the test of rule-of-law substance. The majority did face a rather large problem though in confronting this ¶ Issue. There was no doubt that the United Kingdom faced a serious threat ¶ of terror attacks and the events of July 2005 confirmed the government's ¶ claims. But the issue of whether that threat, or indeed actual attacks, ¶ amounted to an emergency in accordance with the Article 15 definition ¶ was not so much debated but asserted, as one can gather from both the¶ account in the judges' speeches of the government's arguments and by ¶ Lord Hoffmann's cursory dismissal of those arguments. One can sum up ¶ the majority view by saying that if there is some reason to suppose that ¶ there is an emergency, that is, it is not irrational to claim that there is, even ¶ if the judges doubt that there is, they still have to give the benefit of the ¶ doubt to the executive. And not only is that just the test that was suggested ¶ by Lord Hoffmann in Rehman for review of decisions concerning national ¶ security, but Lord Bingham seemed to accept that the jurisprudence of ¶ Rehman should determine this issue. In order for the judges to do more, they would need a better justificatory basis to scrutinize. For there to be such a basis, the government would ¶ have to be prepared to treat Parliament as more than a rubber stamp for ¶ legislation when the government thinks it needs more powers to confront ¶ an alleged crisis. Not only would the government have to forego its standard (and nearly always unjustified) line that there is no time to debate ¶ properly both the extent of the emergency and the appropriate responses ¶ to it. It would have to devise some system of parliamentary committees ¶ which could hear that part of the government's case which could not be ¶ publicly debated. To use the term introduced at the end of the last chapter ¶ more constitutional furniture would have to be put in place in order to ¶ ensure that the government could meet its justificatory responsibilities ¶ before the judges could carry out their duty properly to evaluate the government's case. And for the judges to carry out that duty, they would of ¶ course have to be given some means of testing the arguments made in the ¶ closed committee sessions. The upshot for my critique of the majority on this first issue is not ¶ that I think the judges were obviously wrong to defer to the government's ¶ claim that there was a state of emergency. Rather, my critique is that ¶ they should have made clear both that they did not have an adequate ¶ basis for testing that claim and that the government should take suitable ¶ steps to make an adequate justification possible. They needed to do that ¶ because the two limbs of Schmitt's challenge cannot be separated. As we ¶ know, the majority denied the second limb of Schmitt's claim. They held ¶ contrary to him and to the government, that judges can effectively, and ¶ are entitled to, second-guess the way that the executive chooses to respond ¶ to the emergency, and the logic of that holding extends to the question¶ whether there is an emergency. For the propriety of the response can only ¶ be assessed against a view of what the response is to, a view of whether ¶ there is an emergency and, if there is, of what kind.

#### 5. The executive is the only actor who can act on the exception. The permutation usurps this power, and prevents any ability to respond to the exception.

Dysenhaus ’06 (David. The Constitution of Law: Legality in a Time of Emergency. New York: Cambridge University Press, 2006. Page 34.)

In the opening line of his book Political Theology, Schmitt claimed that 'Sovereign is he who decides on the state of exception' He thus asserted that in abnormal times the sovereign is legally uncontrolled. Schmitt's thought of course goes further. Not only is the sovereign legally uncontrolled in the state of emergency; the quality of being sovereign, he who is the sovereign, is revealed in the answer to the question of who gets to decide that there is a state of emergency. Closely bound up with Schmitt's claim about states of emergency is another claim about 'the political'. According to Schmitt, the political is prior to law and its central distinction is between friend and enemy, so that the primary task of the sovereign is to make that distinction. It is in the moment of the emergency that the existential nature of the political is revealed. Since to make that distinction is to make a kind of existential decision, he who makes it has to be capable of acting in a decisive way, which, for Schmitt, ruled out both the judiciary and Parliament, leaving the executive as the only serious candidate. There is, in Schmitt's view, a continuum of exceptional situations, ranging from a global threat or the situation of war where the state - the political and legal order as a whole-is in danger, to situations which occur within the political and legal order, which are local manifestations of the global external threat. The sovereign must respond to all exceptions. He is the only figure in the political and legal order capable of acting as the guardian of the constitution, since he alone has the power to make the ultimate decision as to who is an enemy. Once one recognizes the possibility of a threat from without that threatens the life of the state, and that it is the sovereign's role both to determine that there is such an emergency and to deal with it, one should also recognize that in more local emergency situations, the sovereign should play the same role.

#### 6. The exception is not just an exception from the law, but from all natural laws and rationality. The attempt to combine the alt and the aff guarantees the exception is domesticated and feckless.

Ben-Archer ’09 (Noa. "Legal Holes." Unbound Harvard Journal of the Legal Left 5)

Schmitt used Bodin's structural analogy to contest jurisprudential theories that compared law to the natural sciences. [n17](http://www.lexisnexis.com.libweb.lib.utsa.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1373906829422&returnToKey=20_T17793193649&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.643170.6875391554#n17) Schmitt suggested instead that the better understanding of law is through the lens of theology: The distinction between the substance and the practice of law, which is of fundamental significance in the history of the concept of sovereignty, cannot be grasped with concepts rooted in the natural sciences and yet is an essential element of legal argumentation. When Kelsen gives the reason for opting for democracy, he openly reveals the mathematical and natural-scientific character of this thinking: Democracy is the expression of a political relativism and a scientific orientation that are *liberated from miracles and dogmas* and based on human understanding and critical doubt. Schmitt thought that the legal exception was analogous to divine miracles, arguing that "the exception in jurisprudence is analogous to the miracle in theology. Only by being aware of this analogy can we appreciate the manner in which the philosophical ideas of the state developed in the last centuries." [n19](http://www.lexisnexis.com.libweb.lib.utsa.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1373906829422&returnToKey=20_T17793193649&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.643170.6875391554#n19) Just as the miracle was essential to the solidity of some strands of theological thought, Schmitt claimed that the legal exception was critical to the survival of the state. Schmitt blamed the rationalization in western thought for banishing both the divine miracle (in the realm of theology) and the legal exception (in the realm of law and sovereignty). In the realm of law, the legal rationality of the 18th and 19th centuries, according to Schmitt, "rejected not only the transgression of the laws of nature through an exception brought about by direct intervention, as is found in the idea of a miracle, but also," and for Schmitt much more importantly, "the sovereign's direct intervention in a valid legal order." [n20](http://www.lexisnexis.com.libweb.lib.utsa.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1373906829422&returnToKey=20_T17793193649&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.643170.6875391554#n20) He thus concluded that "the rationalism of the Enlightenment rejected the exception in every form." Schmitt sought to bring the exception back into the theory of the state and into the legal order. In his famous opening words of *Political Theology*--"Sovereign is he who decides the exception" [n22](http://www.lexisnexis.com.libweb.lib.utsa.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1373906829422&returnToKey=20_T17793193649&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.643170.6875391554#n22)--and later in *The Concept of the Political,* Schmitt positioned the legal exception as definitive of sovereignty and as the core of politics. Thus he argued that whoever was in the position to decide, under the Weimar constitution, that constitutional protections were to be suspended due to an emergency, was in fact the sovereign of the Weimar republic. And, according to Schmitt, that sovereign was neither the parliament nor the courts. It was the president. The moment in which the sovereign practices that authority to declare an exception is, according to Schmitt, the core of politics.

#### Claims that liberalism is preferable is merely a tool of the global neo-liberal elite to demonize state's insisting on national sovereignty and independence.

Thorup ‘06

Mikkel Thorup. In Defense of Enmity: Critiques of Liberal Globalism. Ph.D. Dissertation, Institute of Philosophy and the History of Ideas, University of Aarhus, Denmark. January 2006.

The main enemy of cosmopolitan globalization discourse is the nation state and its practitioners. This gives rise to distinct readings of both history and current affairs, and I argue that it may give rise to an unwelcomed conglomeration of cosmopolitans and the state, where the cosmopolitan discourse isn't really in opposition to the state, as much as it helps its transformation and most likely not to ?he post-nation, plural-nation, nation-indifferent, and nation-tolerant state(Beck 2001c: 87), that they hope. Cosmopolitanism may, paradoxically, be giving us a new language of state sovereignty, which reinstalls the in/out, friend/enemy distinctions under different names. The ?osmopolitan thoughtis an attack on any notions of classical differentiations, both descriptively in the globalization discourse and normatively. The particulars of the nation state age, in/out, friend/enemy, foreign/domestic, local/national/international and also distinctions such as war/peace, economics/politics, police/military are transcended or discarded as obsolete. This may sound as a strong critique of statist power but in actual fact it is complementary to the Western state? own discourse, which is progressively changing its ways of international/global control into a deterritorialized form of dominance, which project force from above and afar. The ones losing are the states trying to secure a statehood in the first place. Once modernity? distinctions are dissolved, one has to ask: Who profits from fluidity and indistinction? Who defines the new distinctions? I want to argue in this final section, that cosmopolitanism serves the re-configuration of power by hyper-politicizing the nation state and, consequently, depoliticizing its usurper. Cosmopolitans help frame the new post-sovereign language of dominance and intervention by not being attentive enough to the ?ew alliance of humanitarian and military interest(Kennedy 2004: xii). The modern nation state was born in and through war; so is the postnational. The ?ew warsare borderland wars and they are instrumental in reinstating order by drawing new distinctions between the West and the Rest, between order and chaos, the civilized and the barbaric, between friends and enemies. As Mark Duffield says in his remarkable book Global Governance and the New Wars: The Merging of Development and Security: ?he aim of liberal peace is to transform the dysfunctional and war- affected societies that it encounters on its borders into cooperative, representative and, especially, stable entities(2001: 11). This is, of course, an often worthy and needed enterprise but it is also part of the new repression of the global borderland and the making of a new global order and it isn? obvious that the humanitarian or cosmopolitan language is always the most effective or appropriate vocabulary. The new wars outline the new cartography and the new enmities of globalized power. This is what we?l concentrate on in the following and in the next chapter. Cosmopolitanism is complicit in the new ?amingof the borderland. The post-sovereignty discourse is no risk to Western states, who are secure in their statehood and in their sovereignty in a post-sovereign order. In this way too, one can agree with Michael Ignatieff that, ?osmopolitanism is the privilege of those who can take a secure nation state for granted” (1994: 9). It may not be meant as such, but the unequal distribution of power in the international system makes the new post-sovereign language a political tool of the powerful. The new global borderland is defined as post-political. The political is obsolete. It belongs exclusively to the nation state era. But this kind of language is systematically hiding the return of the political in new in/out, friend/enemy categories; the most prominent being the ones between cosmopolitan or postmodern states on one side and a combination of modern nationalist barbarism and premodern warlord chaos on the other. The post-sovereign discourse is a moral discourse denying (certain) sovereign states their legitimacy. It becomes, therefore, a means of de-legitimization and intervention. The new moral discourse may be directed against state abuse but in a significant way it gives new life to the state in its most statist register: War. Margaret Canovan (1998) asks: ?rusaders want to see human rights recognized and protected across the world, and questions of political agency inevitable follow. Seeking to make the Marxist political project effective, Lenin hit on the notion of the powerful Party: what collective actor can (by analogy) bear the project of human rights?It is and remains the state or more precisely, a conglomerate of Western states, we?l later call the ?umanitarian sovereign The collective actor of the world community is the West. One cannot imagine China or Iran proclaiming to be the defender of the international community or humanity and then be recognized as such. This humanist and globalist prerogative is exclusively Western.

### CP

#### 3) Voluntary compliance - the CP induces it to forestall the threat of binding restrictions

Gersen and Posner, 8

Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

II. How Does Soft Law Affect Behavior? We propose two main theories for the use of soft statutes in particular and soft law in general. First, Congress or another lawmaking body uses soft law to convey information about future intentions to enact hard law, allowing people to adjust their behavior in advance of binding statutes and in some cases avoiding constitutional requirements that apply to hard law. As we will show, soft law can be useful in this way even when the anticipated hard-law successor never materializes: if people adjust their behavior in anticipation of hard law, hard-law enactment might not be necessary. n63 [\*587] Second, Congress uses soft law to convey information about its beliefs about the state of the world - both factual and normative. The Armenian Genocide resolution, for example, expressed the factual belief that the Armenian Genocide actually occurred - a historical event that is officially denied in Turkey - and the normative belief that the Armenian Genocide was wrong, rather than (as Turkey sometimes argues in the alternative) a series of massacres that were an excusable incident to war. Congress's beliefs about states of the world may influence the beliefs of other people. In both settings, soft law is a signal that provides information. Like other signals, soft law can convey information more or less accurately and more or less efficiently. Soft law is preferable to hard law when the signal conveys information more reliably or more cheaply than hard law does. This Part surveys the relevant variables that affect the direction and magnitude of these tradeoffs.

#### 4) Err neg – no conceptual difference between legal rules and non-binding rules because the executive ignores and re-interprets statutes. Everything that effects the President is political – and the CP has the same political influence.

Posner and Vermeule, 10

\*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 61)

CONCLUSION¶ American government in the period 2001 to 2008 bears little resemblance to the constitutional framework erected, or wished for, by liberal legalism. In the liberal-legalist view, legislatures are said or at least hoped to be the primary actors, with executive and judicial power following suit—through law-execution and law-interpretation respectively. Both legislatures and courts are supposed to check and monitor the executive, keeping its power tightly cabined. In these episodes, however, executive officials take center stage, setting the agenda and determining the main lines of the government’s response, with legislatures and courts offering second-decimal modifications. Legislative and judicial monitoring and checking is largely hopeless, in part because of the necessarily ad hoc character of the¶ government’s initial reaction (“regulation by deal”).88 in part because legislatures and courts come too late to the scene. The overall impression is that the constitutional framework of liberal legalism has collapsed under the pressure of fact, especially the brute fact that the rate of change in the policy environment is too great for traditional modes of lawmaking and policymaking to keep pace. Although crises demonstrate the problem with particular clarity, it is embedded in the structure of the administrative state.¶ None of this means that the president is all-powerful; that is not our claim. As political science assessments of executive power show,89 the president does face some checks even from a generally supine Congress and even in the domains of war and foreign affairs where presidential power reaches its zenith.90 However, these checks are not primarily legal. Even Congress’s main weapon for affecting presidential behavior is not the cumbersome and costly legal mechanism of legislation. Rather legislators appeal to the court of public opinion, which in turn constrains the president. Oversight and various forms of “soft law”91—congressional statements and resolutions short of legally binding legislation—affect public support for presidential action in the realm of foreign policy, and in many other domains as well. There are real constraints on executive government, but formal constitutional procedures are not their source.

#### 5) Political climate – CP creates a political climate that causes the plan down the road

Harvard Law Review, 11

(“A CHEVRON FOR THE HOUSE AND SENATE: DEFERRING TO POST-ENACTMENT CONGRESSIONAL RESOLUTIONS THAT INTERPRET AMBIGUOUS STATUTES” 124 Harv. L. Rev. 1507, April, lexis)

Why a Congressional Resolution Deserves Deference Even for Agency-Administered Statutes As explained in section I.A, a house of Congress brings its significant expertise and political accountability to bear when interpreting a statute. Therefore, when an agency charged with administering a statute has not issued an interpretation of an ambiguous provision, courts should defer to a congressional resolution that resolves the ambiguity. But the issue becomes complicated when both an agency and the House or Senate offer conflicting interpretations. As a normative matter, courts should defer to whichever political branch has greater accountability and expertise. Generally, the House and Senate might be assumed to be more democratically accountable than agencies, while agencies might possess greater expertise than Congress does. Policy decisions, however, nearly always require a combination of both expertise and value judgments, and the relative importance of these two elements varies depending on the particular decision. Moreover, the extent of each branch's comparative advantage on either of these variables differs from case to case. Courts therefore should refrain from [\*1516] adopting a categorical rule that favors one political branch over another. n43 Rather, judges should engage in a careful de novo or Skidmore analysis of the particular statute and the interpretations that have been offered before resolving the statutory ambiguity. Allowing the political branches essentially to veto each other's interpretations of ambiguous statutes by adopting their own conflicting interpretations would increase transparency. Disagreements over the best interpretation would be formalized and public, and each political branch would present its argument for why its interpretation was better - not just as litigants trying to convince the courts, which would have the power to decide between conflicting interpretations, but as elected or accountable officials who are responsible to their constituencies. And by lowering the legislative costs necessary to alter the law, this Note's proposal might promote an investment of resources in developing interpretations that would turn out to be more broadly popular (or where a compromise might be more easily reached) than congressmen initially imagined - thus spurring actual legislation, not just interpretations of existing statutes.

#### 6) Credible signals - statutory restrictions involve institutional bargaining between Congress and the President. The CP avoids this and sends more credible signals in authority disputes

- Also means its solves SOP because the President wouldn’t get involved to shape the policy

Gersen and Posner, 8

Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

Information about legislative preferences. Soft statutes can be better indicators of legislative intent than hard statutes or legislative history. n91 As an indicator of underlying views of the Senate, the Senate Resolution is a better instrument than a hard statute. As an indicator of congressional views, the concurrent resolution is a better indicator than a hard statute. In the former case, the views of the President and the House will affect what proposals are [\*596] passed by the Senate. In the latter case, the prospect of a presidential veto will affect the legislation that Congress proposes. n92 To illustrate, suppose there are three potential meanings of a statutory provision: A, B, and C. Congress prefers interpretation A to B and prefers B to C. The President prefers meaning C to B and B to A. If the President would veto a statute with meaning A, Congress will pass a statute with meaning B. The statute is a correct indicator of congressional intent in the sense that a majority of both houses preferred meaning B to C and meaning B to the status quo. It is, however, a poor indicator of what Congress thought best (meaning A) precisely because what Congress "says" in hard statutes is a function of what the President prefers. A hard statute is a not a clear instrument with respect to congressional intent because it reflects the views of multiple institutions. n93¶ Why should one care about the intent of the Senate or House alone, or even the two houses jointly? After all, a common view is that they can create law only by securing the consent of the President. One reason is that this last statement is not accurate. When Congress acts on its own (for example, overriding a veto), or houses operate separately (the Senate handles appointments, consents to treaties, adjudicates impeachments; the House initiates impeachments, originates revenue bills), observers will want more refined information than that contained in a statute. The hard statute provides crude information because it reveals only that Congress preferred the enacted outcome to the status quo, but it does not convey preference orderings for other available alternatives. And when the President's views are already well known, or the President is on his way out of office, Congress's views might be all that people need to learn. Indeed, in several important cases that we discuss below, Congress's views alone are of crucial importance: in Congress's effort to stake out its constitutional role vis-a-vis that of the President, and in oversight of regulatory agencies. In these cases, the soft statute conveys better information about future political outputs than hard statutes do.

#### 3) Tradeoff - statutory enactment costs consume docket time, energy and capital and tradeoff with the agenda

Harvard Law Review, 11

(“A CHEVRON FOR THE HOUSE AND SENATE: DEFERRING TO POST-ENACTMENT CONGRESSIONAL RESOLUTIONS THAT INTERPRET AMBIGUOUS STATUTES” 124 Harv. L. Rev. 1507, April, lexis)

One impediment to this outcome is that the costs of legislative enactment are frequently too high to make it worth Congress's limited time and energy to overturn a judicial interpretation. The Senate, for example, might prefer the House and the President's interpretation of a statute if it had the time to consider the question and vote on it, but might simply have other business that consumes all of its time. In that case, any bill on the issue introduced by the House or urged by the President would likely fail (or, more likely, would never be initiated). More fundamentally, even where the costs of legislation are less than the benefits gained by legislating, Congress incurs the opportunity [\*1519] costs of forgoing other legislative work. And although in the abstract it may seem that all three political institutions would only infrequently agree on a different interpretation from the one adopted by the judiciary, such a situation is particularly likely to arise when judges interpret open-ended statutes that require technical determinations or value judgments; because judges lack expertise and are not accountable to the public, their interpretations may frequently diverge from what the political branches would adopt.

#### 4) Bipartisan - Soft law constraints are bipartisan and avoid the formal legislative process

Bradley and Morrison, 12

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In addition, Congress has a variety of "soft law" tools for monitoring and pushing back against the executive branch that are not subject to the collective action problems that beset the formal legislative process. These include oversight hearings, nonbinding resolutions, the threat of contempt proceedings, and public disclosure of information. n157 Although the partisan composition of Congress and the White House is likely to affect the extent to which these tools are used at any given point, n158 over time there has been sufficient bipartisan interest in these tools to maintain them as options. The oversight power may be an especially apt example here. Congress might not exercise this power in any consistently Madisonian fashion (preferring instead to use it for partisan purposes against administrations of the other party, or to advance policy goals of importance to the constituents of a committee chairman or other influential member), but members of Congress have come to understand oversight as a sufficiently valuable form of authority that the basic contours of the power have been asserted and preserved fairly consistently. n159 Moreover, at any given time Congress is likely to contain at least a few members inclined to exercise the oversight power and other soft law tools in the pursuit of institutional or broader public interests, rather than purely partisan ones. n160 Only congressional majorities can check the executive branch through formal legislation, but instruments of soft law do not require bicameral majorities. Those instruments thus hold out broader possibilities for resistance to executive aggrandizement. Nevertheless, there is no particular reason to think that these elements of congressional authority produce consistent, robust interbranch rivalry of the sort envisioned in The Federalist No. 51 -- at least not given the realities of modern government.

#### 5) Involvement - soft law doesn’t require presidential involvement – it captures the signaling effects at a lower political cost

Gersen and Posner, 8

Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

C. Soft Law Versus Hard Law: Costs and Benefits There are two main advantages of soft law. First, it is cheaper to produce than hard law, as it does not require presidential consent. Second, soft law more accurately conveys information about congressional views than hard law does. That information is particularly useful in domains where Congress acts without the President's cooperation - as it does when it expresses its views about its constitutional role, exercises oversight over regulatory agencies, and expresses legislative views where the President's views are already known, are in tension with Congress's views, or are not relevant. The main disadvantage of soft law is straightforward: it does not produce legally binding rules except in the uncertain case where a prior hard-law enactment vests it with this authority. Another possible disadvantage of soft law is that it may violate rule-of-law values such as clarity that procedural formalities are supposed to protect. n87 1. Advantages of soft law We have argued that soft law conveys congressional views. But Congress also communicates using hard statutes - directly influencing behavior and advancing normative judgments. Why are soft statutes ever a preferable mechanism for conveying information, given that ordinary statutes convey information and have the additional desired effect of binding force? Cheapness. The first advantage of soft laws is that they can sometimes accomplish what hard laws accomplish but at a lower cost. n88 Suppose, for example, that at time 1 Congress is considering whether to pass a law at time 2. This law will tax some behavior X. However, at time 1 Congress is not certain whether X is desirable or undesirable, or whether a law that taxed X would have undesirable consequences. Congress could handle its uncertainty with various hard law methods: (a) it could pass the law at time 1, realizing that it can repeal the law if it has undesirable effects at time 2; (b) it could pass the law at time 1 and subject it to a sunset provision, realizing that it can reenact the law if it has desirable effects at time 2; (c) it could wait until time 2 before enacting the law and possibly make the law retroactive; (d) it could also pass the law with moderate sanctions or loopholes so that the effect of the law reflects Congress's [\*595] uncertainty about the undesirability of X. All of these approaches have various costs and benefits. n89 The soft-law alternative is (for example) to issue a resolution at time 1 that condemns X. Such a law will lead people to believe that enactment of a hard law at time 2 is more likely but still not certain. The law will produce fewer behavioral changes than (a) and (b) (if the sanction is high enough), but more effects than (c). And it could have more or less effect than (d), depending on what the sanctions and loopholes are. With respect to (a) and (b), the soft law approach is cheaper; it need not be cheaper with respect to (c) and (d). Depending on the degree of Congress's uncertainty and the relative costs of enacting soft and hard law, the legislature could prefer soft law to the alternatives. An additional advantage of the soft law is that it may stimulate debate. Seeing that a hard law is possible in the future, people will come forward with arguments for or against, which will in turn improve Congress's ability to evaluate X. n90 Or consider the earlier suggestion that Congress's judgment about states of the world can influence the public's views. Suppose Congress seeks to condemn the Armenian Genocide while the President prefers not to, fearing injury to American relations with Turkey. Nonetheless, the President would be willing to sign into law a bill condemning the Armenian Genocide in return for congressional cooperation on some other issue. A hard-law condemnation of the Armenian Genocide would be more costly for Congress than a soft-law condemnation would be. At the same time, the soft-law condemnation could be just as effective as the hard-law condemnation. If the public trusts Congress but not the President, then presidential participation in the statement adds nothing to its credibility. Thus, in the right conditions, the cheapness of the soft law approach can produce benefits for Congress without offsetting costs.

## 1NR

### Debt Ceiling DA

#### We control global impact uniqueness – the status quo solves their impacts but decline undermines crucial forms of restraint

Griswold 5

Director of the Center for Trade Policy Studies at the Cato Institute (Daniel, “Peace on earth? Try free trade among men,” 12-29-2005, http://www.freetrade.org/node/282)

Buried beneath the daily stories about car bombs and insurgents is an underappreciated but comforting fact during this Christmas season: The world has somehow become a more peaceful place.¶ As one little-noticed headline on an Associated Press story recently reported, "War declining worldwide, studies say." According to the Stockholm International Peace Research Institute, the number of armed conflicts around the world has been in decline for the past half century. In just the past 15 years, ongoing conflicts have dropped from 33 to 18, with all of them now civil conflicts within countries. As 2005 draws to an end, no two nations in the world are at war with each other. The death toll from war has also been falling. According to the AP story, "The number killed in battle has fallen to its lowest point in the post-World War II period, dipping below 20,000 a year by one measure. Peacemaking missions, meanwhile, are growing in number." Those estimates are down sharply from annual tolls ranging from 40,000 to 100,000 in the 1990s, and from a peak of 700,000 in 1951 during the Korean War. Many causes lie behind the good news -- the end of the Cold War and the spread of democracy, among them -- but expanding trade and globalization appear to be playing a major role. Far from stoking a "World on Fire," as one misguided American author has argued, growing commercial ties between nations have had a dampening effect on armed conflict and war, for three main reasons. First, trade and globalization have reinforced the trend toward democracy, and democracies don't pick fights with each other. Freedom to trade nurtures democracy by expanding the middle class in globalizing countries and equipping people with tools of communication such as cell phones, satellite TV, and the Internet. With trade comes more travel, more contact with people in other countries, and more exposure to new ideas. Thanks in part to globalization, almost two thirds of the world's countries today are democracies -- a record high. Second, as national economies become more integrated with each other, those nations have more to lose should war break out. War in a globalized world not only means human casualties and bigger government, but also ruptured trade and investment ties that impose lasting damage on the economy. In short, globalization has dramatically raised the economic cost of war. Third, globalization allows nations to acquire wealth through production and trade rather than conquest of territory and resources. Increasingly, wealth is measured in terms of intellectual property, financial assets, and human capital. Those are assets that cannot be seized by armies. If people need resources outside their national borders, say oil or timber or farm products, they can acquire them peacefully by trading away what they can produce best at home. Of course, free trade and globalization do not guarantee peace. Hot-blooded nationalism and ideological fervor can overwhelm cold economic calculations. But deep trade and investment ties among nations make war less attractive. Trade wars in the 1930s deepened the economic depression, exacerbated global tensions, and helped to usher in a world war. Out of the ashes of that experience, the United States urged Germany, France and other Western European nations to form a common market that has become the European Union. In large part because of their intertwined economies, a general war in Europe is now unthinkable. In East Asia, the extensive and growing economic ties among Mainland China, Japan, South Korea, and Taiwan is helping to keep the peace. China's communist rulers may yet decide to go to war over its "renegade province," but the economic cost to their economy would be staggering and could provoke a backlash among its citizens. In contrast, poor and isolated North Korea is all the more dangerous because it has nothing to lose economically should it provoke a war. In Central America, countries that were racked by guerrilla wars and death squads two decades ago have turned not only to democracy but to expanding trade, culminating in the Central American Free Trade Agreement with the United States. As the Stockholm institute reports in its 2005 Yearbook, "Since the 1980s, the introduction of a more open economic model in most states of the Latin American and Caribbean region has been accompanied by the growth of new regional structures, the dying out of interstate conflicts and a reduction in intra-state conflicts." Much of the political violence that remains in the world today is concentrated in the Middle East and Sub-Saharan Africa -- the two regions of the world that are the least integrated into the global economy. Efforts to bring peace to those regions must include lowering their high barriers to trade, foreign investment, and domestic entrepreneurship. Advocates of free trade and globalization have long argued that trade expansion means more efficiency, higher incomes, and reduced poverty. The welcome decline of armed conflicts in the past few decades indicates that free trade also comes with its own peace dividend.

#### Timeframe – the US only has till October 17th – we’re on the brink - default immediately destroys confidence and causes financial volatility throughout the economy – default to timeframe – you can only die once

CCTV 10-1

(CCTV, “U.S. gov't shutdown, debt default threaten to weigh on economy: expert” 10-01-2013, <http://english.cntv.cn/20131002/100740.shtml>, KB)

The ongoing partial federal government shutdown and fiscal uncertainties are dampening American economic recovery, and a default on U.S. debt payments would have "immediate and substantial" negative effects on the country's economy that would be difficult to quickly reverse, said David Stockton, a senior fellow at the Peterson Institute for International Economics (PIIE).¶ "A brief shutdown is disruptive, but not likely a systemic macro event," Stockton said Tuesday at an event on the first day of the partial shutdown of the U.S. federal government agencies.¶ U.S. lawmakers failed to agree to a spending bill for keeping the federal government running beyond midnight of Sept. 30, which finally forced the U.S. federal government to a partial shutdown starting Tuesday for the first time in 17 years. Tuesday also coincided with the first day of the U.S. 2014 fiscal year.¶ The federal government shutdown each week will cost the United States about 0.15 percent of the growth in the fourth-quarter gross domestic product (GDP), predicted Stockton, also former chief economist at the U.S. Federal Reserve.¶ However, if U.S. Congress fails to meet a mid-October deadline to raise the country's debt ceiling, it will be "a major macro systemic event" and will lead to financial volatility and depressed household and business confidence, he stressed.¶ A partial government shutdown for several weeks or a month would not have a significant impact on weakening the U.S. dollar or delaying the Fed's decision of tapering off its third round of quantitative easing (QE3), compared with the potential impact of a debt default crisis, he said in answering questions posed by Xinhua.

#### Literally turns the entire aff - Congress will give Obama unfettered power in the event of an emergency

Brooks 13

(Rosa Brooks, “Mission Creep in the War on Terror” March 14, 2013, <http://www.foreignpolicy.com/articles/2013/03/14/mission_creep_in_the_war_on_terror>, KB)

AUMF or no AUMF, if the United States finds credible evidence of an imminent and grave terrorist attack -- of the 9/11 variety -- no one's going to give the president a hard time if he kills the bad guys before they have a chance to attack us. And trust me: If the president has solid evidence of such an impending attack, it won't matter if the terrorists are an al Qaeda offshoot or a rogue group of Canadian girl scouts.¶ And if, despite our best efforts at prevention, another serious terrorist attack occurs in the future, Congress will undoubtedly be quick to give the president any additional authorities he needs -- with the same speed with which Congress passed its 2001 authorization to use force.¶ In the end, it's not that complicated. If we can't shoehorn drone strikes against every "associate of an associate" of al Qaeda into the 2001 AUMF, we should stop trying to stretch or change the law. Instead, we should scale back the targeted killings.¶ It's past time for a serious overhaul of U.S. counterterrorism strategy. This needs to include a rigorous cost-benefit analysis of U.S. drone strikes, one that takes into account issues both of domestic legality and international legitimacy, and evaluates the impact of targeted killings on regional stability, terrorist recruiting, extremist sentiment, and the future behavior of powerful states such as Russia and China. If we undertake such a rigorous cost-benefit analysis, I suspect we'll come to see scaling back drone strikes less as an inconvenience than as a strategic necessity -- and we may come to a new appreciation of counterterrorism measures that don't involve missiles raining from the sky.¶ This doesn't mean we should never use armed drones -- drones, like any other weapons-delivery mechanism, will at times be justifiable and useful. But it does mean we should rediscover a long-standing American tradition: reserving the use of exceptional authorities for rare and exceptional circumstances.

#### Yes collapse ---

#### 1) Business confidence – default wrecks it

Davis, 9/23

(Susan, USA Today, “Clock ticking on shutdown, with 'Obamacare' center stage;

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

However the stopgap spending bill is resolved, soon after it lurks a fiscal fight that holds greater consequences to the U.S. and global economies. "Shutting down the government is one bad thing, but you shut it down, you open it up again," said Minority Leader Nancy Pelosi, D-Calif., "Not lifting the debt limit is unleashing a torrent, a river of no return. It is beyond cataclysmic." The nation has never defaulted. Though the exact impacts are unclear, there is broad consensus among economists, financial markets and most lawmakers that it would upend the markets. "If you don't raise the debt limit in time, you will be opening an economic Pandora's Box. It will be devastating to the economy," Moody's economist Mark Zandi testified before a congressional panel last week. He explained the consequences: "Consumer confidence will sharply decline, investor confidence, business confidence. Businesses will stop hiring, consumers will stop spending, the stock market will fall significantly in value, borrowing costs for businesses and households will rise."

#### That’s key to the economy

Goldmark, 9/22

Former budget director of New York State and publisher of the International Herald Tribune, Goldmark headed the climate program at the Environmental Defense Fund (Peter, Newsday (New York), lexis)

Apparently our closest ally couldn't quite figure out what they wanted to do either, and voted against supporting the president in his proposed military strike on Syria. The lifetime of the proposal for a military strike was briefer than expected - though long enough both to ask Congress to approve it and to allow the Syrians to move their chemical weapons. But before Congress could get around to debating the question, the Russians came up with a plan under which the Syrians would hand over their chemical weapons to an international force supervised, in part, by the Russians. After having said that you can't trust the Russians on Syria, the U.S. government leaped into their arms - even though their plan was dependent for both approval and enforcement on a UN Security Council where both Russia and China have a veto. And in the middle of all this, a group of influential senators from the president's own party attacked Obama's putative nominee to head the Federal Reserve before the choice was even announced. Yes, indeed, many of the weaknesses of the Obama administration have been on display over the past few months. They include not thinking clearly through the consequences of decisions and not communicating with the American people or world leaders in terms compelling and coherent enough to command support. And this is the government we are counting on to lead us through a difficult confrontation over approving a spending plan and raising the debt ceiling next month - a crisis with enormous potential to disrupt the economy and harm American families. What's at stake here? The financial system depends on confidence - confidence that debts will be paid, that governments will support their currencies, that large financial institutions will not fail, and that all the millions of retail financial payments and transactions on which families and businesses depend will continue. A failure or even a significant delay in agreeing on a financing and spending plan for the U.S. government could cause that web of trust and transactions to unravel in several places. And the very prospect of damage to that web could itself trigger a cascade of breaks in the system. The financial markets are skittish cats, as we have had painful reason to be reminded over the past several years. Consider, for example, the consequences of the inability of the U.S. government to assure an orderly market in the face of low or no demand for U.S. Treasury notes. Consider the impact on the U.S. economy and global confidence if the government were unable to fully meet its obligations under Social Security or Medicare and Medicaid in October or November, or had to stretch out payments to its contractors and vendors. What have the Republicans in the House said about this prospect? At least some have said they don't care. And this summer has taught us that under great pressure and against tough deadlines, this administration is not at its best. It would be a cruel outcome for Americans struggling to find work and make ends meet in a fragile recovery if a divided and incompetent government threw us back into a deeper recession. Fasten your seat belts, please. We are about to experience some turbulence.

#### 2) Stock Market – default collapses it, causing a global financial crisis – economists agree

Lowrey 9-30

(ANNIE LOWREY, covers economic policy for the Washington bureau of The New York Times, “How a Debt-Ceiling Crisis Could Become a Financial Crisis” September 30, 2013, <http://economix.blogs.nytimes.com/2013/09/30/how-a-debt-ceiling-crisis-could-become-a-financial-crisis/>, KB)

Come mid-October, the United States will have only $30 billion of cash on hand. On any given day, its net payments can reach as high as $60 billion. That means that unless Congress raises the debt ceiling, allowing the Treasury to issue new debt, the United States may find itself unable to make all of its payments — stiffing government contractors, or state and local governments, or even its bondholders.¶ Economists widely agree that such an unprecedented event would have profound effects for the markets, likely precipitating a stock-market sell-off and setting off a round of global financial turbulence. But it has always been a little unclear just how it may play out. The Treasury might announce it would be forced to delay some payments, promising to do what it could to make sure bondholders were made whole. But then what?

#### 3) Sectors - every key sector will implode – takes out resiliency

McAuliff 9/18 Michael McAuliff, HuffPo, 9/18/13, Debt Limit Showdown Could Be Catastrophic For Economy: Analysts , www.huffingtonpost.com/2013/09/18/debt-limit-showdown\_n\_3950890.html

The House Republican plan to have showdowns over both funding the government and raising the nation's debt limit could have severe consequences for the overall U.S. economy, non-partisan analysts said Wednesday.¶ The concern surrounding a potential political fight over the country's borrowing cap next month was highlighted prominently by Moody's economist Mark Zandi, a former adviser to Sen. John McCain (R-Ariz.) who testified at a joint congressional hearing Wednesday on "The Economic Costs of Debt-Ceiling Brinkmanship.”¶ The debt limit, which stands at $16.7 trillion, authorizes the Treasury Department to pay for the spending that has already been authorized by Congress. Treasury officials warned in the spring that they had begun taking extraordinary measures to keep the government's bills paid, and would likely have to default on some payments in mid-October if Congress did not grant borrowing authority that equals the spending it has written into law.¶ Such a default would be devastating, Zandi warned.¶ "You need to raise the debt limit. There's no other option," he told lawmakers. "Otherwise, it's disastrous. It's counterproductive to your own goals because it's going to result in a recession, bigger deficits and raise the debt."¶ House Speaker John Boehner (R-Ohio) argued earlier on Wednesday that the debt limit is often used as a negotiating lever for politicians, and Rep. Sean Duffy (R-Wis.) made the same point during the hearing, asking why Democrats shouldn't be more willing to talk over Republican demands.¶ Much like Democrats who released their own report on the topic, Zandi noted, however, that in the last showdown over the debt ceiling two years ago, the U.S. government's credit rating was downgraded and the stock market tanked.¶ "You can only put the gun to your head so many times before someone's going to make a mistake and pull the trigger, and it's to everyone's detriment," Zandi told Duffy.¶ He gave a crushing summary of the potential impacts of a default.¶ "If you don't raise the debt limit in time, you will be opening an economic Pandora's box. It will be devastating to the economy," he predicted. "If you don't do it in time, confidence will evaporate, consumer confidence will sharply decline, [as well as] investor confidence, business confidence. Businesses will stop hiring, consumers will stop spending, the stock market will fall significantly in value, borrowing costs for businesses and households will rise."¶ "We'll be in the middle of a very, very severe recession, and I don't see how we get out of it," he added.

#### Their ev just says the author thinks Obama SHOULD do it – Too bad – he won’t and it would still trigger our impacts

Robb 9-30

(Greg Robb, covers Fed and Treasury and economy for MarketWatch, “Obama cannot raise debt ceiling alone: Carney” Sept. 30, 2013, <http://www.marketwatch.com/story/obama-cannot-raise-debt-ceiling-alone-carney-2013-09-30>, KB)

President Barack Obama does not believe he has the authority to raise the debt ceiling unilaterally, putting the onus on Congress to act, White House spokesman Jay Carney said Monday. "Congress has to vote to raise the debt ceiling, the president can't raise it by himself," Carney said at the daily White House briefing. Some law professors and politicians, including former President Bill Clinton, have argued that the constitution gives the president power to raise the debt ceiling in order to avoid a default on government debt. Carney said White House lawyers don't think the constitution gives the president such power. In addition, any unilateral action would just create a cloud of controversy and might not be taken seriously by the global economy and markets, he added.Treasury Secretary Jacob Lew has said emergency measures that have delayed the debt ceiling since May will expire on Oct. 17.

#### We have quotes from the treasury secretary directly

CNBC 10-1

Shutdown is nothing: Debt ceiling debacle could be ugly, John W. Schoen CNBC, <http://www.nbcnews.com/business/shutdown-nothing-debt-ceiling-debacle-could-be-ugly-8C11311718>

The Treasury has said it has no legal authority to decide which bills to pay and which to ignore. It's also not clear whether its payment system could be rejiggered to prioritize some payments over others.¶ In any case, failing to make any federal obligations would raise lasting questions about the U.S. government's "full faith and credit."¶ "Any plan to prioritize some payments over others is simply default by another name," Treasury Secretary Jack Lew warned in a letter to lawmakers last week.¶ Some default deniers also argue that President Obama has the power to override Congress and authorize the Treasury to continue borrowing, based on language in the 14th Amendment ("The validity of the public debt of the United States ... shall not be questioned.")¶ That's another novel theory Lew sought to slap down in a speech last month¶ "Raising the debt limit is Congress's responsibility because Congress, and Congress alone, is empowered to set the maximum amount the government can borrow to meet its financial obligations," he told the Economic Club of Washington, D.C.

#### Decline and war are linked – default to the best studies

Royal 10

Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-214

Less intuitive is how periods of economic decline may increase the likelihood of external conflict**.** Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that **rhythms in the** global **economy are associated with the** rise and **fall of a** pre-eminent **power and** the often **bloody transition** from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 1981) that leads to uncertainty about power balances, **increasing** the **risk of miscalculation** (Feaver, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the **likelihood for conflict increases,** as **states will be inclined to use force to gain** access to those **resources.** Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) **find a strong correlation between internal** conflict **and external conflict**, particularly **during periods of** economic **downturn**. They write: The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline**,** sitting **governments have increased incentives to fabricate** external military **conflicts to create a 'rally** around the flag' **effect.** Wang (1996), DeRouen (1995). and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force. In summary, recent economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science **scholarship links** economic **decline with** external **conflict** at systemic, dyadic and national levels.5 This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

#### Best international studies go neg

Laitman ‘8

(Michael, Prof of Ontology and the Theory of Knowledge, PhD in philosophy, MS in biocybernetics, Founder and Dir for the Bnei Baruch World Center for Kabbalah Studies, “The Financial Crisis May Trigger a World War,” 12-7, http://www.laitman.com/2008/12/the-financial-crisis-may-trigger-a-world-war/)

As the crisis develops, scientists are trying to predict whether a third World War will take place at the end of the “Second Great Depression,” as it happened after the First Great Depression. In the International Security Report 2008, researchers from [the Oxford Research Group (ORG)](http://www.oxfordresearchgroup.org.uk/publications/books/thetippingpoint.php) assert that war is inevitable unless immediate economic changes are made. The social unrest will erupt in a violent, armed struggle for survival. Experts say it is necessary to institute social justice and fair commerce, to write off debts and reduce toxic emissions into the atmosphere.

#### Yes passage ---

#### 1) Momentum – the shutdown created it which gives Obama the edge over the GOP

Klein 9-28

Ezra Klein 9/28/13, writer @ the Washington Post, “The House GOP’s shutdown plan is great news,” Washington Post, <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/09/28/the-house-gops-shutdown-plan-is-great-news/>

House Republicans plan to attach a one-year delay of Obamacare to the continuing resolution. That sharply increases the chances of a government shutdown beginning Monday night.¶ Good.¶ Speaker Boehner's original plan was to pass a clean bill to fund the government and then attach the one-year delay of Obamacare to the debt-ceiling bill. It was a strategy that would minimize the chances of a shutdown but maximize the chances of a default.¶ Boehner wanted that strategy because he thought Republicans had more leverage on the debt limit than they do on the shutdown. A shutdown, after all, is just bad for the economy. A default is catastrophic for it. You'd have to be insanely reckless to permit the federal government to default on its debts. And Boehner believes that House Republicans are insanely reckless and that President Obama isn't.¶ But that strategy failed. Boehner's members refused to wait for the debt ceiling. They want their showdown now. And that's all for the better.¶ Moving the one-year delay of Obamacare to the CR maximizes the chances of a shutdown but makes a default at least somewhat less likely. If a shutdown begins Monday night, Republicans and Democrats will have more than two weeks to resolve it before hitting the debt ceiling.¶ As Alec Phillips put it in a research note for Goldman Sachs, "If a shutdown is avoided, it is likely to be because congressional Republicans have opted to wait and push for policy concessions on the debt limit instead. By contrast, if a shutdown occurs, we would be surprised if congressional Republicans would want to risk another difficult situation only a couple of weeks later. The upshot is that while a shutdown would be unnecessarily disruptive, it might actually ease passage of a debt limit increase."¶ One way a shutdown makes the passage of a debt limit increase easier is that it can persuade outside actors to come off the sidelines and begin pressuring the Republican Party to cut a deal. One problem in the politics of the fiscal fight so far is that business leaders, Wall Street, voters and even many pundits have been assuming that Republicans and Democrats will argue and carp and complain but work all this out before the government closes down or defaults. A shutdown will prove that comforting notion wrong, and those groups will begin exerting real political pressure to force a resolution before a default happens.

#### 2) We control the direction – their ev doesn’t assume PC – Obama won’t budge – that’s key to a deal

Parnes 9-30

(Amie Parnes, White House correspondent at The Hill, “Not giving an inch is seen as best strategy for win at White House” 09/30/13, http://thehill.com/homenews/administration/325663-not-giving-an-inch-is-seen-as-best-strategy-for-win-at-white-house,%20accessed%2010-1-13, KB)

There was no shadow of doubt at the White House as the clocked ticked down to midnight Monday.¶ Officials suggested that a refusal to negotiate over funding the government was the winning strategy.¶ White House officials expressed confidence they wouldn’t have to back down in the slightest, while aides close to Obama, former administration officials and top Democratic strategists who confer with the White House say the chances of them negotiating with Republicans are slim to none.¶ Sources said the White House believes GOP divisions, and polls showing more people would blame Republicans in Congress for a shutdown, mean Obama — who has been blamed for giving in too much in previous bargaining sessions — won’t have to give an inch.¶ White House officials were even more emboldened by support from Senate Republicans, including Sen. Susan Collins of Maine, who said publicly that she disagreed with the House Republican strategy of linking the Affordable Care Act with “the continuing functioning of government.”¶ Some Republicans in the House on Monday also expressed public support for moving a clean funding measure, something the White House will see as giving it more leverage.¶ Those close to the White House say Republicans have backed themselves into a corner with few options remaining.¶ “This is truly [Speaker] John Boehner’s [R-Ohio] worst nightmare,” one former senior administration official said. “This is Republican on Republican violence right now. This has absolutely nothing to do with Democrats or the president. So all Obama has to do now is sit back.”¶ The battle isn’t about “lack of engagement,” the former official added.¶ “The president could go to the Capitol and give the speech of his life on why we shouldn’t shut down the government. But you have this Tea Party base that will never be placated, and they’re itching for a fight. But I have news for them: They won’t win it,” the official said.¶ Another former administration official added, “The question isn’t, should he negotiate. It’s who does he negotiate with. Who up there is actually empowered to cut a deal. It’s not clear. They can’t make up their minds amongst themselves, so who can he negotiate with to reach a deal that sticks?”¶ White House senior adviser Dan Pfeiffer backed that sentiment in an interview on CNN.¶ “What the Republicans want is to extract some ideological concession in order to save face for the Tea Party that funds the government for two months,” Pfeiffer said. “What happens two months from now? What are they going to want then? Full repeal of ObamaCare? Overturn of Roe v. Wade? An installment of [Mitt] Romney as president? At some point, we have to bring this cycle of hostage taking and brinksmanship to an end.”¶ In the lead-up to the shutdown, Obama sent strong signals that he felt he was on the right side of the fight. On Saturday, with the House in session and voting on legislation to avoid the shutdown, the president played a round of golf. ¶ Likewise, Senate Majority Leader Harry Reid (D-Nev.) — who has been coordinating closely with the White House — was in no rush to convene the upper chamber on Sunday.¶ The first former senior administration official credited Reid with stepping up his role in the fight. “Harry Reid is basically saying, ‘No way, not again,’ ” the former official said.¶ Some Republicans accused the White House of over-confidence Monday and said Obama risked getting plenty of blame for a shutdown by not negotiating with Republicans.¶ “If we’re unable to avoid a crisis in the next few weeks, the president will have to explain why he sat at home and did nothing to help find a solution,” said Brendan Buck, a spokesman for Boehner.¶ “Obama is the president, and his job is to lead,” said Kirsten Kukowski, a spokeswoman at the Republican National Committee. “The longer he refuses to come to the table, the more Americans will realize he’s the typical politician he promised he wouldn’t be.”¶ With cable news networks displaying countdown clocks until the deadline Monday, Obama did telegraph a willingness to at least talk to congressional leaders.¶ “I suspect I will be speaking to the leaders today, tomorrow and the next day,” Obama told reporters earlier in the day.¶ Later in the day, however, he signaled a tougher line, stating that “one faction of one party in one house of Congress in one branch of government doesn’t get to shut down the entire government just to refight an election.”¶ “You don’t get to extract a ransom for doing your job,” Obama said. ¶ Those close to the White House predicted that a deal would eventually be reached, even after the deadline. But they reaffirmed the confidence that it would be Republicans who would suffer the consequences.¶ In the meantime, as the debt-ceiling fight heats up, they said Obama would ramp up the rhetoric and use the bully pulpit to drive home that point. In addition, one former senior official said Obama has to get the business community and Wall Street to say, “What the f--- is happening here?”¶ “As people realize what this will do to the stock market, they’ll ask Boehner and the Tea Party, ‘Is this what you really want?’” the official added.¶ “The more he can remain a bit above the fray and say, ‘I’m not going to get on your level’, the better. ”

#### 3) Status quo gains - Obama is ahead and the GOP will cave, but PC is key

Foster 10-1

(Peter Foster, the Telegraph's US Editor based in Washington DC, “US government shutdown: Barack Obama likely to come out on top” 01 Oct 2013, <http://www.telegraph.co.uk/news/worldnews/us-politics/10346071/US-government-shutdown-Barack-Obama-likely-to-come-out-on-top.html>, KB)

“One faction, of one party, in one house of Congress, in one branch of government doesn't get to shut down the entire government just to refight the results of an election,” Mr Obama said, pointing the finger at the small rump of Tea Party conservatives who have ultimately engineered this shutdown.¶ In the days ahead, Washington will play the blame game, as both sides try to prove that the other is responsible for this wholly preventable act of lunacy; but at first glance there are several reasons that explain Mr Obama’s obvious confidence that he will come out on top.¶ The first is the opinion polls, which show that nearly two-thirds of the US public do not want a shutdown of the government - even though a majority still do not like the healthcare reforms that the Tea Party so virulently opposes.¶ As John McCain, a Republican senator ruefully observed at the start of this process, the Obamacare legislation was passed by Congress, ratified by the US Supreme Court and campaigned over in the 2012 election – a vote Mr Obama clearly won.¶ The second is the lesson of history. The last time the US government shutdown in 1996, back when a bombastic Newt Gingrich was the Republican Speaker of the House, the GOP took the lion’s share of the blame and Bill Clinton sailed to victory in that year’s presidential election.¶ Democrats believe history will repeat itself. So when Republicans say Mr Obama "wants" this shutdown as a boost to his personal ratings, there is no doubt a grain of truth to that – particularly when the shutdown is coming largely on the White House’s terms.¶ Thirdly, as Mr Obama demonstrated to some effect last night, he has the advantage of the White House bully pulpit from which he will continue to castigate Republicans for what he will characterize as reckless and irresponsible behaviour.¶ The president will be greatly helped in this argument by the fact that many Republicans privately – and even not so privately - agree with him, and are furious that the Tea Party wing of their party has picked a fight that they have repeatedly been warned they cannot win.¶ In private, senior Republicans were last night talking of the need for the Tea Party rump – who only represent about 10 per cent of Congress and about 20 per cent of the US public - to be “taught a lesson” and “put in their place” for the sake of the wider credibility of the party.¶ Even so, many Tea Party types will celebrate the shutdown as the fulfillment of their electoral promise to fight Obamacare tooth and nail and – even if they lose this particular fight, as they surely must – a victory in the wider battle to fire up the party base before the 2014 mid-term elections.¶ And Tea Party Republicans will, of course, still do their best to blame the White House and Senate Democrats for refusing to compromise, but it is plain to many people that using the funding of the US government as a tool to blackmail Mr Obama over healthcare reforms is simply indefensible.¶ The equivalent, in reverse, would be for Mr Obama to promise to veto a Republican-resolution to fund the government unless it included a rider forcing Republicans to agree to the gun reforms Mr Obama demanded – but was denied – after the Sandy Hook massacre.¶ So whether it takes a day, a week or a month or more, the winners of this political contest will be whoever convinces the public they have right on their side, and in this Mr Obama has a considerable head-start.¶ The losers – the working American public, anyone with a share portfolio or a retirement fund, some 800,000 federal workers and indeed the already tattered credibility of the government of the United States – have already been determined.

#### 4) Holding the line – it gives Obama leverage over the GOP

Epstein 10-1

(Reid Epstein, writer for POLITICO, “Government shutdown: President Obama holds the line,” 10-1-13, http://www.politico.com/story/2013/10/government-shutdown-president-obama-holds-the-line-97646.html?hp=l4, KB)

President Barack Obama started September in an agonizing, extended display of how little sway he had in Congress. He ended the month with a display of resolve and strength that could redefine his presidency.¶ All it took was a government shutdown.¶ This was less a White House strategy than simply staying in the corner the House GOP had painted them into — to the White House’s surprise, Obama was forced to do what he so rarely has as president: he said no, and he didn’t stop saying no.¶ For two weeks ahead of Monday night’s deadline, Obama and aides rebuffed the efforts to kill Obamacare with the kind of firm, narrow sales pitch they struggled with in three years of trying to convince people the law should exist in the first place. There was no litany of doomsday scenarios that didn’t quite come true, like in the run-up to the fiscal cliff and the sequester. No leaked plans or musings in front of the cameras about Democratic priorities he might sacrifice to score a deal.¶ After five years of what’s often seen as Obama’s desperation to negotiate — to the fury of his liberal base and the frustration of party leaders who argue that he negotiates against himself. Even his signature health care law came with significant compromises in Congress.¶ Instead, over and over and over again, Obama delivered the simple line: Republicans want to repeal a law that was passed and upheld by the Supreme Court — to give people health insurance — or they’ll do something that everyone outside the GOP caucus meetings, including Wall Street bankers, seems to agree would be a ridiculous risk.¶ “If we lock these Americans out of affordable health care for one more year,” Obama said Monday afternoon as he listed examples of people who would enjoy better treatment under Obamacare, “if we sacrifice the health care of millions of Americans — then they’ll fund the government for a couple more months. Does anybody truly believe that we won’t have this fight again in a couple more months? Even at Christmas?”¶ The president and his advisers weren’t expecting this level of Republican melee, a White House official said. Only during Sen. Ted Cruz’s (R-Texas) 21-hour floor speech last week did the realization roll through the West Wing that they wouldn’t be negotiating because they couldn’t figure out anymore whom to negotiate with. And even then, they didn’t believe the shutdown was really going to happen until Saturday night, when the House voted again to strip Obamacare funding.¶ This wasn’t a credible position, Obama said again Monday afternoon, but rather, bowing to “extraneous and controversial demands” which are “all to save face after making some impossible promises to the extreme right wing of their political party.”¶ Obama and aides have said repeatedly that they’re not thinking about the shutdown in terms of political gain, but the situation’s is taking shape for them. Congress’s approval on dealing with the shutdown was at 10 percent even before the shutters started coming down on Monday according to a new CNN/ORC poll, with 69 percent of people saying the House Republicans are acting like “spoiled children.”¶ “The Republicans are making themselves so radioactive that the president and Democrats can win this debate in the court of public opinion” by waiting them out, said Jim Manley, a Democratic strategist and former aide to Senate Majority Leader Harry Reid who has previously been critical of Obama’s tactics.¶ Democratic pollster Stan Greenberg said the Obama White House learned from the 2011 debt ceiling standoff, when it demoralized fellow Democrats, deflated Obama’s approval ratings and got nothing substantive from the negotiations.¶ “They didn’t gain anything from that approach,” Greenberg said. “I think that there’s a lot they learned from what happened the last time they ran up against the debt ceiling.”¶ While the Republicans have been at war with each other, the White House has proceeded calmly — a breakthrough phone call with Iranian President Hassan Rouhani Friday that showed him getting things done (with the conveniently implied juxtaposition that Tehran is easier to negotiate with than the GOP conference), his regular golf game Saturday and a cordial meeting Monday with his old sparring partner Israeli Prime Minister Benjamin Netanyahu.¶ White House press secretary Jay Carney said Monday that the shutdown wasn’t really affecting much of anything.¶ “It’s busy, but it’s always busy here,” Carney said. “It’s busy for most of you covering this White House, any White House. We’re very much focused on making sure that the implementation of the Affordable Care Act continues.”¶ Obama called all four congressional leaders Monday evening — including Boehner, whose staff spent Friday needling reporters to point out that the president hadn’t called for a week. According to both the White House and Boehner’s office, the call was an exchange of well-worn talking points, and changed nothing.¶ Manley advised Obama to make sure people continue to see Boehner and the House Republicans as the problem and not rush into any more negotiations until public outrage forces them to bend.¶ “He may want to do a little outreach, but not until the House drives the country over the cliff,” Manley said Monday, before the shutdown. “Once the House has driven the country over the cliff and failed to fund the government, then it might be time to make a move.”¶ The White House believes Obama will take less than half the blame for a shutdown – with the rest heaped on congressional Republicans.¶ The divide is clear in a Gallup poll also out Monday: over 70 percent of self-identifying Republicans and Democrats each say their guys are the ones acting responsibly, while just 9 percent for both say the other side is.¶ If Obama is able to turn public opinion against Republicans, the GOP won’t be able to turn the blame back on Obama, Greenberg said. “Things only get worse once things begin to move in a particular direction,” he said. “They don’t suddenly start going the other way as people rethink this.”

#### Politics DA’s are intrinsic

Saideman 11

associate professor of political science - McGill University, 7/25 (Steve, “Key Constraint on Policy Relevance,” http://duckofminerva.blogspot.com/2011/07/key-constraint-on-policy-relevance.html)

Dan Drezner has a great post today about how the foreign policy smart set (his phrase) gets so frustrated by domestic politics that they tend to recommend domestic political changes that are never going to happen. I would go one step further and suggest that one of the key problems for scholars who want to be relevant for policy debates is that we tend to make recommendations that are "incentive incompatible." I love that phrase. What is best for policy may not be what is best for politics, and so we may think we have a good idea about what to recommend but get frustrated when our ideas do not get that far. Lots of folks talking about early warning about genocide, intervention into civil wars and the like blame "political will." That countries lack, for whatever reason, the compulsion to act. Well, that is another way of saying that domestic politics matters, but we don't want to think about it. Dan's piece contains an implication which is often false--that IR folks have little grasp of domestic politics. Many IR folks do tend to ignore or simplify the domestic side too much, but there is plenty of scholarship on the domestic determinants of foreign policy/grand strategy/war/trade/etc. Plenty of folks look at how domestic institutions and dynamics can cause countries to engage in sub-optimal foreign policies (hence the tradeoff implied in my second book--For Kin or Country). The challenge, then, is to figure out what would be a cool policy and how that cool policy could resonate with those who are relevant domestically. That is not easy, but it is what is necessary. To be policy relevant requires both parts--articulating a policy alternative that would improve things and some thought about how the alternative could be politically appealing. Otherwise, we can just dream about the right policy and gnash our teeth when it never happens.

#### Framing issue - Obama has advantage over GOP now

News Ok 10-2

News Ok is an Oklahoma City News Organization, “Obama Seeks to Strike a Balance during Shutdown,” <http://newsok.com/obama-seeks-to-strike-a-balance-during-shutdown/article/feed/599138>

President Barack Obama's strategy during the partial shutdown of the federal government is aimed at keeping up the appearance of a leader focused on the public's priorities and avoiding looking tone deaf to the hundreds of thousands of Americans forced off the job. He's also trying to maintain what the White House sees as a political advantage over Republicans, with nearly all the president's events providing him a platform to blast House GOP lawmakers for opposing a Senate bill to keep the government running.

#### Yes PC - strength in the current fight gives him a major political edge

O’Brien, 10/1

Political Reporter for NBC News (Michael, “Winners and losers of the government shutdown” <http://nbcpolitics.nbcnews.com/_news/2013/10/01/20763839-winners-and-losers-of-the-government-shutdown?lite>)

Nonetheless, after two-and-a-half years of standoffs and gridlock, the fact that a shutdown has finally come to pass — 17 days before Congress must also raise the debt ceiling, no less — could upend politics with unforeseen consequences for many of this fight's key players. Here is a look at some of the shutdown's winners and losers. Winners: President Barack Obama At the end of the day, Obama's signature domestic achievement — the Affordable Care Act — survived this fight intact. What's more, the president didn't have to offer any concessions in exchange for leaving his namesake "Obamacare" law alone. Unlike the 2011 debt-ceiling fight, when the administration agreed to the automatic spending cuts that would eventually form the basis of the sequester, this time the administration held the line and didn't yield much ground to Republicans. The developments mark a somewhat stunning turnaround for Obama's political fortunes over the last month. Just a few week's ago, the administration was struggling badly to win congressional approval for intervention in Syria — an initiative which had no less than Obama's second-term relevance riding on it. Now, Obama has dispensed with the Syria issue (for now) through diplomacy, and scored a major win over Republicans -- a rare victory, given the waning prospects for immigration reform or major gun control legislation during his presidency.

#### This is true even if they win PC theory is wrong

Huq 12

Aziz Huq, Assistant Professor of Law, University of Chicago Law School, 2012, Binding the Executive (by Law or by Politics), https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/79\_2/06%20Huq%20BKR.pdf

Consider first a simple measure of Presidents’ ability to obtain policy change: Do they obtain the policy changes they desire? Every President enters office with an agenda they wish to accomplish.53 President Obama came into office, for example, promising health care reform, a cap-and-trade solution to climate change, and major immigration reform.54 President George W. Bush came to the White House committed to educational reform, social security reform, and a new approach to energy issues.55 One way of assessing presidential influence is by examining how such presidential agendas fare, and asking whether congressional obstruction or legal impediments— which could take the form of existing laws that preclude an executive policy change or an absence of statutory authority for desired executive action—is correlated with presidential failure. Such a correlation would be prima facie evidence that institutions and laws play some meaningful role in the production of constraints on executive discretion. Both recent experience and long-term historical data suggest presidential agenda items are rarely achieved, and that legal or institutional impediments to White House aspirations are part of the reason. In both the last two presidencies, the White House obtained at least one item on its agenda—education for Bush and health care for Obama—but failed to secure others in Congress. Such limited success is not new. His famous first hundred days notwithstanding, Franklin Delano Roosevelt saw many of his “proposals for reconstruction [of government] . . . rejected outright.”56 Even in the midst of economic crisis, Congress successfully resisted New Deal initiatives from the White House. This historical evidence suggests that the diminished success of presidential agendas cannot be ascribed solely to the narrowing scope of congressional attention in recent decades; it is an older phenomenon. Nevertheless, in more recent periods, presidential agendas have shrunk even more. President George W. Bush’s legislative agenda was “half as large as Richard Nixon’s first-term agenda in 1969–72, a third smaller than Ronald Reagan’s first-term agenda in 1981–84, and a quarter smaller than his father’s first-term agenda in 1989–92.”57 The White House not only cannot always get what it wants from Congress but has substantially downsized its policy ambitions. Supplementing this evidence of presidential weakness are studies of the determinants of White House success on Capitol Hill. These find that “presidency-centered explanations” do little work.58 Presidents’ legislative agendas succeed not because of the intrinsic institutional characteristics of the executive branch, but rather as a consequence of favorable political conditions within the momentarily dominant legislative coalition.59 Again, correlational evidence suggests that institutions and the legal frameworks making up the statutory status quo ante play a role in delimiting executive discretion.