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#### Using national security to justify restraints on the executive is self-defeating. Security discourse consolidates authoritarian politics.

Aziz RANA Law at Cornell 11 [“Who Decides on Security?” Cornell Law Faculty Working Papers, Paper 87, http://scholarship.law.cornell.edu/clsops\_papers/87 p. 1-7]

Today politicians and legal scholars routinely invoke fears that the balance between liberty and security has swung drastically in the direction of government’s coercive powers. In the post-September 11 era, such worries are so commonplace that in the words of one commentator, “it has become part of the drinking water of this country that there has been a trade-off of liberty for security.”1 According to civil libertarians, centralizing executive power and removing the legal constraints that inhibit state violence (all in the name of heightened security) mean the steady erosion of both popular deliberation and the rule of law. For Jeremy Waldron, current practices, from coercive interrogation to terrorism surveillance and diminished detainee rights, provide government the ability not only to intimidate external enemies but also internal dissidents and legitimate political opponents. As he writes, “We have to worry that the very means given to the government to combat our enemies will be used by the government against its enemies.”2 Especially disconcerting for many commentators, executive judgments—due to fears of infiltration and security leaks—are often cloaked in secrecy. This lack of transparency undermines a core value of democratic decisionmaking: popular scrutiny of government action. As U.S. Circuit Judge Damon Keith famously declared in a case involving secret deportations by the executive branch, “Democracies die behind closed doors. . . . When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation.”3 In the view of no less an establishment figure than Neal Katyal, now the Principal Deputy Solicitor General, such security measures transform the current presidency into “the most dangerous branch,” one that “subsumes much of the tripartite structure of government.”4 Widespread concerns with the government’s security infrastructure are by no means a new phenomenon. In fact, such voices are part of a sixty-year history of reform aimed at limiting state (particularly presidential) discretion and preventing likely abuses. What is remarkable about these reform efforts is that, every generation, critics articulate the same basic anxieties and present virtually identical procedural solutions. These procedural solutions focus on enhancing the institutional strength of both Congress and the courts to rein in the unitary executive. They either promote new statutory schemes that codify legislative responsibilities or call for greater court activism. As early as the 1940s, Clinton Rossiter argued that only a clearly established legal framework in which Congress enjoyed the power to declare and terminate states of emergency would prevent executive tyranny and rights violations in times of crisis.5 After the Iran-Contra scandal, Harold Koh, now State Department Legal Adviser, once more raised this approach, calling for passage of a National Security Charter that explicitly enumerated the powers of both the executive and the legislature, promoting greater balance between the branches and explicit constraints on government action.6 More recently, Bruce Ackerman has defended the need for an “emergency constitution” premised on congressional oversight and procedurally specified practices.7 As for increased judicial vigilance, Arthur Schlesinger argued nearly forty years ago, in his seminal book The Imperial Presidency (1973), that the courts “had to reclaim their own dignity and meet their own responsibilities” by abandoning deference and by offering a meaningful check to the political branches.8 Today, Lawrence Tribe and Patrick Gudridge once more imagine that, by providing a powerful voice of dissent, the courts can play a critical role in balancing the branches. They write that adjudication can “generate[]—even if largely (or, at times, only) in eloquent and cogently reasoned dissent—an apt language for potent criticism.”9 The hope—returned to by constitutional scholars for decades—has been that by creating clear legal guidelines for security matters and by increasing the role of the legislative and judicial branches, government abuse can be stemmed. Yet despite this reformist belief, presidential and military prerogatives continue to expand even when the courts or Congress intervene. Indeed, the ultimate result has primarily been to entrench further the system of discretion and centralization. In the case of congressional legislation (from the 200 standby statutes on the books to the postSeptember 11 and Iraq War Authorizations for the Use of Military Force to the Detainee Treatment Act and the Military Commissions Acts), this has often entailed Congress self-consciously playing the role of junior partner—buttressing executive practices by providing its own constitutional imprimatur to them. Thus, rather than rolling back security practices, greater congressional involvement has tended to further strengthen and internalize emergency norms within the ordinary operation of politics.10 As just one example, the USA PATRIOT Act, while no doubt controversial, has been renewed by Congress a remarkable ten consecutive times without any meaningful curtailments.11 Such realities underscore the dominant drift of security arrangements, a drift unhindered by scholarly suggestions and reform initiatives. Indeed, if anything, today’s scholarship finds itself mired in an argumentative loop, re-presenting inadequate remedies and seemingly incapable of recognizing past failures. What explains both the persistent expansion of the federal government’s security framework as well as the inability of civil libertarian solutions to curb this expansion? In this article I argue that the current reform debate ignores the broader ideological context that shapes how the balance between liberty and security is struck. In particular, the very meaning of security has not remained static but rather has changed dramatically since World War II and the beginning of the Cold War. This shift has principally concerned the basic question of who decides on issues of war and emergency. And as the following pages explore, at the center of this shift has been a transformation in legal and political judgments about the capacity of citizens to make informed and knowledgeable decisions in security domains. Yet, while underlying assumptions about popular knowledge—its strengths and limitations—have played a key role in shaping security practices in each era of American constitutional history, this role has not been explored in any sustained way in the scholarly literature. As an initial effort to delineate the relationship between knowledge and security, I will argue that throughout most of the American experience, the dominant ideological perspective saw security as grounded in protecting citizens from threats to their property and physical well-being (especially those threats posed by external warfare and domestic insurrection). Drawing from a philosophical tradition extending back to John Locke, politicians and thinkers—ranging from Alexander Hamilton and James Madison at the founding to Abraham Lincoln and Roger Taney—maintained that most citizens understood the forms of danger that imperiled their physical safety. The average individual knew that securing collective life was in his or her own interest, and also knew the institutional arrangements and practices that would fulfill this paramount interest. A widespread knowledge of security needs was presumed to be embedded in social experience, indicating that citizens had the skill to take part in democratic discussion regarding how best to protect property or to respond to forms of external violence. Thus the question of who decides was answered decisively in favor of the general public and those institutions—especially majoritarian legislatures and juries—most closely bound to the public’s wishes. What marks the present moment as distinct is an increasing repudiation of these assumptions about shared and general social knowledge. Today the dominant approach to security presumes that conditions of modern complexity (marked by heightened bureaucracy, institutional specialization, global interdependence, and technological development) mean that while protection from external danger remains a paramount interest of ordinary citizens, these citizens rarely possess the capacity to pursue such objectives adequately. Rather than viewing security as a matter open to popular understanding and collective assessment, in ways both small and large the prevailing concept sees threat as sociologically complex and as requiring elite modes of expertise. Insulated decision-makers in the executive branch, armed with the specialized skills of the professional military, are assumed to be best equipped to make sense of complicated and often conflicting information about safety and self-defense.12 The result is that the other branches—let alone the public writ large—face a profound legitimacy deficit whenever they call for transparency or seek to challenge presidential discretion. Not surprisingly, the tendency of procedural reform efforts has been to place greater decision-making power in the other branches and then to watch those branches delegate such power back to the very same executive bodies. How did the governing, expertise-oriented concept of security gain such theoretical and institutional dominance and what alternative formulations exist to challenge its ideological supremacy? In offering an answer to these questions, I begin in Part II by examining the principal philosophical alternatives that existed prior to the emergence of today’s approach, one of which grounded early American thought on security issues. I refer to these alternatives in the Anglo-American tradition as broadly ‘Hobbesian’ and ‘Lockean’ and develop them through a close reading of the two thinkers’ accounts of security. For all their internal differences, what is noteworthy for my purposes is that each approach rejected the idea—pervasive at present—that there exists a basic divide between elite understanding and mass uncertainty. In other words, John Locke and even Thomas Hobbes (famous as the philosopher of absolutism) presented accounts of security and self-defense that I argue were normatively more democratic than the current framework. Part III will then explore how the Lockean perspective in particular took constitutional root in early American life, focusing especially on the views of the founders and on the intellectual and legal climate in the mid nineteenth century. In Part IV, I will continue by detailing the steady emergence beginning during the New Deal of our prevailing idea of security, with its emphasis on professional expertise and insulated decision-making. This discussion highlights the work of Pendleton Herring, a political scientist and policymaker in the 1930s and 1940s who co-wrote the National Security Act of 1947 and played a critical role in tying notions of elite specialization to a new language of ‘national security.’ Part V will then show how Herring’s ‘national security’ vision increasingly became internalized by judicial actors during and after World War II. I argue that the emblematic figure in this development was Supreme Court Justice Felix Frankfurter, who not only defended security expertise but actually sought to redefine the very meaning of democracy in terms of such expertise. For Frankfurter, the ideal of an ‘open society’ was one premised on meritocracy, or the belief that decisions should be made by those whose natural talents make them most capable of reaching the technically correct outcome. According to Frankfurter, the rise of security expertise meant the welcome spread of meritocratic commitments to a critical and complex arena of policymaking. In this discussion, I focus especially on a series of Frankfurter opinions, including in Ex parte Quirin (1942), Hirabayashi v. United States (1943), Korematsu v. United States (1944), and Youngstown Steel & Tube Co. v. Sawyer (1952), and connect these opinions to contemporary cases such as Holder v. Humanitarian Law Project (2010). Finally, by way of conclusion, I note how today’s security concept—normatively sustained by Frankfurter’s judgments about merit and elite authority—shapes current discussions over threat and foreign policy in ways that often inhibit rather than promote actual security. I then end with some reflections on what would be required to alter governing arrangements. As a final introductory note, a clarification of what I mean by the term ‘security’ is in order. Despite its continuous invocation in public life, the concept remains slippery and surprisingly under-theorized. As Jeremy Waldron writes, “Although we know that ‘security’ is a vague and ambiguous concept, and though we should suspect that its vagueness is a source of danger when talk of trade-offs is in the air, still there has been little or no attempt in the literature of legal and political theory to bring any sort of clarity to the concept.”13 As a general matter, security refers to protection from those threats that imperil survival—both of the individual and of a given society’s collective institutions or way of life. At its broadest, these threats are multidimensional and can result from phenomena as wide-ranging as environmental disasters or food shortages. Thus, political actors with divergent ideological commitments defend the often competing goals of social security, economic security, financial security, collective security, human security, food security, environmental security, and—the granddaddy of them all—national security. But for my purposes, when invoked without any modifier the word ‘security’ refers to more specific questions of common defense and physical safety. These questions, emphasizing issues of war and peace, are largely coterminous with what Franklin Delano Roosevelt famously referred to in his “Four Freedoms” State of the Union Adresss as “the freedom from fear”: namely ensuring that citizens are protected from external and internal acts of “physical aggression.”14 This definitional choice is meant to serve two connected theoretical objectives. First, as a conceptual matter it is important to keep the term security analytically separate from ‘national security’—a phrase ubiquitous in current legal and political debate. While on the face of it, both terms might appear synonymous, my claim in the following pages is that ‘national security’ is in fact a relatively novel concept, which emerged in the mid twentieth century as a particular vision of how to address issues of common defense and personal safety. Thus national security embodies only one of a number of competing theoretical and historical approaches to matters of external violence and warfare. Second, and relatedly, it has become a truism in political philosophy that the concept of liberty is plural and multifaceted.15 In other words, different ideals of liberty presuppose distinct visions of political life and possibility. Yet far less attention has been paid to the fact that security is similarly a plural concept, embodying divergent assumptions about social ordering. In fact, competing notions of security—by offering different answers to the question of “who decides?”—can be more or less compatible with democratic ideals. If anything, the problem of the contemporary moment is the dominance of a security concept that systematically challenges those sociological and normative assumptions required to sustain popular involvement in matters of threat and safety.

#### National security frame justifies extinction in the name of saving human life.

Dillon 96—Michael, University of Lancaster [October 4, 1996, “Politics of Security: Towards a Political Philosophy of Continental Thought”]

The way of sharpening and focusing this thought into a precise question is first provided, however, by referring back to Foucault; for whom Heidegger was the philosopher. Of all recent thinkers, Foucault was amongst the most committed to the task of writing the history of the present in the light of the history of philosophy as metaphysics. 4 That is why, when first thinking about the prominence of security in modern politics, I first found Foucault’s mode of questioning so stimulating. There was, it seemed to me, a parallel to be drawn between what he saw the technology of disciplinary power/knowledge doing to the body and what the principle of security does to politics.

What truths about the human condition, he therefore prompted me to ask, are thought to be secreted in security? What work does securing security do for and upon us? What power-effects issue out of the regimes of truth of security? If the truth of security compels us to secure security, why, how and where is that grounding compulsion grounded? How was it that seeking security became such an insistent and relentless (inter)national preoccupation for humankind? What sort of project is the pursuit of security, and how does it relate to other modern human concerns and enterprises, such as seeking freedom and knowledge through representative-calculative thought, technology and subjectification? Above all, how are we to account—amongst all the manifest contradictions of our current (inter)national systems of security: which incarcerate rather than liberate; radically endanger rather than make safe; and engender fear rather than create assurance—for that terminal paradox of our modern (inter)national politics of security which Foucault captured so well in the quotation that heads this chapter. 5 A terminal paradox which not only subverts its own predicate of security, most spectacularly by rendering the future of terrestrial existence conditional on the strategies and calculations of its hybrid regime of sovereignty and governmentality, but which also seems to furnish a new predicate of global life, a new experience in the context of which the political has to be recovered and to which it must then address itself: the globalisation of politics of security in the global extension of nihilism and technology, and the advent of the real prospect of human species extinction.

#### Alternative—Challenge to *conceptual* framework of national security. Legal restraint without conceptual change is futile.

Aziz RANA Law at Cornell 11 [“Who Decides on Security?” Cornell Law Faculty Working Papers, Paper 87, http://scholarship.law.cornell.edu/clsops\_papers/87 p. 45-51]

If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars—emphasizing new statutory frameworks or greater judicial assertiveness—is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants—danger too complex for the average citizen to comprehend independently—it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

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#### A topical aff must restrict authority that the President has—they don’t.

Bradley and Goldsmith 5—Curtis and Jack, professor of law at the University of Virginia and professor of law at Harvard [118 Harvard Law Review 2047, May, Lexis]

Second, under Justice Jackson's widely accepted categorization of presidential power, n5 "the strongest of presumptions and the widest latitude of judicial interpretation" attach "when the President acts pursuant to an express or implied authorization of Congress." n6 This  [\*2051]  proposition applies fully to presidential acts in wartime that are authorized by Congress. n7 By contrast, presidential wartime acts not authorized by Congress lack the same presumption of validity, and the Supreme Court has invalidated a number of these acts precisely because they lacked congressional authorization. n8 The constitutional importance of congressional approval is one reason why so many commentators call for increased congressional involvement in filling in the legal details of the war on terrorism. Before assessing what additional actions Congress should take, however, it is important to assess what Congress has already done. Third, basic principles of constitutional avoidance counsel in favor of focusing on congressional authorization when considering war powers issues. n9 While the President's constitutional authority as Commander-in-Chief is enormously important, determining the scope of that authority beyond what Congress has authorized implicates some of the most difficult, unresolved, and contested issues in constitutional law. n10 Courts have been understandably reluctant to address the scope of that constitutional authority, especially during wartime, when the consequences of a constitutional error are potentially enormous. n11 Instead,  [\*2052]  courts have attempted, whenever possible, to decide difficult questions of wartime authority on the basis of what Congress has in fact authorized. n12 This strategy makes particular sense with respect to the novel issues posed by the war on terrorism.

#### Vote neg—they destroy ground based off of a change in authority and allow affs to restrict any assertion of authority the President has made.

#### They un-limit the topic

BARRON & LEDERMAN 8—\*David J. Barron, Professor of Law, Harvard Law School AND \*\*Martin S. Lederman, Visiting Professor of Law, Georgetown University Law Center [THE COMMANDER IN CHIEF AT THE LOWEST EBB—FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING, January, 2008, Havard Law Review, 121 Harv. L. Rev. 689]

5. Further Assertions of the Preclusive Commander in Chief Power.—In light of the Bush Administration's theory of preclusive Commander in Chief authority, and its consistent invocation of that argument across so many distinct areas, there are probably other examples as well. Because any further OLC documents containing arguments in support of such statutory noncompliance are not public, we do not know the extent of the phenomenon. On dozens of occasions, however, the President has invoked his power as Commander in Chief in issuing signing statements objecting to statutory enactments, suggesting that he will not fully comply with such laws in some circumstances, in particular when they cut too close to his chosen means of conducting a military campaign. n66 Moreover, the President, as we have noted, has invoked a Commander in Chief objection in vetoing a bill purporting to regulate the use of troops in Iraq. n67 The Administration has further indicated that any statutory restrictions Congress might approve on the use of force against Iran would be unconstitutional. n68 These recent assertions give practical effect to the expansive and uncompromising constitutional theory of preclusive executive war powers first enunciated in the OLC memorandum drafted two weeks after the attacks of September 11. n69

#### Bidirectionality—they allow affs to increase presidential authority by allowing affs to codify authority the office is claiming now. They have Congress create authorization and increases the President’s authority

### 1NC CP

#### The Office of Legal Counsel should determine that the Executive Branch lacks the legal authority to use targeted killing and indefinite detention as granted by the 2001 Authorization for Use of Military Force and modified by the 2012 National Defense Authorization Act by limiting the targets of those authorities to al-Qaeda, the Taliban, or those nations, organizations, or persons who enjoy close and well-established collaboration with al-Qaeda or the Taliban.

#### The President should require the Office of Legal Counsel to publish any legal opinions regarding policies adopted by the Executive Branch.

#### The CP is competitive and solves the case—OLC rulings do not actually remove authority but nevertheless hold binding precedential value on the executive.

Trevor W. Morrison, October 2010. Professor of Law, Columbia Law School. “STARE DECISIS IN THE OFFICE OF LEGAL COUNSEL,” Columbia Law Review, 110 Colum. L. Rev. 1448, Lexis.

On the other hand, an OLC that says "yes" too often is not in the client's long-run interest. n49 Virtually all of OLC's clients have their own legal staffs, including the White House Counsel's Office in the White House and the general counsel's offices in other departments and agencies. Those offices are capable of answering many of the day-to-day issues that arise in those components. They typically turn to OLC when the issue is sufficiently controversial or complex (especially on constitutional questions) that some external validation holds special value. n50 For example, when a department confronts a difficult or delicate constitutional question in the course of preparing to embark upon a new program or course of action that raises difficult or politically sensitive legal questions, it has an interest in being able to point to a credible source affirming the  [\*1462]  legality of its actions. n51 The in-house legal advice of the agency's general counsel is unlikely to carry the same weight. n52 Thus, even though those offices might possess the expertise necessary to answer at least many of the questions they currently send to OLC, in some contexts they will not take that course because a "yes" from the in-house legal staff is not as valuable as a "yes" from OLC. But that value depends on OLC maintaining its reputation for serious, evenhanded analysis, not mere advocacy. n53

The risk, however, is that OLC's clients will not internalize the long-run costs of taxing OLC's integrity. This is in part because the full measure of those costs will be spread across all of OLC's clients, not just the client agency now before it. The program whose legality the client wants OLC to review, in contrast, is likely to be something in which the client has an immediate and palpable stake. Moreover, the very fact that the agency has come to OLC for legal advice will often mean it thinks there is  [\*1463]  at least a plausible argument that the program is lawful. In that circumstance, the agency is unlikely to see any problem in a "yes" from OLC.

Still, it would be an overstatement to say that OLC risks losing its client base every time it contemplates saying "no." One reason is custom. In some areas, there is a longstanding tradition - rising to the level of an expectation - that certain executive actions or decisions will not be taken without seeking OLC's advice. One example is OLC's bill comment practice, in which it reviews legislation pending in Congress for potential constitutional concerns. If it finds any serious problems, it writes them up and forwards them to the Office of Management and Budget, which combines OLC's comments with other offices' policy reactions to the legislation and generates a coordinated administration position on the legislation. n54 That position is then typically communicated to Congress, either formally or informally. While no statute or regulation mandates OLC's part in this process, it is a deeply entrenched, broadly accepted practice. Thus, although some within the Executive Branch might find it frustrating when OLC raises constitutional concerns in bills the administration wants to support as a policy matter, and although the precise terms in which OLC's constitutional concerns are passed along to Congress are not entirely in OLC's control, there is no realistic prospect that OLC would ever be cut out of the bill comment process entirely. Entrenched practice, then, provides OLC with some measure of protection from the pressure to please its clients.

But there are limits to that protection. Most formal OLC opinions do not arise out of its bill comment practice, which means most are the product of a more truly voluntary choice by the client to seek OLC's advice. And as suggested above, although the Executive Branch at large has an interest in OLC's credibility and integrity, the preservation of those virtues generally falls to OLC itself. OLC's nonlitigating function makes this all the more true. Whereas, for example, the Solicitor General's aim of prevailing before the Supreme Court limits the extent to which she can profitably pursue an extreme agenda inconsistent with current doctrine, OLC faces no such immediate constraint. Whether OLC honors its oft-asserted commitment to legal advice based on its best view of the law depends largely on its own self-restraint.

2. Formal Requests, Binding Answers, and Lawful Alternatives. - Over time, OLC has developed practices and policies that help maintain its independence and credibility. First, before it provides a written opinion, n55 OLC typically requires that the request be in writing from the head or general counsel of the requesting agency, that the request be as specific and concrete as possible, and that the agency provide its own written  [\*1464]  views on the issue as part of its request. n56 These requirements help constrain the requesting agency. Asking a high-ranking member of the agency to commit the agency's views to writing, and to present legal arguments in favor of those views, makes it more difficult for the agency to press extreme positions.

Second, as noted in the Introduction, n57 OLC's legal advice is treated as binding within the Executive Branch until withdrawn or overruled. n58 As a formal matter, the bindingness of the Attorney General's (or, in the modern era, OLC's) legal advice has long been uncertain. n59 The issue has never required formal resolution, however, because by longstanding tradition the advice is treated as binding. n60 OLC protects that tradition today by generally refusing to provide advice if there is any doubt about whether the requesting entity will follow it. n61 This guards against "advice-shopping by entities willing to abide only by advice they like." n62 More broadly, it helps ensure that OLC's answers matter. An agency displeased with OLC's advice cannot simply ignore the advice. The agency might  [\*1465]  construe any ambiguity in OLC's advice to its liking, and in some cases might even ask OLC to reconsider its advice. n63 But the settled practice of treating OLC's advice as binding ensures it is not simply ignored.

In theory, the very bindingness of OLC's opinions creates a risk that agencies will avoid going to OLC in the first place, relying either on their general counsels or even other executive branch offices to the extent they are perceived as more likely to provide welcome answers. This is only a modest risk in practice, however. As noted above, legal advice obtained from an office other than OLC - especially an agency's own general counsel - is unlikely to command the same respect as OLC advice. n64 Indeed, because OLC is widely viewed as "the executive branch's chief legal advisor," n65 an agency's decision not to seek OLC's advice is likely to be viewed by outside observers with skepticism, especially if the in-house advice approves a program or initiative of doubtful legality.

OLC has also developed certain practices to soften the blow of legal advice not to a client's liking. Most significantly, after concluding that a client's proposed course of action is unlawful, OLC frequently works with the client to find a lawful way to pursue its desired ends. n66 As the OLC Guidelines put it, "when OLC concludes that an administration proposal is impermissible, it is appropriate for OLC to go on to suggest modifications that would cure the defect, and OLC should stand ready to work with the administration to craft lawful alternatives." n67 This is a critical component of OLC's work, and distinguishes it sharply from the courts. In addition to "providing a means by which the executive branch lawyer can contribute to the ability of the popularly-elected President and his administration to achieve important policy goals," n68 in more instrumental terms the practice can also reduce the risk of gaming by OLC's clients. And that, in turn, helps preserve the bindingness of OLC's opinions. n69

 [\*1466]  To be sure, OLC's opinions are treated as binding only to the extent they are not displaced by a higher authority. A subsequent judicial decision directly on point will generally be taken to supersede OLC's work, and always if it is from the Supreme Court. OLC's opinions are also subject to "reversal" by the President or the Attorney General. n70 Such reversals are rare, however. As a formal matter, Dawn Johnsen has argued that "the President or attorney general could lawfully override OLC only pursuant to a good faith determination that OLC erred in its legal analysis. The President would violate his constitutional obligation if he were to reject OLC's advice solely on policy grounds." n71 Solely is a key word here, especially for the President. Although his oath of office obliges him to uphold the Constitution, n72 it is not obvious he would violate that oath by pursuing policies that he thinks are plausibly constitutional even if he has not concluded they fit his best view of the law. It is not clear, in other words, that the President's oath commits him to seeking and adhering to a single best view of the law, as opposed to any reasonable or plausible view held in good faith. Yet even assuming the President has some space here, it is hard to see how his oath permits him to reject OLC's advice solely on policy grounds if he concludes that doing so is indefensible as a legal matter. n73 So the President needs at least a plausible legal basis for  [\*1467]  disagreeing with OLC's advice, which itself would likely require some other source of legal advice for him to rely upon.

The White House Counsel's Office might seem like an obvious candidate. But despite recent speculation that the size of that office during the Obama Administration might reflect an intention to use it in this fashion, n74 it continues to be virtually unheard of for the White House to reverse OLC's legal analysis. For one thing, even a deeply staffed White House Counsel's Office typically does not have the time to perform the kind of research and analysis necessary to produce a credible basis for reversing an OLC opinion. n75 For another, as with attempts to rely in the first place on in-house advice in lieu of OLC, any reversal of OLC by the White House Counsel is likely to be viewed with great skepticism by outside observers. If, for example, a congressional committee demands to know why the Executive Branch thinks a particular program is lawful, a response that relies on the conclusions of the White House Counsel is unlikely to suffice if the committee knows that OLC had earlier concluded otherwise. Rightly or wrongly, the White House Counsel's analysis is likely to be treated as an exercise of political will, not dispassionate legal analysis. Put another way, the same reasons that lead the White House to seek OLC's legal advice in the first place - its reputation for  [\*1468]  providing candid, independent legal advice based on its best view of the law - make an outright reversal highly unlikely. n76

Of course, the White House Counsel's Office may well be in frequent contact with OLC on an issue OLC has been asked to analyze, and in many cases is likely to make it abundantly clear what outcome the White House prefers. n77 But that is a matter of presenting arguments to OLC in support of a particular position, not discarding OLC's conclusion when it comes out the other way. n78The White House is not just any other client, and so the nature of - and risks posed by - communications between it and OLC on issues OLC is analyzing deserve special attention. I take that up in Part III. n79 My point at this stage is simply that the prospect of literal reversal by the White House is remote and does not meaningfully threaten the effective bindingness of OLC's decisions.

#### Mandatory publishing requirements prevent OLC deferral to presidential pressure—can be self-imposed—avoids SOP concerns with congressional interference.

Ross L. Weiner, February 2009. JD May 2009 @ George Washington University Law School. “THE OFFICE OF LEGAL COUNSEL AND TORTURE: THE LAW AS BOTH A SWORD AND SHIELD,” THE GEORGE WASHINGTON LAW REVIEW, 77 Geo. Wash. L. Rev. 524, Lexis.

The Torture Memo exposed serious deficiencies in how the OLC operates. For two years, interrogators were given erroneous legal advice regarding torture, with two adverse results. First, American interrogators behaved in ways contrary to traditional American values, possibly leading in part to the Abu Ghraib scandal n147 and to a decline in American reputation around the globe. n148 Second, agents on the  [\*549]  frontlines were given advice that, if followed, might be the basis for prosecution one day. n149 More importantly, when the Torture Memo was leaked to the public, it exposed the OLC to charges of acting as an enabler to the executive branch. John Yoo, the author of the Torture Memo, was known as "Dr. Yes" for his ability to author memos asserting exactly what the Bush Administration wanted to hear. n150 To ensure that this situation does not repeat itself in the future, it is critical for changes to be implemented at the OLC by mandating publication and increasing oversight.

A. Mandated Publishing
One explanation for the Torture Memo and its erroneous legal arguments was the OLC authors' belief that the Memo would remain secret forever. When he worked in the OLC, Harold Koh was often told that we should act as if every opinion might be [sic] some day be on the front page of the New York Times. Almost as soon as the [Torture Memo] made it to the front page of the New York Times, the Administration repudiated it, demonstrating how obviously wrong the opinion was. n151
Furthermore, James B. Comey, a Deputy Attorney General in the OLC, told colleagues upon his departure from the OLC that they would all be "ashamed" when the world eventually found out about other opinions that are still classified today on enhanced interrogation techniques. n152 This suggests that OLC lawyers, operating in relative obscurity, felt somewhat protected by the general veil of secrecy surrounding their opinions.

[\*550]  For many opinions, some of which are already published on the OLC's Web site, n153 this will not be a controversial proposition. Publication has three advantages: (1) accessibility; (2) letting people see the factual predicate on which an opinion is based; and (3) eliminating people's ability to strip an OLC opinion of nuance in favor of saying "OLC says we can do it." n154 Koh provides a telling illustration of the problems associated with the absence of mandated publishing as he found an OLC opinion placed in the Territorial Sea Journal that was critical to a case he was trying on behalf of a group of Haitians seeking to enter the United States. n155 He was incredulous that on a matter "of such consequence," n156 he literally had to be lucky to find the opinion. n157

Secrecy in government facilitates abuse, and nowhere is the need for transparency more important than the OLC, whose opinions are binding on the entire executive branch. In a telling example, on April 2, 2008, the Bush Administration declassified a second Torture Memo. n158 In eighty-one pages, John Yoo presented legal arguments that effectively allowed military interrogators carte blanche to abuse prisoners without any fear of prosecution. n159 While the Memo was classified at the "secret" level, it is clear that there was no strategic rationale for classifying it beyond avoiding public scrutiny. n160 According  [\*551]  to J. William Leonard, the nation's top classification oversight official from 2002-2007, "There is no information contained in this document which gives an advantage to the enemy. The only possible rationale for making it secret was to keep it from the American people." n161

To address this problem, the OLC should be required to publish all of its opinions, with a few limited exceptions. John F. Kennedy once said, "The very word 'secrecy' is repugnant in a free and open society." n162 Justice Potter Stewart, in New York Times Co. v. United States, n163 laid out the inherent dangers of secrecy in the realm of foreign affairs:
I should suppose that moral, political, and practical considerations would dictate that a very first principle of that wisdom would be an insistence upon avoiding secrecy for its own sake. For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion. I should suppose, in short, that the hallmark of a truly effective internal security system would be the maximum possible disclosure, recognizing that secrecy can best be preserved only when credibility is truly maintained. n164

The proposal to require the OLC to publish its opinions has been advocated by many, including former heads of the OLC. n165 [\*552]

1. Process for Classification
In certain situations, an opinion may have to remain confidential for national security purposes, but mechanisms can be designed to deal with this scenario. First, in order to deem a memorandum classified as a matter of national security, another agency in the executive branch with expertise on the subject should be required to sign off on such a classification. The Torture Memo exposed an instance of the OLC acting secretively not only for national security purposes, but also because it knew the Torture Memo could not withstand scrutiny. n166 Thus, only opinions dealing with operational matters that give aide to the enemy should be classified. Opinions that consist solely of legal reasoning on questions of law clearly would not pass that test.

If there is a disagreement between those in the OLC who choose to classify something and those in the other executive agency who believe it should be published, then the decision should be sent back to the OLC to review the potential for publishing a redacted version of the opinion. For example, consider a memo from the OLC on the different interrogation techniques allowable under the law. While it would be harmful for the OLC to publish specific activities, and thus alert the country's enemies as to interrogation tactics, publishing the legal analysis that gives the President this authority would not be harmful. Publishing would restore legitimacy to the work the OLC is doing and help remove the taint the Torture Memo has left on the office.

2. Exceptions
There are a few necessary exceptions to a rule requiring publication, and the former OLC attorneys who wrote a series of guidelines for the OLC are clear on them:
Ordinarily, OLC should honor a requestor's desire to keep confidential any OLC advice that the proposed executive action would be unlawful, where the requestor then does not take the action. For OLC routinely to release the details of all contemplated action of dubious legality might deter executive branch actors from seeking OLC advice at sufficiently early stages in policy formation. n167
 [\*553]  This reasoning stems directly from the attorney-client privilege and the need for candor in government. It is imperative that the executive branch seek information on potential action that may or may not be legal (or constitutional), and this type of inquiry should not be discouraged. This exception is only to be applied when the President does not go ahead with the policy in question. If the OLC were to opine that something is illegal or unconstitutional, and the President were to disregard that advice and proceed with the action anyway, this type of opinion should be made public. n168

If the OLC tells a President he can ignore a statute, and the President follows that advice, that opinion should be available to the public. One of the foundations of American governance is that nobody is above the law; advice that a statute should not be enforced contradicts this maxim. The Torture Memo asserted that violations of U.S. law would probably be excused by certain defenses, including necessity and self-defense. n169 Additionally, the Torture Memo argued that "Congress can no more interfere with the President's conduct of the interrogation of enemy combatants than it can dictate strategic or tactical decisions on the battlefield." n170 The OLC thus told the President that he does not have to enforce any congressional statutes that infringe on his Commander in Chief power. For both the purposes of good government and accountability, this type of claim should be made in public, rather than in secret, so Americans know how the President is interpreting the laws.

3. Oversight of Secret Opinions
Increased oversight at the OLC is most important for opinions that are classified as secret pursuant to the above procedures, and are unlikely to ever be heard in a court of law. According to former OLC attorneys:
The absence of a litigation threat signals special need for vigilance: In circumstances in which judicial oversight of executive branch action is unlikely, the President - and by extension  [\*554]  OLC - has a special obligation to ensure compliance with the law, including respect for the rights of affected individuals and the constitutional allocation of powers. n171
How can oversight be ensured?

First, memos that are both secret and unlikely to be heard in court must be reviewed by others with an expertise in the field. In 2002, there were two major issues with the OLC: first, almost nobody outside a group of five attorneys was allowed to read the secret opinions, n172 and second, there was a lack of expertise in the office on matters of national security. n173 As Goldsmith later confessed, "I eventually came to believe that [the immense secrecy surrounding these memoranda] was done [not for confidentiality, but] to control outcomes in the opinions and minimize resistance to them."n174

For opinions that are classified as secret, at least one other legal department in the federal government, with a similar level of expertise, should be asked to review a secret opinion in order to take a [\*555]  substantive look at the legal work in question. According to Jack Goldsmith, this process was traditionally how things worked; n175 when the Bush Administration started "pushing the envelope," n176 however, nearly all outside opinion was shut out under the guise of preventing leaks. n177 It is now apparent that the concern stemmed more from a fear of objections than from the national security concern of a leak. n178 Based on the declassification of the Torture Memo, along with the subsequent declassification of another memo on torture, n179 there was no national security purpose for keeping the memos secret.

The reason an outside review of memos labeled as classified is important is that in times of crisis, proper oversight mechanisms need to be in place. It is in times of emergency when the country is most vulnerable to decisions that it might later regret. n180 Based on the legal reasoning exposed in both the Torture Memo and the released Yoo opinion from March 2003, it is reasonable to surmise that other opinions written in the aftermath of September 11 are similarly flawed. n181 Currently, there are a number of classified memoranda that have been referenced in declassified OLC opinions, but have never been declassified themselves. n182 What these memoranda assert, and whether President Bush decided to follow them, are currently unknown. In a recently declassified opinion, however, there is a footnote indicating that the Fourth Amendment's protection against unreasonable searches and seizures is not applicable to domestic military operations related to the war on terror.n183 Because this would be a novel assertion  [\*556]  of authority, the American public should be able to evaluate the merits of such a legal argument.

Different agencies of government have personnel with different expertise, so it will be incumbent upon those in the OLC to determine which department, and which individual in the department, has the required security clearance and knowledge to review an opinion. Thus, when an opinion has been deemed classified, before it can be forwarded outside of the OLC, it would have to go to another agency for approval.

The question that the reviewer should have to answer is whether the work he or she is analyzing is an "accurate and honest appraisal of applicable law." n184 If it is, then there is no problem with the opinion, and the second agency will sign off on it. If it is not, then the reviewer should prepare a minority report. What is most critical is that both the Attorney General and the President - who might not be an attorney - understand exactly what their lawyers are saying. For a controversial decision, it should not be sufficient for someone in the OLC like John Yoo to write an inaccurate legal memo that asserts one thing, while the law and precedent say another, with the eventual decisionmaker - the President - only viewing the flawed opinion. The minority report will serve two purposes: first, it will encourage lawyers to avoid dressing up a shoddy opinion in "legalese" to make it look legitimate when in reality it is not; and second, it will ensure that the opinion truly is a full and fair accounting of the law.

The most important by-product from mandated review of secret opinions will be that lawyers in the OLC will no longer be able to hide behind a wall of total confidentiality. n185 Rather than acting as if the OLC is above the law and answerable to no one, the knowledge that every classified opinion will be reviewed by someone with an expertise in the field should give pause to any OLC attorney who lacks independence and serves as a yes-man for the President.

 [\*557]

B. Mechanisms for Implementing Changes

1. Self-Imposed by Executive
The easiest way to implement such a change in OLC requirements would be for the President to impose them on the OLC. The OLC's authority stems from the Attorney General, who has delegated some of his power to the OLC. n186 The Attorney General is in the executive branch, which means that the President has the authority to order these changes.

It is unlikely that the executive branch would self-impose constraints on the OLC, because Executives from both parties have historically exhibited a strong desire to protect the levers of power. n187One of the reasons lawyers at the OLC were able to write documents like the Torture Memo without anyone objecting was because the results were in line with what the Bush Administration wanted to hear. n188 Thus, it was unlikely that the Bush Administration would make any changes during its final year in office, and as it turned out, the Bush Administration ended on January 20, 2009, without making any changes.

Nevertheless, in light of the OPR's publicly announced investigation of the OLC's conduct, n189 and the release of another John Yoo memorandum on torture, n190 the lack of oversight at the OLC could come to the forefront of the public's attention. n191 Thus, it is possible that through public pressure, President Bush could be persuaded to mandate these changes himself. n192

2. Congressional Mandate
Alternatively, Congress could step into the void and legislate. Any potential congressional interference, however, would be fraught with separation of powers concerns, which would have to be dealt with directly. First, the President is entitled to advice from his advisors. n193 Second, a great deal of deference is owed to the President when he is operating in the field of foreign affairs. n194 Any attempt by Congress to limit either of these two powers will most likely be met with resistance. n195

### 1NC DA

#### Nuclear deal with Iran coming. Obama is holding off new sanctions from congress that would torpedo the deal – its all about politics.

CBS NEWS 11 – 13 – 13 Obama administration seeks time from Congress for Iran diplomacy, <http://www.cbsnews.com/8301-250_162-57612230/obama-administration-seeks-time-from-congress-for-iran-diplomacy/>

The Obama administration is pleading with Congress to allow more time for diplomacy with Iran, but faces sharp resistance from Republican and Democratic lawmakers determined to further squeeze the Iranian economy and wary of yielding any ground in nuclear negotiations.

Back from a week of nuclear talks in Geneva and tense consultations with nervous Middle East allies, Secretary of State John Kerry arrived Wednesday on Capitol Hill to join Vice President Joe Biden in presenting the administration's case to their ex-colleagues in the Senate on Wednesday and ask them to hold off on a package of new, tougher Iran sanctions under consideration.

Kerry told reporters as he arrived for the briefing that new sanctions "could be viewed as bad faith by the people we are negotiating with. It could destroy the ability to be able to get an agreement. And it could actually wind up setting us back in dialogue that has taken 30 years to be able to achieve."

Still, Kerry added, "nothing is agreed until everything is agreed here."

"The fact is, you know, we didn't put sanctions in place for the sake of sanctions; we did it to be able to negotiate, and to negotiate a final agreement," he said. "What we have negotiated, we believe, is a very strong protocol which will restrict Iran's ability to be able to grow its program."

A House committee, meanwhile, held a hearing to vent its frustration with Kerry and an Obama administration they believe should adopt a far tougher line with Tehran.

"The Iranian regime hasn't paused its nuclear program," said Rep. Ed Royce, a Republican and the House Foreign Affairs Committee chairman. "Why should we pause our sanctions efforts as the administration is pressuring Congress to do?"

President Obama's disagreement with many if not most members of Congress concerns tactics, not substance: Each wants to stop Iran from reaching the capacity to produce nuclear weapons, and even hard-line hawks say they'd prefer diplomacy to U.S. military intervention. Almost everyone recognizes that Washington and its partners will have to offer some relief from the punitive measures that have crippled Iran's economy in exchange for concrete Iranian actions to roll back and dismantle elements of the nuclear program.

But the road map for achieving what has been a central U.S. foreign policy goal for more than a decade is hotly politicized, with fierce debate over the parameters and sequencing of any deal. The Obama administration has offered Iran an initial opportunity to recoup some of the billions of dollars in frozen overseas assets if it begins the process, while insisting that the most severe restrictions would remain in place until Tehran conclusively eliminates fears that it is trying to assemble an atomic arsenal. Some legislators worry Obama is moving too quickly.

Iran maintains that its uranium enrichment is for energy production and medical research, not for any covert military objective. But until the recent election of President Hassan Rouhani, it refused to compromise in talks with world powers.

Responding to Rouhani's promise of flexibility, Obama has staked significant international credibility on securing a diplomatic agreement. His telephone chat with Rouhani in September was the first direct conversation between U.S. and Iranian leaders in more than three decades. The unprecedented outreach has angered U.S. allies such as Israel and Saudi Arabia. And lawmakers are deeply skeptical.

"This is a decision to support diplomacy and a possible peaceful resolution to this issue," White House press secretary Jay Carney told reporters Tuesday. "The American people justifiably and understandably prefer a peaceful solution that prevents Iran from obtaining a nuclear weapon, and this agreement, if it's achieved, has the potential to do that. The American people do not want a march to war."

The administration sees itself on the cusp of a historic breakthrough, so much so that Obama hastily dispatched Kerry to Switzerland last week for the highest-level nuclear negotiations to date. The talks broke down as Iran demanded formal recognition of what it says is its right to enrich uranium for peaceful purposes, and as France sought stricter limits on Iran's ability to make nuclear fuel and on its heavy water reactor to produce plutonium, according to diplomats.

Still, officials said significant progress was made. The U.S., Britain, China, France, Germany, Iran and Russia will send top nuclear negotiators back to Geneva next week to see whether they can push the ball forward.

And on Wednesday, Obama spoke by telephone with French President Francois Hollande. The two countries "are in full agreement" on Iran, the White House said in a statement.

However, the administration is worried Congress could make an agreement more difficult.

Kerry and top U.S. nuclear negotiator Wendy Sherman hope to persuade members of the Senate Banking Committee in their meeting Wednesday to hold off on additional punitive measures on the Iranian economy. After, Biden and the Treasury Department's sanctions chief, David Cohen, will join them for a separate briefing with Senate Democratic leaders.

#### The standing of the executive is the crucial internal link – key to hold off hawks in congress. Vital internal to overall US nuclear leadership

LEVERETT 11 – 7 – 13 Profs of International Relations – Penn State & American University [Flynt Leverett and Hillary Mann Leverett, America’s Moment of Truth on Iran , <http://iranian.com/posts/view/post/23789>]

America’s Iran policy is at a crossroads. Washington can abandon its counterproductive insistence on Middle Eastern hegemony, negotiate a nuclear deal grounded in the Nuclear Non-Proliferation Treaty (NPT), and get serious about working with Tehran to broker a settlement to the Syrian conflict. In the process, the United States would greatly improve its ability to shape important outcomes there. Alternatively, America can continue on its present path, leading ultimately to strategic irrelevance in one of the world’s most vital regions—with negative implications for its standing in Asia as well.

U.S. policy is at this juncture because the costs of Washington’s post-Cold War drive to dominate the Middle East have risen perilously high. President Obama’s self-inflicted debacle over his plan to attack Syria after chemical weapons were used there in August showed that America can no longer credibly threaten the effective use of force to impose its preferences in the region. While Obama still insists “all options are on the table” for Iran, the reality is that, if Washington is to deal efficaciously with the nuclear issue, it will be through diplomacy.

In this context, last month’s Geneva meeting between Iran and the P5+1 brought America’s political class to a strategic and political moment of truth. Can American elites turn away from a self-damaging quest for Middle Eastern hegemony by coming to terms with an independent regional power? Or are they so enthralled with an increasingly surreal notion of America as hegemon that, to preserve U.S. “leadership,” they will pursue a course further eviscerating its strategic position?

The proposal for resolving the nuclear issue that Iran’s foreign minister, Javad Zarif, presented in Geneva seeks answers to these questions. It operationalizes the approach advocated by Hassan Rohani and other Iranian leaders for over a decade: greater transparency on Iran’s nuclear activities in return for recognizing its rights as a sovereign NPT signatory—especially to enrich uranium under international safeguards—and removal of sanctions. For years, the Bush and Obama administrations rejected this approach. Now Obama must at least consider it.

The Iranian package provides greater transparency on Tehran’s nuclear activities in two crucial respects. First, it gives greater visibility on the conduct of Iran’s nuclear program. Iran has reportedly offered to comply voluntarily for some months with the Additional Protocol (AP) to the NPT—which it has signed but not yet ratified and which authorizes more proactive and intrusive inspections—to encourage diplomatic progress. Tehran would ratify the AP—thereby committing to its permanent implementation—as part of a final deal.

Second, the package aims to validate Iran’s declarations that its enrichment infrastructure is not meant to produce weapons-grade fissile material. Iran would stop enriching at the near-20 percent level of fissile-isotope purity needed to fuel the Tehran Research Reactor and cap enrichment at levels suitable for fueling power reactors. Similarly, Iran is open to capping the number of centrifuges it would install—at least for some years—at its enrichment sites in Natanz and Fordo.

Based on conversations with Iranian officials and political figures in New York in September (during Rohani and Zarif’s visit to the UN General Assembly) and in Tehran last month, it is also possible to identify items that the Iranian proposal almost certainly does not include. Supreme Leader Ayatollah Seyed Ali Khamenei has reportedly given President Rohani and his diplomats flexibility in negotiating a settlement—but he has also directed that they not compromise Iran’s sovereignty. Thus, the Islamic Republic will not acquiesce to American (and Israeli) demands to suspend enrichment, shut its enrichment site at Fordo, stop a heavy-water reactor under construction at Arak, and ship its current enriched uranium stockpile abroad.

On one level, the Iranian package is crafted to resolve the nuclear issue based on the NPT, within a year. Iran’s nuclear rights would be respected; transparency measures would reduce the proliferation risks of its enrichment activities below what Washington tolerates elsewhere. On another level, though, the package means to test America’s willingness and capability to resolve the issue on this basis. It tests this not just for Tehran’s edification, but also for that of other P5+1 states, especially China and Russia, and of rising powers like India and South Korea.

America can fail the Iranian test in two ways. First, the Obama administration—reflecting America’s political class more broadly—may prove unwilling to acknowledge Iran’s nuclear rights in a straightforward way, insisting on terms for a deal that effectively suborn these rights and violate Iranian sovereignty.

There are powerful constituencies—e.g., the Israel lobby, neoconservative Republicans, their Democratic “fellow travelers,” and U.S.-based Iran “experts”—that oppose any deal recognizing Iran’s nuclear rights. They understand that acknowledging these rights would also mean accepting the Islamic Republic as an enduring entity representing legitimate national interests; to do so, America would have to abandon its post-Cold War pretensions to Middle Eastern hegemony.

Those pretensions have proven dangerously corrosive of America’s ability to accomplish important objectives in the Middle East, and of its global standing. Just witness the profoundly self-damaging consequences of America’s invasion and occupation of Iraq, and how badly the “global war on terror” has eviscerated the perceived legitimacy of American purposes in the Muslim world.

But, as the drama over Obama’s call for military action against Syria indicates, America’s political class remains deeply attached to imperial pretense—even as the American public turns away from it. If Washington could accept the Islamic Republic as a legitimate regional power, it could work with Tehran and others on a political solution to the Syrian conflict. Instead, Washington reiterates hubristic demands that President Bashar al-Assad step down before a political process starts, and relies on a Saudi-funded “Syrian opposition” increasingly dominated by al-Qa’ida-like extremists.

 If Obama does not conclude a deal recognizing Iran’s nuclear rights, it will confirm suspicions already held by many Iranian elites—including Ayatollah Khamenei—and in Beijing and Moscow about America’s real agenda vis-à-vis the Islamic Republic. It will become undeniably clear that U.S. opposition to indigenous Iranian enrichment is not motivated by proliferation concerns, but by determination to preserve American hegemony—and Israeli military dominance—in the Middle East. If this is so, why should China, Russia, or rising Asian powers continue trying to help Washington—e.g., by accommodating U.S. demands to limit their own commercial interactions with Iran—obtain an outcome it does not actually want?

America can also fail Iran’s test if it is unable to provide comprehensive sanctions relief as part of a negotiated nuclear settlement. The Obama administration now acknowledges what we have noted for some time—that, beyond transitory executive branch initiatives, lifting or even substantially modifying U.S. sanctions to support diplomatic progress will take congressional action.

 During Obama’s presidency, many U.S. sanctions initially imposed by executive order have been written into law. These bills—signed, with little heed to their long-term consequences, by Obama himself—have also greatly expanded U.S. secondary sanctions, which threaten to punish third-country entities not for anything they’ve done in America, but for perfectly lawful business they conduct in or with Iran. The bills contain conditions for removing sanctions stipulating not just the dismantling of Iran’s nuclear infrastructure, but also termination of Tehran’s ties to movements like Hizballah that Washington (foolishly) designates as terrorists and the Islamic Republic’s effective transformation into a secular liberal republic.

 The Obama administration may have managed to delay passage of yet another sanctions bill for a few weeks—but Congressional Democrats no less than congressional Republicans have made publicly clear that they will not relax conditions for removing existing sanctions to help Obama conclude and implement a nuclear deal. If their obstinacy holds, why should others respect Washington’s high-handed demands for compliance with its extraterritorial (hence, illegal) sanctions against Iran?

 Going into the next round of nuclear talks in Geneva on Thursday, it is unambiguously plain that Obama will have to spend enormous political capital to realign relations with Iran. America’s future standing as a great power depends significantly on his readiness to do so.

#### PLAN kills the executive

KRINER 10—Assistant professor of political science at Boston University [Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, pg. 276-77]

One of the mechanisms by which congressional opposition influences presidential cost-benefit calculations is by sending signals of American disunity to the target state. Measuring the effects of such congressional signals on the calculations of the target state is always difficult. In the case of Iraq it is exceedingly so, given the lack of data on the non-state insurgent actors who were the true “target” of the American occupation after the fall of the Hussein regime. Similarly, in the absence of archival documents, such as those from the Reagan Presidential Library presented in chapter 5, it is all but impossible to measure the effects of congressional signals on the administration’s perceptions of the military costs it would have to pay to achieve its objectives militarily.

By contrast. measuring the domestic political costs of congressional opposition, while still difficult, is at least a tractable endeavor. Chapter 2 posited two primary pathways through which congressional opposition could raise the political costs of staying the course militarily for the president. First, high-profile congressional challenges to a use of force can affect real or anticipated public opinion and bring popular pressures to bear on the president to change course. Second, congressional opposition to the president’s conduct of military affairs can compel him to spend considerable political capital in the military arena to the detriment of other major items on his programmatic agenda. On both of these dimensions, congressional opposition to the war in Iraq appears to have had the predicted effect.

#### US/Iran war & Iranian prolif

WORLD TRIBUNE 11 – 13 – 13 [Obama said to suspend Iran sanctions without informing Congress, <http://www.worldtribune.com/2013/11/13/obama-said-to-suspend-iran-sanctions-without-informing-congress/>]

The administration has also pressured Congress to suspend plans for new sanctions legislation against Iran. The sources said the White House effort has encountered resistance from both Democrats and Republicans, particularly those in the defense and foreign affairs committees.

“I urge the White House and the Senate to learn from the lessons of the past and not offer sanctions relief in return for the false hopes and empty promises of the Iranian regime,” Rep. Ileana Ros-Lehtinen, chairwoman of the House Middle East and North Africa Subcommittee, said. “Instead, new rounds of sanctions must be implemented to gain further leverage because any misstep in calculations at this juncture will have devastating and irreversible consequences that will be difficult to correct retroactively.”

On Nov. 12, the White House warned that additional sanctions on Iran would mean war with the United States. White House press secretary Jay Carney, in remarks meant to intensify pressure on Congress, said sanctions would end the prospect of any diplomatic solution to Iran’s crisis.

“The American people do not want a march to war,” Carney said. “It is important to understand that if pursuing a resolution diplomatically is disallowed or ruled out, what options then do we and our allies have to prevent Iran from acquiring a nuclear weapon?”

Still, the Senate Banking Committee has agreed to delay any vote on sanctions legislation until a briefing by Secretary of State John Kerry on Nov. 13. The sources said Kerry was expected to brief the committee on the P5+1 talks in Geneva that almost led to an agreement with Teheran.

“The secretary will be clear that putting new sanctions in place would be a mistake,” State Department spokeswoman Jen Psaki said on Nov. 12. “We are still determining if there’s a diplomatic path forward. What we are asking for right now is a pause, a temporary pause, in sanctions.”

#### Iran war escalates

White, July/August 2011 (Jeffrey—defense fellow at the Washington Institute for Near East Policy, What Would War With Iran Look Like, National Interest, p. <http://www.the-american-interest.com/article-bd.cfm?piece=982>)

A U.S.-Iranian war would probably not be fought by the United States and Iran alone. Each would have partners or allies, both willing and not-so-willing. Pre-conflict commitments, longstanding relationships, the course of operations and other factors would place the United States and Iran at the center of more or less structured coalitions of the marginally willing. A Western coalition could consist of the United States and most of its traditional allies (but very likely not Turkey, based on the evolution of Turkish politics) in addition to some Persian Gulf states, Jordan and perhaps Egypt, depending on where its revolution takes it. Much would depend on whether U.S. leaders could persuade others to go along, which would mean convincing them that U.S. forces could shield them from Iranian and Iranian-proxy retaliation, or at least substantially weaken its effects. Coalition warfare would present a number of challenges to the U.S. government. Overall, it would lend legitimacy to the action, but it would also constrict U.S. freedom of action, perhaps by limiting the scope and intensity of military operations. There would thus be tension between the desire for a small coalition of the capable for operational and security purposes and a broader coalition that would include marginally useful allies to maximize legitimacy. The U.S. administration would probably not welcome Israeli participation. But if Israel were directly attacked by Iran or its allies, Washington would find it difficult to keep Israel out—as it did during the 1991 Gulf War. That would complicate the U.S. ability to manage its coalition, although it would not necessarily break it apart. Iranian diplomacy and information operations would seek to exploit Israeli participation to the fullest. Iran would have its own coalition. Hizballah in particular could act at Iran’s behest both by attacking Israel directly and by using its asymmetric and irregular warfare capabilities to expand the conflict and complicate the maintenance of the U.S. coalition. The escalation of the Hizballah-Israel conflict could draw in Syria and Hamas; Hamas in particular could feel compelled to respond to an Iranian request for assistance. Some or all of these satellite actors might choose to leave Iran to its fate, especially if initial U.S. strikes seemed devastating to the point of decisive. But their involvement would spread the conflict to the entire eastern Mediterranean and perhaps beyond, complicating both U.S. military operations and coalition diplomacy.

### Firebreak

#### No Chinese overreactions. They will rely on Washington to reign in Taiwan and carrots to undercut independence.

**Yijiang ‘9** (Ding, Prof. Pol. Sci. and Chair IR Program – Okanagan U. College, Asian Affairs: An American Review, Beijing's New Approach and the Rapprochement in the Taiwan Strait”, (late 09, last issue pre 2010), 36:4)

The year 2008 saw major progress made in the reconciliation across the Taiwan Strait. Several factors contributed to this significant development, which has occurred amid China’s1 fast rise and a shifting balance of power in East Asia. The change of government in Taiwan has also been a factor. The cumulative effect of nearly twenty years of steadily deepening economic integration across the Taiwan Strait has played a role as well, with the People’s Republic of China (PRC) attracting a huge amount of Taiwanese investment, becoming home to hundreds of thousands of Taiwan’s businesspeople, and replacing theUnited States as Taiwan’s largest exportmarket every year since 2002. Taiwan’s exports to the Chinesemainland exceeded U.S.$100 billion in 2008, accounting for 40 percent of the island’s total exports and 26 percent of its total gross domestic product.2 This article, however, will focus on a single factor that has facilitated the recent rapprochement: a gradual change in Beijing’s strategy in the handling of its relationship with Taipei, which occurred between 2003 and 2008. Beijing’s reaction to 2007–8 presidential election campaigns in Taiwan marked a clear departure from its previous handling the provocative proindependence rhetoric that is characteristic of Taiwan’s election campaigns. The subsequent reconciliation with the newly elected Chinese Nationalist Party (KMT) government apparently proved that the change in its approach was working. The new strategy appears to be, “speak softly and carry a big stick” toward proponents of Taiwanese independence, relying on Washington to rein in the proindependence Democratic Progressive Party (DPP), and at the same time actively seeking reconciliation with the anti-independence KMT by offering economic benefits to Taiwan and by making limited concessions on some difficult bilateral issues, including the sovereignty issue, to promote economic and social relations and to undercut the support for Taiwanese independence. There have been some scholarly discussions on different aspects of Beijing’s new approach. Alan D. Romberg, for example, observes that Beijing “will look to Washington to keep things under control rather than having to play a heavy hand itself,” indicating its greater willingness to rely on the United States to rein in the DPP while exercising self-restraint toward the DPP’s proindependence rhetoric.3 Romberg’s observation is supported by Lin Chong-Pin, who also finds that Beijing has launched “soft offensives” by offering Taiwan a large number of various kind benefits, ranging from billions of dollars of loans to Taiwanese businesses, to no tariffs for Taiwanese farm products, to much lower tuition fees than previously charged to Taiwanese students.4 In the words of Erik Lenhart, Beijing’s carrot for Taiwan is “getting much sweeter,” even though its basic principles remain unchanged.5 Chu Shulong and Guo Yuli offer an analysis of the Hu Jintao leadership’s new thinking behind the change of approach toward the Taiwan issue.6 In this article, I analyze the origins of Beijing’s new approach, its evolution, the current rapprochement, its limitations, and its significance for the future relationship between Taiwan and China.

#### Dilemma. Either:

#### a. US won't intervene.

**IBD, ‘10** (Investor's Business Daily, “China Draws A Line As U.S. Backs Off”, 3-1, L/N)

Col. Liu argues that China should use its growing revenues to become the world's biggest military power, to the point where the U.S. "would not dare and would not be able to intervene in military conflict in the Taiwan Strait." That possibility is increasingly real. As Defense Secretary Roberts Gates said in a recent speech to the Air Force Association: "Investments in cyber and anti-satellite warfare (by China), anti-air and anti-ship weaponry, and ballistic missiles could threaten America's primary way to project power and help allies in the Pacific -- in particular our forward air bases and carrier strike groups."

#### OR

#### b. Their impacts are a reason it will never happen.

**AFP, ’10** (Agence France Presse – English, “US arms deal strengthens Taiwan deterrent: analysts”, 2-3, L/N)

"I don't think the arms package will change the balance. It's much more symbolic," said Bruce Jacobs, an expert on the relationship between China and Taiwan at Australia's Monash University. "The United States will be involved in a conflict. Unofficially, Australia will be involved, for example with intelligence gathering. Japan will be involved if China does invade. It wouldn't just be China and Taiwan." In case of war, the United States would be forced by its own past promises -- and by public opinion -- to come to the defence of Taiwan, meaning conflict could rapidly engulf the region, analysts said. "On the part of the US, the commitment is obviously there, and I think China also understands that the US will probably intervene, and it will be too costly for China," said Joseph Cheng, a China watcher at City University of Hong Kong. "China has no intention of engaging in war with United States. Attacking Taiwan militarily is almost unthinkable."

#### Odds of the war going nuclear are ZERO. Their high probability assessment is media hype

**Enders 02** [David, “Experts say nuclear war still unlikely,” Michigan Daily, 1/30. http://www.michigandaily.com/content/experts-say-nuclear-war-still-unlikely.]

University political science Prof. Ashutosh Varshney becomes animated when asked about the likelihood of nuclear war between India and Pakistan. "Odds are close to zero," Varshney said forcefully, standing up to pace a little bit in his office. "The assumption that India and Pakistan cannot manage their nuclear arsenals as well as the U.S.S.R. and U.S. or Russia and China concedes less to the intellect of leaders in both India and Pakistan than would be warranted." The world"s two youngest nuclear powers first tested weapons in 1998, sparking fear of subcontinental nuclear war a fear Varshney finds ridiculous. "The decision makers are aware of what nuclear weapons are, even if the masses are not," he said. "Watching the evening news**,** CNN, I think they have vastly overstated the threat of nuclear war," political science Prof. Paul Huth said. Varshney added that there are numerous factors working against the possibility of nuclear war. "India is committed to a no-first-strike policy," Varshney said. "It is virtually impossible for Pakistan to go for a first strike, because the retaliation would be gravely dangerous." Political science Prof. Kenneth Lieberthal, a former special assistant to President Clinton at the National Security Council, agreed. "Usually a country that is in the position that Pakistan is in would not shift to a level that would ensure their total destruction," Lieberthal said, making note of India"s considerably larger nuclear arsenal. "American intervention is another reason not to expect nuclear war," Varshney said. "If anything has happened since September 11, it is that the command control system has strengthened. The trigger is in very safe hands."But the low probability of nuclear war does not mean tensions between the two countries who have fought three wars since they were created in 1947 will not erupt. "The possibility of conventional war between the two is higher. Both sides are looking for ways out of the current tension," Lieberthal said.

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\* Ashutosh Varshney - Professor of Political Science and South Asia expert at the University of Michigan

\* Paul Huth – Professor of International Conflict and Security Affairs at the University of Maryland

\* Kenneth Lieberthal - Professor of Political Science at the University of Michigan

#### No South Asian war—deterrence checks

Malik 3 (Mohan, Professor of Security Studies at the Asia-Pacific Center for Security Studies, Asian Affairs, An American Review, “The Stability of Nuclear Deterrence in South Asia: The Clash between State and Antistate Actors”, 30:3, Fall ,Proquest)

India and Pakistan's past behavior shows that there is little or no danger of either side firing a nuclear weapon in anger or because of miscalculation. "Gentlemanly wars" is the primary term used to describe past Indian-Pakistani wars. In all three wars, both sides avoided wars of attrition or deliberate targeting of population and industrial centers. Despite their penchant for inflammatory and bellicose rhetoric, no sane leader willingly would commit national suicide. The leaders in both capitals insist that nuclear weapons are only for deterrence and are not weapons of war. History shows that nuclear weapons are usable only against an opponent that does not have the ability to retaliate in kind-such as the United States against Japan in 194The only exception to this rule might be the case of a state that faced total imminent destruction. It is conceivable that Pakistan could use nuclear weapons if faced with total defeat by India. Indians argue, however, that they have no interest in destroying the Pakistani state and incorporating another 140 million Muslims///

 into the Indian state. One Indian analyst argues, "Since the 1980s, Indian military doctrine has moved away from the seizure of Pakistani territory in recognition of the less significant role played by landmass in modern estimates of strategic strength. Not only does India not have any territorial ambitions on Pakistan, [India is] prepared to permanently concede Pakistan-occupied Kashmir to Islamabad, and would accept the 'line of control' in Kashmir as the international boundary."22 If New Delhi goes to war with Islamabad, the war will be over Kashmir, not the existence of Pakistan. Many Indians claim that the West consistently and deliberately has promoted the idea of a nuclear flashpoint to get India and Pakistan to establish a nuclear risk reduction regime concurrently with a sustained dialogue on Kashmir and their nonproliferation agenda. Pakistan long has subscribed to this idea and publicly articulated its intention to use nuclear weapons if India launches a conventional attack across the line of control in Pakistani Kashmir. The presence of nuclear weapons certainly makes states exceedingly cautious; notable examples are China and Pakistan's postnuclear behavior. The consequences of a nuclear war are too horrendous to contemplate. Policymakers in New Delhi and Islamabad have a sound understanding of each other's capabilities, intentions, policies, and, more important, red lines, which they are careful not to cross. This repeatedly has been demonstrated since the late 1980s. Despite the 1999 Kargil War and the post-September 11 brinkmanship that illustrate the "stability-instability" paradox that nuclear weapons have introduced to the equation in South Asia,23 proponents of nuclear deterrence in Islamabad and New Delhi believe that nuclear deterrence is working to prevent war in the region. They point to the fact that neither the 1999 Kargil conflict nor the post-September 11 military standoff escalated beyond a limited conventional engagement due to the threat of nuclear war. So the stability argument is based on the reasonable conclusion that nuclear weapons have served an Important purpose in the sense that India and Pakistan have not gone to an all-out war since 1971.24 just as nuclear deterrence maintained stability between the United States and the USSR during the cold war, so it can induce similar stabilizing effects in South Asia.

### Terror

#### No impact to bioweapons—multiple reasons

Mueller 10 [John, Woody Hayes Chair of National Security Studies at the Mershon Center for International Security Studies and a Professor of Political Science at The Ohio State University, A.B. from the University of Chicago, M.A. and Ph.D. @ UCLA, Atomic Obsession – Nuclear Alarmism from Hiroshima to Al-Qaeda, Oxford University Press]

Properly developed and deployed, biological weapons could potentially, if thus far only in theory, kill hundreds of thousands, perhaps even millions, of people. The discussion remains theoretical because biological weapons have scarcely ever been used. For the most destructive results, they need to be dispersed in very low-altitude aerosol clouds. Since aerosols do not appreciably settle, pathogens like anthrax (which is not easy to spread or catch and is not contagious) would probably have to be sprayed near nose level. Moreover, 90 percent of the microorganisms are likely to die during the process of aerosolization, while their effectiveness could be reduced still further by sunlight, smog, humidity, and temperature changes. Explosive methods of dispersion may destroy the organisms, and, except for anthrax spores, long-term storage of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organisms have a limited lifetime. Such weapons can take days or weeks to have full effect, during which time they can be countered with medical and civil defense measures. In the summary judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties-as an aerosol that could be inhaled-requires a delivery system of enormous sophistication, and even then effective dispersal could easily be disrupted by unfavorable environmental and meteorological conditions.

#### No nuclear terrorism—no capability nor intent reject their alarmism

* Many reasons to doubt both the capability and interest of terrorists getting nuclear devices
* Dangers of a loose nuke from Russia is far over-stated
* Even if a terrorist group got a nuclear weapon using it would be very difficult
* Terrorists and connections between rogue states is exaggerates
* Iran and North Korea are not going to give terrorists nukes because their arsenals are small
* What can go wrong will go wrong—multiple intensifying and compounding probability make terrorist failure inevitable
* Their evidence uses worst case scenarios which is alarmist and false
* Insider documents within Al-Qaeda show they don’t want nuclear weapons and prefer convention weapons
* Their evidence about them wanting nukes is wrong the 90s and out of date
* Even if they did want a nuke it was only to deter a U.S. invasion

Gavin 10—Francis J. Gavin is Tom Slick Professor of International Affairs and Director of the Robert S. Strauss Center for International Security and Law, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin [International Security, Vol. 34, No. 3 (Winter 2009/10), pp. 7–37, the President and Fellows of Harvard College and the Massachusetts Institute of Technology, “Same As It Ever Was Nuclear Alarmism, Proliferation, and the Cold War”, http://www.mitpressjournals.org/doi/pdf/10.1162/isec.2010.34.3.7]

Nuclear Terrorism. The possibility of a terrorist nuclear attack on the United States is widely believed to be a grave, even apocalyptic, threat and a likely possibility, a belief supported by numerous statements by public officials. Since the collapse of the Soviet Union, “the inevitability of the spread of nuclear terrorism” and of a “successful terrorist attack” have been taken for granted.48 Coherent policies to reduce the risk of a nonstate actor using nuclear weapons clearly need to be developed. In particular, the rise of the Abdul Qadeer Khan nuclear technology network should give pause.49 But again, the news is not as grim as nuclear alarmists would suggest. Much has already been done to secure the supply of nuclear materials, and relatively simple steps can produce further improvements. Moreover, there are reasons to doubt both the capabilities and even the interest many terrorist groups have in detonating a nuclear device on U.S. soil. As Adam Garfinkle writes, “The threat of nuclear terrorism is very remote.”50 Experts disagree on whether nonstate actors have the scientific, engineering, financial, natural resource, security, and logistical capacities to build a nuclear bomb from scratch. According to terrorism expert Robin Frost, the danger of a “nuclear black market” and loose nukes from Russia may be overstated. Even if a terrorist group did acquire a nuclear weapon, delivering and detonating it against a U.S. target would present tremendous technical and logistical difficulties.51 Finally, the feared nexus between terrorists and rogue regimes may be exaggerated. As nuclear proliferation expert Joseph Cirincione argues, states such as Iran and North Korea are “not the most likely sources for terrorists since their stockpiles, if any, are small and exceedingly precious, and hence well-guarded.”52 Chubin states that there “is no reason to believe that Iran today, any more than Sadaam Hussein earlier, would transfer WMD [weapons of mass destruction] technology to terrorist groups like al-Qaida or Hezbollah.”53 Even if a terrorist group were to acquire a nuclear device, expert Michael Levi demonstrates that effective planning can prevent catastrophe: for nuclear terrorists, what “can go wrong might go wrong, and when it comes to nuclear terrorism, a broader, integrated defense, just like controls at the source of weapons and materials, can multiply, intensify, and compound the possibilities of terrorist failure, possibly driving terrorist groups to reject nuclear terrorism altogether.” Warning of the danger of a terrorist acquiring a nuclear weapon, most analyses are based on the inaccurate image of an “infallible tenfoot-tall enemy.” This type of alarmism, writes Levi, impedes the development of thoughtful strategies that could deter, prevent, or mitigate a terrorist attack: “Worst-case estimates have their place, but the possible failure-averse, conservative, resource-limited five-foot-tall nuclear terrorist, who is subject not only to the laws of physics but also to Murphy’s law of nuclear terrorism, needs to become just as central to our evaluations of strategies.”54 A recent study contends that al-Qaida’s interest in acquiring and using nuclear weapons may be overstated. Anne Stenersen, a terrorism expert, claims that “looking at statements and activities at various levels within the al-Qaida network, it becomes clear that the network’s interest in using unconventional means is in fact much lower than commonly thought.”55 She further states that “CBRN [chemical, biological, radiological, and nuclear] weapons do not play a central part in al-Qaida’s strategy.”56 In the 1990s, members of al-Qaida debated whether to obtain a nuclear device. Those in favor sought the weapons primarily to deter a U.S. attack on al-Qaida’s bases in Afghanistan. This assessment reveals an organization at odds with that laid out by nuclear alarmists of terrorists obsessed with using nuclear weapons against the United States regardless of the consequences. Stenersen asserts, “Although there have been various reports stating that al-Qaida attempted to buy nuclear material in the nineties, and possibly recruited skilled scientists, it appears that al-Qaida central have not dedicated a lot of time or effort to developing a high-end CBRN capability.... Al-Qaida central never had a coherent strategy to obtain CBRN: instead, its members were divided on the issue, and there was an awareness that militarily effective weapons were extremely difficult to obtain.”57 Most terrorist groups “assess nuclear terrorism through the lens of their political goals and may judge that it does not advance their interests.”58 As Frost has written, “The risk of nuclear terrorism, especially true nuclear terrorism employing bombs powered by nuclear fission, is overstated, and that popular wisdom on the topic is significantly fiawed.”59

#### No econ internal link—their ev just says a lot of trade flows through the region. Terrorism doesn’t literally stop all trade.

#### Empirics prove no war.

Miller 1—Morris Miller is an adjunct economics professor at the University of Ottawa [Jan.-Mar, 2001, “Poverty: A Cause of War?” *Peace Magazine*, http://peacemagazine.org/archive/v17n1p08.htm]

Economic Crises?

Some scholars have argued that it is not poverty, as such, that contributes to the support for armed conflict, but rather some catalyst, such as an economic crisis. However, a study by Minxin Pei and Ariel Adesnik shows that this hypothesis lacks merit. After studying 93 episodes of economic crisis in 22 countries in Latin American and Asia since World War II, they concluded that much of the conventional thinking about the political impact of economic crisis is wrong:

"The severity of economic crisis—as measured in terms of inflation and negative growth—bore no relationship to the collapse of regimes ... or (in democratic states, rarely) to an outbreak of violence... In the cases of dictatorships and semi-democracies, the ruling elites responded to crises by increasing repression (thereby using one form of violence to abort another)."

#### Empirical ev shows targeted killings are counterproductive counterterrorism policy

Jordan 9—Jenna Jordan is a PhD Candidate at the University of Chicago [“When Heads Roll: Assessing the Effectiveness of Leadership Decapitation,” *Security Studies*, Volume 18, Issue 4, 2009, pg. 719-755]

This article explores the effectiveness of decapitation as a counterterrorism policy. First, I identified the conditions under which decapitation results in organizational decline. A group's age, size, and type are all important predictors of when decapitation is likely to be effective. The data indicate that as an organization becomes larger and older, decapitation is less likely to result in organizational collapse. Furthermore, religious groups are highly resistant to attacks on their leadership, while ideological organizations are much easier to destabilize through decapitation.

Second, the data also show that decapitation is not an effective counterterrorism strategy. Decapitation does not increase the likelihood of organizational collapse beyond to a baseline rate of collapse for groups over time. The marginal utility for decapitation is actually negative. Groups that have not had their leaders targeted have a higher rate of decline than groups whose leaders have been removed. Decapitation is actually counterproductive, particularly for larger, older, religious, or separatist organizations.

Finally, in order to determine whether decapitation hindered the ability of an organization to carry out terrorist attacks, I looked at three cases in which decapitation did not result in a group's collapse. The results were mixed over the extent to which decapitation has resulted in organizational degradation. While in some cases decapitation resulted in fewer attacks, in others the attacks became more lethal in the years immediately following incidents of decapitation. I argue that these results are largely driven by a group's size and age.

Ultimately, these findings indicate that our current counterterrorism strategies need rethinking. The data show that independent of other measures, going after the leaders of older, larger, and religious groups is not only ineffective, it is counterproductive. Moreover, the decentralized nature of many current terrorist organizations has proven to be highly resistant to decapitation and to other counterterrorism measures. The remainder of this article will proceed in five parts. First, I will look at existing explanations for leadership decapitation, focusing on theories of charismatic leadership and social network analysis. Second, I will outline the data and methodology used in this study. Third, I will identify the conditions under which decapitation is likely to result in organizational collapse. Fourth, I will evaluate the effectiveness of decapitation. Fifth, I will look at three cases to explore the extent to which decapitation can weaken an organization. I will conclude with a discussion of policy implications.

#### Turn—Drones cause terrorism—ideological gains for insurgents outweigh tactical kinetic victories

Groves 13—Major Bryan Groves is currently the Deputy Director of the Combating Terrorism Center at the U.S. Military Academy at West Point. A graduate from Yale University's Masters of Arts in IR program, he is a Special Forces Officer and has served in Iraq and Bosnia [“America's Trajectory in the Long War1: Redirecting Our Efforts Toward Strategic Effects Versus Simply Tactical Gains,” *Studies in Conflict & Terrorism*, Vol. 36, Issue 1, 2013, Taylor & Francis, Accessed through Emory Libraries]

Stuck at the Tactical and Operational Levels

During the Long War the American effort has been stuck at the tactical and operational levels. The reason for this is that American leaders have had their attention focused too narrowly, missing that the “center of gravity” in the struggle resides in the non-fighting populations of both sides. To effect lasting change, America needs to address the ideological battle, point out inconsistencies in enemy narratives and actions, and stem the flow of new recruits into the terrorist groups.

Instead, the United States has been focused on making a series of changes that have been tactical or operational in scope. One is the significant intelligence collection effort and reorganization among the U.S. intelligence apparatus. President George W. Bush's creation of the Department of Homeland Security (DHS) and alignment of some twenty agencies under it is another. The government's passage of the Patriot Act to authorize more robust counterterrorism measures was a third new counterterrorism measure. Fourth and for better or worse, the United States used the prison facilities at Guantanamo Bay, along with renditions, to handle the difficult aspects of the legal battle against terrorists that democracies face. The primary focus of each of these aspects of the fight has been to keep America safe and prevent terror attacks against U.S. interests.

This objective is strategic in nature, but there has been an ends–means mismatch. The main means by which the government has sought to accomplish its counterterrorism goals have been to kill or capture and prosecute bad guys. By its very nature, gains won through these means are likely to be temporary because of the resilient nature and tremendous regenerative capacity of the enemy. For each operative that America kills or put behind bars, Al Qaeda, Taliban, and other like-minded groups have proven capable in maintaining a rate of new recruits that has the potential to keep pace with their losses. Whether they actually are able to do so depends on a number of factors. Some of the variables include the level of resources the U.S. levies against the group in a particular region, the resonance of their message with the local population, and the host nation's capacity and willingness to counter the organization.

A common way in which terrorist groups are able to maintain their numerical strength is because they have become exceptionally good at the “new media,”///

 which facilitates a steady flow of recruits, their radicalization, and effective mobilization toward violence on behalf of the group's objective. This is especially true of Al Qaeda. Instead of relying on “old media” or traditional television and radio outlets, Al Qaeda has developed the ability to produce and disseminate its own first-rate videos. 28 This allows them to control the message, both in its creation and in its distribution. Recognizing the need to send nuanced versions of their message to different audiences, Al Qaeda has become quite sophisticated in its approach, eclipsing other terrorist organizations and serving as a model for them. 29

The enemy's decentralized network and metamorphosis into an ideological movement (a “network of networks”) are other reasons they have rendered our kinetic victories to be of limited duration. America's military pressure definitely disrupts the enemy's ability to plan, coordinate, and conduct successful attacks—especially spectacular attacks. But they also contribute to further radicalizing elements of the Ummah (global Muslim population), especially when civilian casualties result from military strikes, though inadvertent on the American part, the perception is substantially different among some Muslim segments. Global jihadists view our strikes as a justification for their struggle. They argue their case to illicit fence sitters among the Ummah to join in solidarity with them and recognize armed jihad as the only solution. And, without other efforts to build bridges with Muslim communities domestically, the United States is in danger of furthering a polarizing trend among average Americans that could lead us in an opposite direction of our long-held “melting pot” identity. Government at all levels needs to address this issue to foster greater integration and prevent fracturing along religious, ethnic, or socioeconomic lines. 30

## \*\*\* 2NC

### Overview—NO Authority

#### And authority must have a legal basis—assertions aren’t enough

Words and Phrases 4 [Volume 4a, Cumulative Supplement Pamphlet, p. 275]

U.S.N.Y. 1867. Under the federal judiciary act, giving the Supreme Court jurisdiction to review a final judgement or decree of a state court of last resort in any suit where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, it is held that the term “authority exercised under the United States” must be something more than a bare assertion of such authority, and must be an authority having a real existence derived from competent governmental power, and in this respect the word “authority” stands on the same footing with “treaty” or “statute.” Hence, where a party claimed authority under an order of a federal court which, when rightfully viewed, did not purport to confer any authority upon him, a writ of error to the Supreme Court has dismissed.—Milligar v. Hartupee, 73 U.S. 258, 6 Wall. 258, 18 L.Ed. 829

### AT: Asserted Authority = Authority

#### Asserted authority isn’t topical. We should push back against claims of executive authority—allowing it means it will expand. The alternative is an unchecked executive

BARRON & LEDERMAN 8—\*David J. Barron, Professor of Law, Harvard Law School AND \*\*Martin S. Lederman, Visiting Professor of Law, Georgetown University Law Center [THE COMMANDER IN CHIEF AT THE LOWEST EBB -- A CONSTITUTIONAL HISTORY, February, 2008, Havard Law Review, 121 Harv. L. Rev. 941]

VII. Conclusion

Powers once claimed by the Executive are not easily relinquished. One sees from our narrative how, in a very real sense, the constitutional law of presidential power is often made through accretion. A current administration eagerly seizes upon the loose claims of its predecessors, and applies them in ways perhaps never intended or at least not foreseen or contemplated at the time they were first uttered. The unreflective notion that the "conduct of campaigns" is for the President alone to determine has slowly insinuated itself into the consciousness of the political departments (and, at times, into public debate), and has gradually been invoked in order to question all manner [\*1112] of regulations, from requirements to purchase airplanes, to limitations on deployments in advance of the outbreak of hostilities, to criminal prohibitions against the use of torture and cruel treatment. In this regard, the claims of the current Administration represent as clear an example of living constitutionalism in practice as one is likely to encounter. There is a radical disjuncture between the approach to constitutional war powers the current President has asserted and the one that prevailed at the moment of ratification and for much of our history that followed.

But that dramatic deviation did not come from nowhere. Rarely does our constitutional framework admit of such sudden creations. Instead, the new claims have drawn upon those elements in prior presidential practice most favorable to them. That does not mean our constitutional tradition is foreordained to develop so as to embrace unchecked executive authority over the conduct of military campaigns. At the same time, it would be wrong to assume, as some have suggested, that the emergence of such claims will be necessarily self-defeating, inevitably inspiring a popular and legislative reaction that will leave the presidency especially weakened. In light of the unique public fears that terrorism engenders, the more substantial concern is an opposite one. It is entirely possible that the emergence of these claims of preclusive power will subtly but increasingly influence future Executives to eschew the harder work of accepting legislative constraints as legitimate and actively working to make them tolerable by building public support for modifications. The temptation to argue that the President has an obligation to protect the prerogatives of the office asserted by his or her predecessors will be great. Congress's capacity to effectively check such defiance will be comparatively weak. After all, the President can veto any effort to legislatively respond to defiant actions, and impeachment is neither an easy nor an attractive remedy.

The prior practice we describe, therefore, could over time become a faint memory, recalled only for the proposition that it is anachronistic, unsuited for what are thought to be the unique perils of the contemporary world. Were this to happen it would represent an unfortunate development in the constitutional law of war powers. Thus, it is incumbent upon legislators to challenge efforts to bring about such a change. Moreover, executive branch actors, particularly those attorneys helping to assure that the President takes care the law is faithfully executed, should not abandon two hundred years of historical practice too hastily. At the very least, they should resist the urge to continue to press the new and troubling claim that the President is entitled to unfettered discretion in the conduct of war.

### A2 barnes Solvency Deficit

#### Barnes admits it’s the Administration’s legal framework that is the problem – counterplan solves the root of the problem. We post date their Barnes card by a year.

BARNES 5 – 16 – 13 JD, Aff Author [Beau Barnes, The War On Terror Has Changed – Now The Rules Should, Too, <http://cognoscenti.wbur.org/2013/05/16/authorization-for-use-of-military-force-beau-barnes>]

The law that forms the foundation of the war on terror is almost obsolete, undermining the legal basis of U.S. counterterrorism operations. On Thursday, the Senate Armed Services Committee will take a long-overdue first step to fix this problem, a development we should all applaud.

On September 14, 2001, Congress passed the Authorization for Use of Military Force (AUMF), authorizing “all necessary and appropriate force against those nations, organizations, or persons” behind the 9/11 attacks. Over a decade later, al-Qaida, the group that perpetrated the attacks, is on the ropes. But other armed groups – like the Haqqani Network, al-Shabab, and al-Qaida in the Islamic Maghreb – have become targets of the Obama administration’s worldwide counterterrorism efforts. The statute’s explicit reference to the 9/11 attacks, however, means it can’t authorize military action against groups with only superficial links to al-Qaida.

In the wake of 9/11, the AUMF provided legal authority and demonstrated congressional support for the U.S. invasion of Afghanistan. But the Bush administration soon abandoned the AUMF, justifying the war on terror on the basis of the president’s inherent constitutional powers as commander-in-chief. These interpretations were soon discredited, both in the court of public opinion and in actual courts, with the Supreme Court repeatedly chastising the Bush administration’s legal approach to counterterrorism.

In a laudable attempt to bring U.S. counterterrorism policy back within the rule of law, the Obama administration has invoked the AUMF as the basis for its global “targeted killing” operations, known by most simply as “drone strikes.” But, like its predecessor, this administration has also stretched the law to serve its purposes, and is currently contemplating even more implausible interpretations of the AUMF. The president and his legal team are pushing us closer to a place where every terrorist is a member of al-Qaida.

How we justify counterterrorism operations is not just a question for the lawyers – it’s a policy choice with far-reaching domestic and international implications. Military might and covert operations alone can’t win the global struggle against al-Qaida and its ideological comrades-in-arms. We need credible arguments too, both to secure support from potential partners and undermine extremist justifications. As former Defense Department general counsel Jeh Johnson argued, “we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.” The administration has already read nearly all meaning out of the legal concepts of “imminence” and “hostilities” — another far-fetched legal interpretation might be the last straw for the administration’s legitimacy in the arena of counterterrorism.

Alternatives to the AUMF exist, but they’re not good. Relying on inherent presidential power runs into considerable legal and political difficulties. Legally, this approach would risk intervention by a Supreme Court with a willingness to strike down excessive claims of executive power. Politically, it would be difficult to sustain for a president who ran for office largely on the promise of repudiating Bush-era legal excesses.

A rationale based on the international law of self-defense is similarly unappealing. Although the Obama administration maintains that the AUMF “does not authorize military force against anyone the Executive labels a ‘terrorist,’” using this legal argument would lead to precisely that result, usurping Congress’s constitutionally provided role in national security policy.

Since the United States plays an important role in setting norms of international conduct, our government should not claim legal rights that it is not prepared to see proliferate around the globe. UN officials recognize that the Obama administration’s “expansive and open-ended interpretation of the right to self-defense threatens to destroy the prohibition on the use of armed force.” CIA director John Brennan noted in 2012 that U.S. drone strikes “are establishing precedents that other nations may follow” – a concern that is already materializing.

### 2NC OLC Solvency

#### OLC rulings hold binding precedential value --- the President has an incentive to defer to those rulings in order to maintain a unitary voice on executive legal policy.

Arthur Garrison, 2013. Assistant Professor of Criminal Justice at Kutztown University. Dr. Garrison received a B.S. from Kutztown University, a M.S. from West Chester University, and a Doctor of Law and Policy from Northeastern University. “THE OPINIONS BY THE ATTORNEY GENERAL AND THE OFFICE OF LEGAL COUNSEL: HOW AND WHY THEY ARE SIGNIFICANT,” Albany Law Review, 76 Alb. L. Rev. 217, Lexis.

Various Attorneys General have reflected on the approach of Wirt and Legare that an Attorney General opinion should be approached in similar matter to that of a judge. [n48](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.47081.33858445962&target=results_DocumentContent&returnToKey=20_T18153716325&parent=docview&rand=1379281447712&reloadEntirePage=true" \l "n48) Similar to a judge, the Attorney General is bound to make determinations of law, [n49](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.47081.33858445962&target=results_DocumentContent&returnToKey=20_T18153716325&parent=docview&rand=1379281447712&reloadEntirePage=true#n49) not to rule on hypothetical cases, [n50](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.47081.33858445962&target=results_DocumentContent&returnToKey=20_T18153716325&parent=docview&rand=1379281447712&reloadEntirePage=true#n50) and prior Attorneys General opinions have precedential authority on subsequent Attorneys General. [n51](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.47081.33858445962&target=results_DocumentContent&returnToKey=20_T18153716325&parent=docview&rand=1379281447712&reloadEntirePage=true#n51) Attorney General William Moody summarized the prevailing view on the authority of an Attorney General opinion when he opined in 1904:
Of course the opinion of the Attorney-General, when rendered in a proper case - as must be the presumption  [\*231]  always from the fact that it is rendered - must be controlling and conclusive, establishing a rule for the guidance of other officers of the Government, and must not be treated as nugatory and ineffective…
If a question is presented to the Attorney-General in accordance with law - that is, if it is submitted by the President or the head of a Department - if it is a question of law and actually arises in the administration of a Department, and the Attorney-General is of opinion that the nature of the question is general and important ... and therefore conceives that it is proper for him to deliver his opinion, I think it is final and authoritative under the law, and should be so treated ....
... I entertain no doubt whatever that the Attorney-General's opinion should not only be justly persuasive ... but should be controlling and should be followed ... unless contrary to some authoritative judicial decision which puts the matter at rest. It is always to be assumed that an Attorney-General would not overlook or ignore such a decision in announcing his own conclusion. [n52](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.47081.33858445962&target=results_DocumentContent&returnToKey=20_T18153716325&parent=docview&rand=1379281447712&reloadEntirePage=true#n52)
An opinion issued by past Attorneys General and those by the OLC serve as precedent that governs current opinion-making by the OLC. [n53](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.47081.33858445962&target=results_DocumentContent&returnToKey=20_T18153716325&parent=docview&rand=1379281447712&reloadEntirePage=true#n53) One significant attribute of the two centuries of Attorneys General and OLC opinions is that they create an institutional legal foundation and tradition that governs current opinion-making regardless of the personal views of a current Attorney General or head of OLC. [n54](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.47081.33858445962&target=results_DocumentContent&returnToKey=20_T18153716325&parent=docview&rand=1379281447712&reloadEntirePage=true#n54) Legal opinions need not nor should not be guided by the personal, political, or academic opinions held by the writer of  [\*232]  the opinion. Both precedent and institutional tradition obligate the writer to produce opinions that provide the best view of the law taking into account past opinions by the OLC and Attorneys General so as to protect the continuity of the law. [n55](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.47081.33858445962&target=results_DocumentContent&returnToKey=20_T18153716325&parent=docview&rand=1379281447712&reloadEntirePage=true#n55) As Walter Dellinger, in addressing the difference in his views on presidential power to deploy the military without prior congressional approval when he was a professor and when he was head of the OLC, observed,
I expect that I would have seen a distinction between the planned deployment in Haiti and the sending of half a million troops into battle against one of the world's largest and best-equipped armies. Even apart from that, however, I am not sure I agree with the apparent assumption of Professor Tribe's letter and the Washington Times editorial - that it would be wrong for me to take a different view at the Office of Legal Counsel from the one I would have been expected to take as an academic. It might well be the case that I have actually learned something from the process of providing legal advice to the executive branch - both about the law (from the career lawyers at the Departments of Justice, State, and Defense and the National Security Council) and about the extraordinary complexity of interrelated issues facing the executive branch in general and the President in particular.
Moreover, unlike an academic lawyer, an executive branch attorney may have an obligation to work within a tradition of reasoned, executive branch precedent, memorialized in formal written opinions. Lawyers in the executive branch have thought and written for decades about the President's legal authority to use force. Opinions of the Attorneys General and of the Office of Legal Counsel, in particular, have addressed the extent of the President's authority to use troops without the express prior approval of Congress. Although it would take us too far from the main subject here to discuss at length the stare decisis effect of these opinions on executive branch officers, the opinions do count for something. When lawyers who are now at the Office of Legal Counsel begin to research an issue, they are not expected to turn to what I might have written or said in a floor  [\*233]  discussion at a law professors' convention. They are expected to look to the previous opinions of the Attorneys General and of heads of this office to develop and refine the executive branch's legal positions. That is not to say that prior opinions will never be reversed, only that there are powerful and legitimate institutional reasons why one's views might properly differ when one sits in a different place. [n56](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.47081.33858445962&target=results_DocumentContent&returnToKey=20_T18153716325&parent=docview&rand=1379281447712&reloadEntirePage=true#n56)
Both tradition and fidelity to the rule of law are important in justifying the authority of the Attorney General to issue legal opinions which are binding on the operations of the executive branch. [n57](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.47081.33858445962&target=results_DocumentContent&returnToKey=20_T18153716325&parent=docview&rand=1379281447712&reloadEntirePage=true#n57)Another reason is protection of the unitary President and the power of the President to control the operation of the executive branch. As General Bell observed,
as a matter of good government, it is desirable generally that the executive branch adopt a single, coherent position with respect to the legal questions that arise in the process of government. Indeed, the commitment of our government to due process of law and to equal protection of the laws probably requires that our executive officers proceed in accordance with a coherent, consistent interpretation of the law, to the extent that it is administratively possible to do so. It is thus desirable for the President to entrust the final responsibility for interpretations of the law to a single officer or department. The Attorney General is the one officer in the executive branch who is charged by law with the duties of advising the others about the law and of representing the interests of the United States in general litigation in which questions of law arise. The task of developing a single, coherent view of the law is entrusted to the President himself, and by delegation to the Attorney General. That task is consistent with the nature of the office of Attorney General. [n58](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.47081.33858445962&target=results_DocumentContent&returnToKey=20_T18153716325&parent=docview&rand=1379281447712&reloadEntirePage=true#n58)
As discussed below, the traditional view of the Office of the Attorney General regarding the quasi-judicial authority and status of legal opinions issued by the Attorney General is institutionalized within the OLC, the Department of Justice, and the executive  [\*234]  branch.

### AT: BW—No GE

#### No genetic engineering—it would be treatable, not transmittable, and not that bad.

Pendergrast 10 [Mark, Journalist that specializes in Medical / Epidemiological Topics, Writer @ Life Sciences Blog, Is Bioterrorism the Most Terrifying Public Health Problem?, http://scienceblogs.com/bookclub/2010/07/is\_bioterrorism\_the\_most\_terri\_1.php]

Then there is the idea that some mad scientist is going to use genetic engineering to create a new killer strain that will cause a pandemic. The June 2010 issue of Scientific American ran an article, "Terror in a Vial," asserting that the concern over nuclear bombs is old-fashioned, "an approach unsuited to the modern reality." Instead, the authors believe we should be worried about bioterrorism. "Terrorists no longer need to steal deadly pathogens when common-place genetic engineering techniques could turn a benign microbe into a killer or synthetic biology tools might be used to build a virus from scratch." Maybe, but I think natural selection is a far more potent device to create microbes to take advantage of the burgeoning human herd. There will be 9 billion of us in another 40 years. I don't think terrorists or any humans are smart enough to create a microbe that could do worse than nature already does. And if they did, it would be likely to be treatable and not easily transmissible. Much better to worry about nuclear bombs. What we really need is a well-funded public health system that conducts comprehensive surveillance for infectious as well as toxic agents. Bioterrorism will be spotted as part of that effort. Every year approximately 36,000 people die of seasonal flu-related causes. Yet no one seems unduly concerned.

### 2NC—No Retal

#### No US nuclear retaliation

Neely 3/21—Meggaen Neely, The George Washington University Master of Arts (M.A.), Security Policy Studies 2012—2014 (expected) Baylor University Master of Arts (M.A.), Public Policy and Administration 2010—2012, Richard D. Huff Distinguished Masters Student in Political Science (2012) Baylor University Bachelor of Arts (B.A.), Political Science and Government, Research Assistant, Elliott School at George Washington University, Research Intern, Project on Nuclear Issues (PONI) at Center for Strategic and International Studies (CSIS) Communications Intern at Federation of American Scientists Graduate Assistant at Department of Political Science, Baylor University [March 21, 2013, “Doubting Deterrence of Nuclear Terrorism,” http://csis.org/blog/doubting-deterrence-nuclear-terrorism]

Because of the difficulty of deterring transnational actors, many deterrence advocates shift the focus to deterring state sponsors of nuclear terrorism. The argument applies whether or not the state intended to assist nuclear terrorists. If terrorists obtain a nuclear weapon or fissile materials from a state, the theory goes, then the United States will track the weapon’s country of origin using nuclear forensics, and retaliate against that country. If this is U.S. policy, advocates predict that states will be deterred from assisting terrorists with their nuclear ambitions. Yet, let’s think about the series of events that would play out if a terrorist organization detonated a weapon in the United States. Let’s assume forensics confirmed the weapon’s origin, and let’s assume, for argument’s sake, that country was Pakistan. Would the United States then retaliate with a nuclear strike? If a nuclear attack occurs within the next four years (a reasonable length of time for such predictions concerning current international and domestic politics), it seems unlikely. Why? First, there’s the problem of time. Though nuclear forensics is useful, it takes time to analyze the data and determine the country of origin. Any justified response upon a state sponsor would not be swift. Second, even if the United States proved the country of origin, it would then be difficult to determine that Pakistan willingly and intentionally sponsored nuclear terrorism. If Pakistan did, then nuclear retaliation might be justified. However, if Pakistan did not, nuclear retaliation over unsecured nuclear materials would be a disproportionate response///

 and potentially further detrimental. Should the United States launch a nuclear strike at Pakistan, Islamabad could see this as an initial hostility by the United States, and respond adversely. An obvious choice, given current tensions in South Asia, is for Pakistan to retaliate against a U.S. nuclear launch on its territory by initiating conflict with India, which could turn nuclear and increase the exchanges of nuclear weapons. Hence, it seems more likely that, after the international outrage at a terrorist group’s nuclear detonation, the United States would attempt to stop the bleeding without a nuclear strike. Instead, some choices might include deploying forces to track down those that supported the suicide terrorists that detonated the weapon, pressuring Pakistan to exert its sovereignty over fringe regions such as the Federally Administered Tribal Areas, and increasing the number of drone strikes in Waziristan. Given the initial attack, such measures might understandably seem more of a concession than the retaliation called for by deterrence models, even more so by the American public. This is not an argument against those technologies associated with nuclear forensics. The United States and International Atomic Energy Agency (IAEA) should continue their development and distribution. Instead, I question the presumed American response that is promulgated by deterrence advocates. By looking at possibilities for a U.S. response to nuclear terrorism, a situation in which we assume that deterrence has failed, we cast doubt on the likelihood of a U.S. retaliatory nuclear strike and hence cast doubt on the credibility of a U.S. retaliatory nuclear strike as a deterrent. Would the United States launch a nuclear weapon now unless it was sure of another state’s intentional sponsorship of nuclear terrorism? Any reasonable doubt of sponsorship might stay the United States’ nuclear hand. Given the opaqueness of countries’ intentions, reasonable doubt over sponsorship is inevitable to some degree. Other countries are probably aware of U.S. hesitance in response to terrorists’ use of nuclear weapons. If this thought experiment is true, then the communication required for credible retaliatory strikes under deterrence of nuclear terrorism is missing.

## \*\*\* 1NR

### AT: Trade

#### Doesn’t solve conflict

**Gelpi and Greico 05,** Associate Professor and Professor of Political Science, Duke University

 (Christopher, Joseph, “Democracy, Interdependence, and the Sources of the Liberal Peace”, Journal of Peace Research)

As we have already emphasized, increasing levels of trade between an autocratic and democratic country are unlikely to constrain the former from initiating militarized disputes against the latter. As depicted in Figure 1, our analysis indicates that an increase in trade dependence by an autocratic challenger on a democratic target from zero to 5% of the former's GDP would increase the probability of the challenger’s dispute initiation from about 0.31% to 0.29%. Thus, the overall probability of dispute initiation by an autocratic country against a democracy is fairly high (given the rarity of disputes) at 23 nearly .3% per country per year. Moreover, increased trade does little or nothing to alter that risk. Increases in trade dependence also have little effect on the likelihood that one autocracy will initiate a conflict with another. In this instance, the probability of dispute initiation remains constant at 0.33% regardless of the challenger’s level of trade dependence.

### 1nr oview

#### War with Iran risks nuclear world war III.

**Reuveny 10** - Professor of political economy @ Indiana University [Dr. Rafael Reuveny (PhD in Economics and Political Science from the University of Indiana), “Guest Opinion: Unilateral strike on Iran could trigger world depression,” McClatchy Newspaper, Aug 9, 2010, pg. http://www.indiana.edu/~spea/news/speaking\_out/reuveny\_on\_unilateral\_strike\_Iran.shtml

BLOOMINGTON, Ind. -- A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash.
For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force.
Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground.
All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians, but also the Chinese and, likely, the Russians as well. By now, Iran has also built redundant command and control systems and nuclear facilities, developed early-warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces.
Because Iran is well-prepared, a single, conventional Israeli strike — or even numerous strikes — could not destroy all of its capabilities, giving Iran time to respond.
A regional war
Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt, and the Palestinian Authority to join the assault, turning a bad situation into a regional war.
During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents.
Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.
In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.
An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.
Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.
The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops. Russia, China, Venezuela, and maybe Brazil and Turkey — all of which essentially support Iran — could be tempted to form an alliance and openly challenge the U.S. hegemony.
Replaying Nixon’s nightmare
Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario.

#### ( ) Strikes end Muslim cooperation in the War on Terror

Larrabee ‘6

[Stephen,- Corporate Chair in European Security @ RAND 3-9 “Defusing the Iranian Crisis” <http://www.rand.org/commentary/030906OCR.html> //MGW-JV]

Moreover, the political costs would be very high. A military strike would unleash a wave of nationalism and unite the Iranian population behind the current regime, ending any prospect of internal change in the near future and ensuring decades of enmity from the Iranian middle class and youth, who are largely opposed to the current regime. It would also provoke outrage in the Muslim world, probably making any attempt to obtain the support of moderate Muslims in the war on terror impossible.

#### That’s the key internal link to victory

AFP ‘5 [Agence France Presse. “Trust and Confidence of Muslims “Crucial” in Fight Against Terror” 2005. Lexis//MGW-JV]

The United States must use its "soft power" to gain the trust and confidence of Muslims worldwide if it is to "prevail over terrorism", Singapore Prime Minister Lee Hsien Loong said Friday. Opening an international security conference, Lee said one reason why many moderate Muslims are reluctant to condemn and disown religious extremists was the "wide gap that separates the US from the Muslim world". He said the large-scale US assistance to Indonesia, the world's biggest Muslim nation, in the aftermath of the December 26 tsunami disaster had not completely erased the resentment many Muslims feel toward the United States. "The sources of this Muslim anger are historical and complex, but they have been accentuated in recent years by Muslim perceptions of American unilateralism and hostility to the faith," Lee told the audience, which included US Defense Secretary Donald Rumsfeld. Lee cited a survey that found that in 2000 three quarters of Indonesians said they were "attracted" to the United States but that by 2003 the number had fallen to just 15 percent. Lee said US help to bring relief assistance to the tsunami victims in Indonesia had touched the hearts of many Indonesians. "But this singular event has not eliminated the antipathy that many Muslims still feel towards the US," he said. He cited demonstrations worldwide, including in Jakarta and Kuala Lumpur, following a report by the US magazine Newsweek that US interrogators at the Guantanamo Bay detention centre had flushed a copy of the Koran down the toilet. Newsweek later withdrew the report, saying they could not confirm the story with their source. "The US needs to make more use of its 'soft power' to win over international opinion, correct misperceptions and build trust and credibility, especially in the Muslim world," Lee said. "In the long term this is vital if the US is to prevail over terrorism, and to maintain its position of global leadership."

#### More sanctions DESTROY cred – flip the aff

HUFFINGTON POST 11 – 13 – 13 [Obama Seeks Time From Congress On Iran Diplomacy, <http://www.huffingtonpost.com/2013/11/13/obama-congress-iran_n_4266240.html>]

Responding to Rouhani's promise of flexibility, Obama has staked significant international credibility on securing a diplomatic agreement. His telephone chat with Rouhani in September was the first direct conversation between U.S. and Iranian leaders in more than three decades. The unprecedented outreach has angered U.S. allies such as Israel and Saudi Arabia. And lawmakers are deeply skeptical.

"This is a decision to support diplomacy and a possible peaceful resolution to this issue," White House press secretary Jay Carney told reporters Tuesday. "The American people justifiably and understandably prefer a peaceful solution that prevents Iran from obtaining a nuclear weapon, and this agreement, if it's achieved, has the potential to do that. The American people do not want a march to war."

### 1nr No Sanctions Now

#### AND – Obama is holding them off – proves the link and that we’ll win uniqueness.

DREYFUSS 11 – 13 – 13 Nation contributing editor, specializing in politics and national security [Bob Dreyfuss, Did the Israel Lobby Agree to Hold Off on New Iran Sanctions?, <http://www.thenation.com/blog/177144/did-israel-lobby-agree-hold-new-iran-sanctions>]

The New York Times today reports, in an odd turn of phrase, that the Obama administration’s second-biggest enemy in its search for a deal with Iran is, well, the US Congress. Says the Times, the administration “is gingerly weighing a threat to the talks potentially more troublesome than the opaque leadership in Tehran: Congress.” That’s because the Senate is considering the passage of yet another round of anti-Iran sanctions, following the passage last summer of a similar bill by the House. Making explicit the fact that he understands perfectly that yet more superfluous economic sanctions now, in the midst of delicate talks with Iran, could upset the whole thing, Senator Bob Corker (R-TN) said: “I understand the problem that this creates at the negotiating table.”

In other words, he understands it—and he wants to do it anyway.

Today the leaders of the US negotiating team are on Capitol Hill, trying to dissuade senators from that sort of outright sabotage. Secretary of State John Kerry, along with Wendy Sherman, are meeting with members of the Senate Banking Committee and others to beg, plead and cajole the Capitol Hill busybodies, many of whom are strongly influenced by the Israel lobby and its chief arm, the American Israel Public Affairs Committee. So far, it appears that the Democratic-controlled Senate, despite its AIPAC ties, is willing to go along with White House requests to avoid interfering in the talks. Reports The Wall Street Journal:

Proponents of tougher sanctions could seek avenues beside the Banking Committee to move a measure.… Senate Majority Leader Harry Reid (D., Nev.) is likely to oppose such a move, however. Mr. Reid on Tuesday warned against attempts to force “extraneous issues” into the debate over the defense bill.

Obama administration officials have been reaching out to a number of lawmakers in recent days to tamp down any momentum for new sanctions. Mr. Kerry has personally spoken with key senators while traveling in recent days, and was to speak to top Senate Democrats on Wednesday.

As for AIPAC itself, it issued a statement saying that it won’t accept any delays in sending a wrecking ball aimed at the talks. “AIPAC continues to support congressional action to adopt legislation to further strengthen sanctions, and there will absolutely be no pause, delay or moratorium in our efforts.”

The comment on “pause, delay or moratorium” follows an effort by the White House, which recently met with American Jewish organizations, to seek exactly that: a moratorium on new anti-Iran sanctions while the talks are underway. As the AP reported on October 29:

The White House has updated Jewish and pro-Israel groups about its talks with Iran amid concerns by some of the groups about the U.S. easing sanctions pressure on Iran over its nuclear program.

The American Israel Public Affairs Committee, the powerful pro-Israel lobbying group, attended the meeting along with the Anti-Defamation League, the American Jewish Committee, and the Conference of Presidents of Major American Jewish Organizations.

The White House’s National Security Council says senior officials told Jewish leaders that the U.S. will not let Iran obtain a nuclear weapon but wants to resolve the nuclear issue through diplomacy.

The Obama administration is asking Congress to hold off on new sanctions while it pursues diplomacy. But Israel and AIPAC are pressing the administration to retain harsh economic sanctions.

That’s tricky for AIPAC, and for Israel. Because if they defy the White House and push aggressively for new sanctions and fail, it will be a major, even unprecedented defeat for AIPAC—plus, it makes outright enemies of the Obama administration and the president himself. Scuttlebutt after the White House meeting suggested that the Jewish groups (AIPAC, the ADL and the AJC) had quietly agreed to allow the negotiations to unfold without the added interference of new sanctions.

Laura Rozen, reporting for Al-Monitor, penned a detailed report on the talks between the White House and the Jewish groups, at which Sherman was joined by Susan Rice, Obama’s national security adviser, and two top White House aides, Antony Blinken and Ben Rhodes.

Following the talks, there was conflicting information about whether or not the Jewish groups (which, collectively, make up the bosses of the Israel lobby) had agreed to a “pause” in their lobbying efforts. According to Haaretz, the liberal Israeli daily, the four groups did indeed agree to a moratorium:

Though they refrained from describing it as “a deal” or a quid pro quo, sources familiar with the meeting said they had agreed to a limited “grace period” only after hearing assurances from the Administration that it had no intention of easing sanctions or of releasing Iranian funds that have been “frozen” in banks around the world.

That was later denied by the same groups, according to The Jerusalem Post:

A report published in Haaretz on Friday claiming that US Jewish leaders have agreed to halt their lobbying efforts in support of a new sanctions bill against Iran has been roundly denied by their organizations.

“No one has given any commitment to make some public moratorium,” said sources with an organization represented at the meeting, “categorically denying” that any such commitment was given.

However, in an on-the-record interview with Haaretz, the ADL’s Abraham Foxman (who attended the White House gathering on October 29) confirmed the cease-fire:

ADL National Director Abe Foxman has confirmed that leaders of major Jewish organizations have agreed on a limited “time out” during which they will not push for stronger sanctions on Iran.

“That means that we are not lobbying for additional sanctions and we are not lobbying for less sanctions,” Foxman told Haaretz, as well as US media outlets.

Foxman was responding to a report in Haaretz on Friday that cited understandings reached among the leaders of four major Jewish organizations who participated in a Monday meeting at the White House with a group of senior White House officials led by National Security Adviser Susan Rice.

Foxman was specific, too:

Foxman made clear, however, that the hiatus is only tactical in nature. “We still believe that sanctions have worked and that additional sanctions would also work,” Foxman said, “but the Administration feels otherwise. They believe that further sanctions at this time would harm prospects for a diplomatic solution.”

“We didn’t change our positions and they didn’t change their positions. But we’re not going to be out there before the end of the next two meetings of the P5+1 with Iran.”

The risk for the Israel lobby is enormous. If it tries to wreck the talks and fails, because members of Congress—especially Democrats in the Senate—sanely agree to postpone a new round of sanctions, it will look powerless and ineffective. So it has to tread carefully, all while being pushed, hard, by Netanyahu and Co. in Israel.

According to Politico, Senate Democrats are willing to give the White House room to negotiate:

Banking Committee Chairman Tim Johnson (D-S.D.) said his panel will not draft new economic penalties toward Iran until the Senate has fully digested that briefing. Even then, Johnson said he will defer to his leadership and the White House to give him the green light. …

Two members of Democratic leadership, Sens. Patty Murray of Washington and Chuck Schumer of New York, both said they remain undecided on pursuing new sanctions and will continue to talk to top administration brass.

#### Obama has won the sanctions fight – SO FAR

NYT 11 – 12 – 13 [Iran Talks Face Resistance in U.S. Congress, <http://www.nytimes.com/2013/11/13/world/middleeast/iran-talks-face-resistance-in-us-congress.html>]

After having come tantalizingly close over the weekend to an agreement to freeze Iran’s nuclear program, the Obama administration is gingerly weighing a threat to the talks potentially more troublesome than the opaque leadership in Tehran: Congress.

Secretary of State John Kerry will meet behind closed doors on Wednesday afternoon with members of the Senate Banking, Housing and Urban Affairs Committee to try to head off a new round of stiff sanctions on Iran that administration officials fear could derail the talks in Geneva.

In addition, Vice President Joseph R. Biden Jr.; Mr. Kerry; Wendy R. Sherman, the administration’s chief negotiator; and David S. Cohen, under secretary of the Treasury for terrorism and financial intelligence, are scheduled to brief Senate Democratic leaders that day in a full-court press to win backing of the diplomatic initiative.

But the administration is running headlong into Prime Minister Benjamin Netanyahu of Israel and pro-Israel lobbyists pressing their case that the deal taking shape would be a major blunder.

Diplomats from the United States and five other countries are pursuing an accord that would cause Iran to freeze its nuclear program in exchange for the loosening of some of the sanctions that have crippled the Iranian economy. Talks broke off this weekend but are scheduled to resume on Nov. 20.

But they are facing bipartisan doubt about their course. “I understand what they’re saying about destroying a chance for a peaceful outcome here with new sanctions, but I really do believe if the new sanctions were crafted in the right way, they would be more helpful than harmful,” said Senator Lindsey Graham, Republican of South Carolina.

Senator Charles E. Schumer of New York, the third-ranking Democrat, was briefed Monday on the negotiations by Mr. Biden and has met with the White House chief of staff, Denis R. McDonough, as well as with cabinet officials. Yet he still proclaimed himself “dubious” of the possible agreement because of concerns that the administration might be willing to give too much away while getting too little in return.

In a letter to the editor in The New York Times last week and an opinion article in USA Today, Senator Robert Menendez of New Jersey, the Democratic chairman of the Foreign Relations Committee, indicated he would press forward against the administration’s wishes on the sanctions legislation.

“Iran is on the ropes because of its intransigent policies and our collective will, and it would be imprudent to want an agreement more than the Iranians do,” he wrote in USA Today on Monday. “Tougher sanctions will serve as an incentive for Iran to verifiably dismantle its nuclear weapons program.”

A powerful lobbying group, the American Israel Public Affairs Committee, issued its own broadside. “Aipac continues to support congressional action to adopt legislation to further strengthen sanctions, and there will absolutely be no pause, delay or moratorium in our efforts,” the group’s president, Michael Kassen, said in a statement this month.

But the group’s officials are taking a wait-and-see stance for now. If the talks collapse on their own, the group can avoid wading into a political donnybrook, but if a dipomatic breakthrough is achieved, Aipac is ready to mount an aggressive campaign to stop it, according to one person familiar with its thinking.

### Undecided Votes Now

#### Multiple key votes undecided – tough fight for Obama

MID EAST MONITOR 11 – 14 – 13 [Congress upset by Obama's push back against new Iran sanctions, <http://www.middleeastmonitor.com/news/americas/8322-congress-upset-by-obamas-push-back-against-new-iran-sanctions>]

A number of senior members of the US Congress have expressed their anger at the Obama Administration's strong pleas to postpone imposing new sanctions on Iran, highlighting how tough the president's task of pursuing any rapprochement with Tehran will be.

Vice President Joe Biden and Secretary of State John Kerry, both former senators, visited the Congress on Capitol Hill accompanied by other top officials to warn senators that implementing new measures now could ruin the delicate talks between Iran and world powers regarding Tehran's nuclear programme.

"The risk is that if Congress were to make a unilateral move to increase sanctions, it could break the trust in those negotiations and actually stop or dismantle them," Kerry told reporters on Wednesday before the closed-door briefing.

After the briefing, some legislators said they were not convinced.

"It was a very unsatisfying briefing," remarked Senator Bob Corker, the top Republican member of the Senate Foreign Relations Committee.

However, Corker said that he had not yet made up his mind about whether they should go forward with imposing new sanctions on Iran. Corker is also a member of the Senate Banking Committee, which oversees the sanctions measures.

Democratic Senator Tim Johnson, the chairman of the Banking Committee, said that he is also still undecided regarding the issue.

However, a spokesperson for Democratic Senator Robert Menendez, who is the chairman of the Foreign Relations Committee and a member of the Banking Committee, conveyed after the meeting that he still wanted to impose the new sanctions.

President Barack Obama requested a "temporary pause" on any new sanctions to give diplomats from the US and the five other world powers a chance to negotiate with Tehran and see whether it may be possible to resolve a decade-long dispute over its nuclear programme.

The US, EU and Iran have been working on a proposal to end the dispute regarding the Iranian nuclear programme for months.

Kerry said that, "We have the P5+1; Germany, Great Britain, France, Russia, China and the US have all agreed on the proposal that's on the table."

"If we impose more sanctions suddenly," added Kerry, "then some members of this alliance will think we are dealing in bad faith and will run off," thus potentially sabotaging the negotiations.

The negotiators failed to reach an agreement during the latest talks that ended on Saturday in Geneva. A new round of talks is scheduled to begin on 20 November.

Iran argues that its nuclear programme is peaceful and is aimed at generating electricity, but its refusal to stop sensitive activities has led the West to impose strict sanctions on its vital oil exports as well as its banking sector.

The new set of intensified sanctions is currently being discussed in Congress, where lawmakers, including many of Obama's fellow Democrats, generally take a more hardline approach towards Iran than the administration.

### 2nc/1nr Thumpers

#### Random Domestic thumpers don’t matter – Obama is focusing on foreign policy because it isn’t tangled with domestic issues

HAMMOND 11 – 14 – 13 formerly a special adviser in the government of former UK Prime Minister Tony Blair, and also a geopolitical analyst at Oxford Analytica [Andrew Hammond, Iranian diplomacy underscores Obama's search for legacy, <http://www.cnn.com/2013/11/13/opinion/iran-obama-legacy-hammond/>]

As well as legacy-building, the likelihood of Obama concentrating more on foreign policy also reflects domestic U.S. politics. Particularly the intense polarization and gridlock of Washington.

Since re-election, Obama has achieved little domestic policy success. His gun control bill was defeated, immigration reform faces significant opposition in the Republican-controlled House of Representatives, and the prospect of a long-term federal budgetary "grand bargain" with Congress looks unlikely. Moreover, implementation of his landmark healthcare initiative has been botched.

Many re-elected presidents in the post-war era have, like Obama, found it difficult to acquire domestic policy momentum. In part, this is because the party of re-elected presidents, as with the Democrats now, often hold a weaker position in Congress. Thus Dwight Eisenhower in 1956, Richard Nixon in 1972, and Bill Clinton in 1996 were all re-elected alongside Congresses where both the House and Senate were controlled by their partisan opponents.

Another factor encouraging foreign policy focus in second terms is the fact that re-elected presidents have often been impacted by domestic scandals in recent decades. Thus, Watergate ended the Nixon administration in 1974, Iran-Contra badly damaged the Reagan White House, and the Lewinsky scandal led to Clinton being impeached.

Since Obama's re-election, a series of problems have hit the administration. These include revelations that the Internal Revenue Service targeted some conservative groups for special scrutiny; and the Department of Justice's secret subpoenaing of private phone records of several Associated Press reporters and editors in the wake of a terrorist plot leak.

Even if Obama escapes further significant problems, he will not be able to avoid the "lame-duck" factor. That is, as a president cannot seek more than two terms, political focus will refocus elsewhere, particularly after the November 2014 congressional ballots when the 2016 presidential election campaign kicks into gear.

Taken overall, Iranian diplomatic progress and wider recent events in the Middle East are therefore likely to accentuate the incentives for Obama to place increasing emphasis on foreign policy -- which Congress has less latitude over -- in his remaining period of office. And, this shift is only likely to be reinforced if, as anticipated, the U.S. economic recovery continues to build up steam in 2014.

#### Negotiations now – Obama focused

HAMMOND 11 – 14 – 13 formerly a special adviser in the government of former UK Prime Minister Tony Blair, and also a geopolitical analyst at Oxford Analytica [Andrew Hammond, Iranian diplomacy underscores Obama's search for legacy, <http://www.cnn.com/2013/11/13/opinion/iran-obama-legacy-hammond/>]

Significant progress was reportedly made last weekend in Geneva toward a landmark nuclear agreement with Iran. And, as talks concluded on November 10, U.S. Secretary of John Kerry announced that negotiations will start again on November 20.

Despite the concerns of regional U.S. allies like Israel and Saudi Arabia, and also a significant number of legislators in the U.S. Congress, it is clear that the Obama administration is pushing strongly for deal as part of its wider Middle Eastern strategy. Indeed, Kerry has now spent more time negotiating with counterpart Iranian officials than any other U.S. high-level engagement for perhaps three decades.

The seriousness of negotiations was emphasized by the fact that, as well as Kerry and his Iranian counterpart Mohammad Javad Zarif, foreign ministers from Russia, the United Kingdom, Germany and France, and the Chinese deputy foreign minister, came together.

### 2NC/1NR Link Wall

#### Usurping Obama’s authority undermines his leverage and the agenda.

Lillis and Wasson, The Hill, 9-7-13

(Mike and Erik, “Fears of wounding Obama weigh heavily on Democrats ahead of vote,” http://thehill.com/homenews/house/320829-fears-of-wounding-obama-weigh-heavily-on-democrats, accessed 9-15-13, CMM)

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."¶ “Clearly a loss is a loss,” a Senate Democratic aide noted.¶ Publicly, senior party members are seeking to put a firewall between a failed Syria vote — one that Democrats might have a hand in — and fiscal matters.¶ Rep. Gerry Connolly (D-Va.) said Friday that the fear of damaging Obama just eight months into his second term "probably is in the back of people's minds" heading into the Syria vote. But the issue has not percolated enough to influence the debate.¶ "So far it hasn't surfaced in people's thinking explicitly," Connolly told MSNBC. "People have pretty much been dealing with the merits of the case, not about the politics of it — on our side."¶ Moran said he doesn't think the political aftershocks would be the “deciding factor” in their Syria votes.¶ "I rather doubt that most of my colleagues are looking at the bigger picture," he said, "and even if they were, I don't think it would be the deciding factor."¶ Moran said the odds of passing the measure in the House looked slim as of Friday.¶ Other Democrats are arguing that the Syria vote should be viewed in isolation from other matters before Congress.¶ “I think it’s important each of these major issues be decided on its own — including this one,” Rep. Sander Levin (Mich.), senior Democrat on the House Ways and Means Committee, said Friday.¶ With Obama scheduled to address the country Tuesday night, several Democrats said the fate of the Syria vote could very well hinge on the president's ability to change public opinion.¶ “This is going to be a fireside chat, somewhat like it was in the Thirties," Levin said. "I wasn’t old enough to know, one has to remember how difficult it was for President Roosevelt in WWII."¶ Rep. Elijah Cummings (D-Md.), who remains undecided on the Syria question, agreed.¶ "It's very, very important that the case for involvement in Syria not only be made to the members of Congress and the Senate, but it must also be made to the American people," Cummings said Friday in the Capitol.¶ Still other Democrats, meanwhile, are arguing that the ripple effects of a Syria vote are simply too complicated to game out in advance. Some said the GOP has shown little indication it will advance Obama’s agenda even after his reelection, so a Syria failure would do little damage.¶ “There is a constant wounding [of Obama] going on with the Tea Party on budgets, appropriations and the debt ceiling,” said Rep. Sheila Jackson Lee (D-Texas). “I am going to reach out to my colleagues, Tea Party or not, and ask is this really the way you want to project the political process?”¶ Jackson Lee said using Syria to score political points would be “frolicking and frivolity” by the Tea Party.¶ Yet others see a more serious threat to the Democrats' legislative agenda if the Syria vote fails.¶ A Democratic leadership aide argued that Republicans — some of whom are already fundraising on their opposition to the proposed Syria strikes — would only be emboldened in their fight against Obama's agenda if Congress shoots down the use-of-force resolution.¶ "It's just going to make things harder to do in Congress, that's for sure," the aide said Friday.¶ But other aides said Obama could also double down on fighting the cuts from sequestration if he becomes desperate for a win after Syria, and the net effect could be positive.¶ A leading Republican strategist echoed that idea.¶ “Should the President lose the vote in Congress, he will be severely weakened in the eyes of public opinion, the media, the international crowd and the legislative branch," The Hill columnist John Feehery said Friday on his blog.

#### The discussion of AUTHORITY will cost capital and trade-off

O’Neil 07 (David, Adjunct Associate Professor of Law – Fordham Law School, “The Political Safeguards of Executive Privilege”, Vanderbilt Law Review, 60 Vand. L. Rev. 1079, Lexis)

The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes///

, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

### 1nr PC key

#### Obama’s capital will prevent congress from acting

MATTHEW 11 – 13 – 13 Gulf News Editor at Large [Francis Matthew, Nuclear deal with Iran is on right track, <http://gulfnews.com/opinions/columnists/nuclear-deal-with-iran-is-on-right-track-1.1254736>]

A nuclear deal with Iran is now a real possibility. All sides have recognised that they want to find a way forward and they all agree that diplomacy can work. This is a huge shift from the deliberately confrontational days of Iranian president Mahmoud Ahmadinejad and US president George W. Bush, when all sides wanted to maximise the drama of the confrontation for their own purposes.

But despite high hopes of a deal being announced in Geneva early this week, it failed due to last-minute problems and a dramatic refusal from the French to rubber stamp the six-month interim programme. However, in their final debrief, European Union Foreign Policy Chief Catherine Ashton, Iran’s Foreign Minister Mohammad Javad Zarif and US Secretary of State John Kerry all spoke of how much closer they were to an agreement than they have been in decades.

Nonetheless, the devil is in the detail and none more so when dealing with making Iran’s nuclear facilities open to the international community. The mechanics of ensuring full transparency at a large number of different kinds of nuclear facilities are both politically sensitive and technically difficult. They make it very easy to derail progress unless there is a clear political lead from the politicians that would encourage (or even allow) trust between the two sides.

Israeli Prime Minister Benjamin Netanyahu has unsurprisingly already criticised the deal as a complete sell-out to Iran. Saudi Arabia is leading a strand of Gulf Cooperation Council thought, which has deep reservations about bringing Shiite Iran back into the mainstream community of the region. In Tehran, the hardliners are already working on the Supreme Leader, who last week said that he does not trust the US.

There is also strong opposition to the agreement in Congress, where Congress has just passed a bill that will put even tougher sanctions on Iranian oil exports and Robert Menendez, the Democrat who chairs the Senate Foreign Affairs Committee, has refused pleas from Barack Obama’s administration to stop the bill in the Senate. He wants any agreement in Geneva to include a commitment for Iran to halt any enrichment of uranium.

However, diplomacy will continue. What became apparent in Geneva was that the full P5+1 (US, Russia, France, Britain, China and Germany) had been working on the framework of a final agreement, but the six-month interim deal getting Iran to slow down its activities in return for some sanctions relief, had been largely agreed bilaterally between Iran and the US. This was accepted by most of the P5+1, but infuriated the French who resented being presented with this fait accompli and they refused to be stampeded into agreement.

French Foreign Minister Laurent Fabius was concerned in particular about two things: Agreeing to Iran’s right to enrich uranium right at the start of the process and the continuing construction of a heavy-water plant near Arak, which is due to come on-steam next year and could produce plutonium, would enable it to be weaponised. The Arak plant has genuinely worried all western countries and Israel has been predictably vocal in reminding everyone involved in the talks that work at Arak should stop completely as part of any interim deal.

Despite the French, things are moving in the right direction on several tracks. While the diplomats were hammering away at each other over four days in Geneva, the International Atomic Energy Agency (IAEA) chief, Yukiya Amano, won IAEA access to Iran with an agreement that the IAEA will visit the Arak heavy-water production plant and a uranium mine at Gchine within three months. This may help allay French fears, which would improve the atmosphere at Geneva when the diplomats meet again in just over a week.

Nonetheless, there is not likely to be any rush to support the deal, since Iran has very few international friends. Therefore, it will take considerable political courage for Obama to go to Congress and the Senate to argue in favour of trusting Tehran, after decades of deep mistrust. It will be a particular challenge that any deal must involve some elements that ensure Iran’s self respect, which will be a red rag to anti-Iranians in Congress and to the Israelis who will mount a fierce counter attack.

Obama will be asked to spend a large amount of his dwindling political capital on getting the deal through, just at the time that he has lost control of Congress over the continuing brinkmanship to get the US government budget approved every few months, as well as over intervening in Syria.

The most important argument that Obama has to emphasise is that it will stop Iran being able to develop a nuclear weapon. This fundamental element of any deal should be enough to get even the dimmest Congressman on side and it should also be enough for the Israelis.

### A2 Obama circs

#### doesn’t solve – introduction triggers the impact

NYT 11 – 12 – 13 [Iran Talks Face Resistance in U.S. Congress, <http://www.nytimes.com/2013/11/13/world/middleeast/iran-talks-face-resistance-in-us-congress.html>]

Sanctions legislation would require the president’s signature, but even its introduction could upset the talks. Administration officials fear that congressional action would raise questions in Tehran about the value of Western promises while potentially angering some negotiating team members, especially China and Russia, whose companies would be hit especially hard by the tightening economic noose.

### 1nr – US-Iran Deal Yes

#### Deal will happen – delay post Geneva is good

MALONEY 11 – 13 – 13 senior fellow at the Brookings Institution's Saban Center for Middle East Policy. [Suzanne Maloney, INSIGHT: US, Iran Find Nuclear Breakthrough Hard to Achieve, http://middleeastvoices.voanews.com/2013/11/insight-us-iran-find-nuclear-breakthrough-hard-to-achieve-26834/]

In the lead-up to last week’s negotiations on the Iranian nuclear issue, all signs seemed to herald the possibility of a historic breakthrough. Officials in both Washington and Tehran were careful to try to suppress irrational exuberance, but in private briefings and official media statements, they could not help but convey an air of anticipation.

After all, the talks were building upon a suddenly conducive context ushered in by the June election of a moderate Iranian president, Hassan Rouhani, who has made it his mission to resolve the standoff and halt the deterioration of his country’s economy and its standing in the world. Since his election, and particularly since his September visit to New York, when he exchanged unprecedented telephone greetings with U.S. President Barack Obama, the long-deadlocked negotiating process on the nuclear issue has taken on a feverish pace.

An opening round last month in Geneva produced hope of steady progress, with technical talks and new Iranian cooperation with the International Atomic Energy Agency. And the start to last week’s talks was serious enough to trigger travel by six foreign ministers - including U.S. Secretary of State John Kerry - who interrupted their agendas in order to hurry to Geneva to join Iran’s foreign minister and the European Union foreign policy chief in leading the talks on Friday and Saturday.

It seemed all that was left to do was to break out the celebratory champagne - non-alcoholic, of course, in deference to the Iranian theocratic sensitivities - and set up the podium for the signing ceremony. And then, just as suddenly, expectations deflated even more rapidly than they had risen, with the furious release of rumor and recriminations shared via Twitter by the pack of reporters and commentators jostling impatiently in a Geneva hotel lobby.

When the negotiations finally wound down in the early hours of a Swiss Sunday morning, the dignitaries emerged empty-handed. In the end, they came, they talked (and talked some more), but they could not conquer more than a dozen years of distrust that surrounds the issue and the decades of animosity that infects the U.S.-Iranian dynamic.

The good news

The failure should be kept in perspective. After all, the latest Geneva round still represents the most serious, sustained dialogue between leading American and Iranian officials since the revolution. And while surely the six foreign ministers who rushed to Geneva would have preferred a photo-op finish complete with a signing ceremony, the engagement of all these principals in the diplomatic grunt work of trying to hammer out mutually acceptable terms should have a salutary impact on their state’s investment in an eventual outcome.

Despite the doom-sayers, diplomacy will go on. The incentives that all parties see for achieving a negotiated agreement remain just as powerful as ever, and the disincentives surrounding any possible alternative course continue to loom large even for skeptics of the process.

“The passing of time will contract political space and this in turn may erode whatever combination of political capital and courage both sides were willing to invest in this deal.” – Suzanne Maloney, Brookings Saban Center

The time-out may be just what the embryonic process needs - a chance to buy time and space to work through the continuing contentious issues. The controversy among some of America’s allies over the terms proposed in the talks will help sell the deal within Iran, to the extent that it needs selling. And a protracted germination is a far more viable path to a sustainable solution than an agreement that is rushed to conclusion amidst a fragmenting political coalition.

#### Deal likely – ignore dire warnings of deal failure

CBS NEWS 11 – 13 – 13 Lawmakers push new sanctions to aid Iran nuclear talks, <http://www.cbsnews.com/8301-250_162-57611679/lawmakers-push-new-sanctions-to-aid-iran-nuclear-talks/>

Despite some of the dour analyses that accompanied the breakdown of the talks in Geneva, others argued that the overall picture was more encouraging than headlines might suggest.

"I think any time that you are actually at the diplomatic table negotiating on a question that, just a year or so ago, would have been unfathomable - the idea that we could actually get Iran to back off its pursuit of nuclear weapons," said Rep. Debbie Wasserman-Schultz, D-Fla., also the chair of the Democratic National Committee, on CNN. "It demonstrates that the sanctions that we've imposed thus far have been extremely painful and effective and that President Obama's emphasis on trying to do all that we can to make sure that Iran cannot attain those nuclear weapons is working and we're going in the right direction."

"Of course," she added, any deal "has to be one that makes sense for the United States' security interests and also the interests of our allies in the region."