# 1NC Round 5 GSU

### 1NC K

#### 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. Only our alternative displaces the source of executive overreach. 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.

### 1NC T

#### A. Interpretation --- targeted killings are the use of force against specific individuals in an armed conflict who are identified in advance of the operation.

Philip Alston, 2011. John Norton Pomeroy Professor of Law, New York University School of Law. The author was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010. “The CIA and Targeted Killings Beyond Borders,” Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 283, Lexis.

There are thus three central requirements for a workable definition. The first is that it be able to embrace the different bodies of international law that apply and is not derived solely from either IHRL or IHL. The second is that it should not prejudge the question of the legality or illegality  [\*298]  of the practice in question. And the third is that it must be sufficiently flexible to be able to encompass a broad range of situations in relation to which it has regularly been applied.

The common element in each of the very different contexts noted earlier is that lethal force is intentionally and deliberately used, with a degree of pre-meditation, against an individual or individuals specifically identified in advance by the perpetrator. [n43](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.956772.9904507712&target=results_DocumentContent&returnToKey=20_T18204790399&parent=docview&rand=1379849016557&reloadEntirePage=true" \l "n43) In a targeted killing, the specific goal of the operation is to use lethal force. This distinguishes targeted killings from unintentional, accidental, or reckless killings, or killings made without conscious choice. It also distinguishes them from law enforcement operations, e.g., against a suspected suicide bomber. Under such circumstances, it may be legal for law enforcement personnel to shoot to kill based on the imminence of the threat, but the goal of the operation, from its inception, should not be to kill.

Although in most circumstances targeted killings violate the right to life, in the exceptional circumstance of armed conflict, they may be legal. This is in contrast to other terms with which "targeted killing" has sometimes been interchangeably used, such as "extrajudicial execution," "summary execution," and "assassination," all of which are, by definition, illegal. [n44](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.956772.9904507712&target=results_DocumentContent&returnToKey=20_T18204790399&parent=docview&rand=1379849016557&reloadEntirePage=true" \l "n44) Consistent with the detailed analysis developed by Nils Melzer, [n45](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.956772.9904507712&target=results_DocumentContent&returnToKey=20_T18204790399&parent=docview&rand=1379849016557&reloadEntirePage=true" \l "n45) this Article adopts the following definition: a targeted killing is the intentional, premeditated, and deliberate use of lethal force, by States or their agents acting under color of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator. [n46](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.956772.9904507712&target=results_DocumentContent&returnToKey=20_T18204790399&parent=docview&rand=1379849016557&reloadEntirePage=true" \l "n46)

#### B. Violation --- signature strikes are distinct from targeted killing because they don’t use individuated intelligence.

From the US standpoint, it is partly that it does not depend as much as it did on Pakistan’s intelligence. But it is also partly, as a couple of well-publicized incidents a few months ago made clear, that sharing targeting decisions with Pakistan’s military and ISI runs a very considerable possibility of having the targets tipped off (as even The Onion has observed). The article notes in this regard, the U.S. worries that “if they tell the Pakistanis that a drone strike is coming someone within Pakistani intelligence could tip off the intended target.” However, the Journal’s reporting goes from there to emphasize an aspect of targeted killing and drone warfare that is not sufficiently appreciated in public discussions trying to assess such issues as civilian collateral damage, strategic value and uses, and the uses of drones in counterterrorism and counterinsurgency as distinct activities. The article explains:

The CIA carries out two different types of drone strikes in the tribal areas of Pakistan—those against so-called high-value targets, including Mr. Rahman, and “signature” strikes targeting Taliban foot-soldiers who criss-cross the border with Afghanistan to fight U.S. forces there.

High-value targets are added to a classified list that the CIA maintains and updates. The agency often doesn’t know the names of the signature targets, but it tracks their movements and activities for hours or days before striking them, U.S. officials say.

Another way to put this is that, loosely speaking, the high value targets are part of a counterterrorism campaign – a worldwide one, reaching these days to Yemen and other places. It is targeted killing in its strict sense using drones – aimed at a distinct individual who has been identified by intelligence. The “signature” strikes, by contrast, are not strictly speaking “targeted killing,” because they are aimed at larger numbers of fighters who are targeted on the basis of being combatants, but not on the basis of individuated intelligence. They are fighting formations, being targeted on a mass basis as part of the counterinsurgency campaign in Afghanistan, as part of the basic CI doctrine of closing down cross-border safe havens and border interdiction of fighters. Both of these functions can be, and are, carried out by drones – though each strategic function could be carried out by other means, such as SEAL 6 or CIA human teams, in the case of targeted killing, or manned aircraft in the case of attacks on Taliban formations. The fundamental point is that they serve distinct strategic purposes. Targeted killing is not synonymous with drone warfare, just as counterterrorism is analytically distinct from counterinsurgency. (I discuss this in the opening sections of this draft chapter on SSRN.)

This analytic point affects how one sees the levels of drone attacks going up or down over the years. Neither the total numbers of fighters killed nor the total number of drone strikes – going up or down over months – tells the whole story. Total numbers do not distinguish between the high value targets, being targeted as part of the top down dismantling of Al Qaeda as a transnational terrorist organization, on the one hand, and ordinary Taliban being killed in much larger numbers as part of counterinsurgency activities essentially part of the ground war in Afghanistan, on the other. Yet the distinction is crucial insofar as the two activities are, at the level of truly grand strategy, in support of each other – the war in Afghanistan and the global counterterrorism war both in support of the AUMF and US national security broadly – but at the level of ordinary strategic concerns, quite distinct in their requirements and conduct. If targeted killing against AQ leadership goes well in Pakistan, those might diminish at some point in the future; what happens in the war against the Afghan Taliban is distinct and has its own rhythm, and in that effort, drones are simply another form of air weapon, an alternative to manned aircraft in an overt, conventional war. Rising or falling numbers of drone strikes in the aggregate will not tell one very much without knowing what mission is at issue.

#### C. Vote negative

#### 1. Limits --- precise definition of TK key to prevent a topic explosion into areas like assassinations or killings of dissidents.

Sebastian Jose Silva, 2003. University of Montreal Master’s candidate. “Death for life : a study of targeted killing by States in international law,” <https://papyrus.bib.umontreal.ca/xmlui/bitstream/handle/1866/2372/11474222.PDF;jsessionid=4D1530E8E8F2DEE3B4C68BA4B7997F3B?sequence=1>.

As defined by Steven R. David, targeted killing is the "intentional slaying of a specific individual or group of individuals undertaken with explicit governmental approval.,,25 Though concise, the problem with this definition is that it fails to specify the intended targets and ignores the context in which they are carried out. By failing to define targeted killings as measures of counter-terrorism, killings of all types may indiscriminately fall under its mantle with devastating consequences. As such, the killing of political leaders in peacetime, which amounts to assassination, can fall within its scope. The same can be said about the killing of specific enemy combatants in armed conflict, which amounts to targeted military strikes, and the intentional slaying of common criminals, dissidents, or opposition leaders. Actions carried-out by governments within their jurisdictions can also be interpreted as targeted killings. Although the killing of terrorists abroad may constitute lawful and proportionate self-defense in response to armed attacks, the use of such measures by states for an unspecified number of reasons renders shady their very suggestion. David's definition is essentially correct but over-inclusive.

#### 2. Ground --- the aff doesn’t get to restrict drones, they get to restrict TK --- signature strikes and targeted killings are different strategies with different literature bases --- they bypass core negative ground and eliminate only the worst aspects of drone strikes.

### 1NC CP

#### Text: The Office of Legal Counsel should determine that the Executive Branch lacks the legal authority to conduct signature strikes. 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

#### Clean Debt Ceiling vote will pass

BLOOMBERG 9 – 20 – 13 Senate Budget Chief Sees Republican Yield on Debt Lifting, <http://www.bloomberg.com/news/2013-09-19/senate-budget-chief-sees-republican-yield-on-debt-lifting.html>

Republicans seeking to curb President Barack Obama’s health-care law probably will capitulate to demands from Democrats to enact a “clean” bill raising the nation’s debt ceiling, the Senate’s top Democratic budget writer said.

“I see no deals on the debt ceiling,” Senator Patty Murray of Washington state, who leads the Budget Committee, said in an interview on Bloomberg Television’s “Political Capital with Al Hunt” airing this weekend.

“The downside of not paying our bills is our credit-rating tanks,” Murray said. “That affects every family, every business, every community. It affects Main Street. It affects Wall Street.”

Murray said she also expects Republicans to relent on their demands for stripping spending from Obama’s health plan as part of action on a spending bill needed to keep the government running after Sept. 30.

Republicans led by House Speaker John Boehner of Ohio have clashed with Obama over the debt ceiling, with the lawmakers demanding changes to spending programs as a condition of raising the $16.7 trillion federal borrowing limit.

Republicans “will come together with some mishmash policy of everything in the bag they’ve ever promised” to anti-tax Tea Party activists, though “they haven’t been able to get the votes for anything yet,” said Murray, 62, fourth-ranking Democrat in the Senate’s leadership.

#### Plan kills Obama’s agenda

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

#### Losing authority would embolden the GOP on the debt ceiling fight

SEEKING ALPHA 9 – 10 – 13 [“Syria Could Upend Debt Ceiling Fight” <http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight>]

Unless President Obama can totally change a reluctant public's perception of another Middle-Eastern conflict, it seems unlikely that he can get 218 votes in the House, though he can probably still squeak out 60 votes in the Senate. This defeat would be totally unprecedented as a President has never lost a military authorization vote in American history. To forbid the Commander-in-Chief of his primary power renders him all but impotent. At this point, a rebuff from the House is a 67%-75% probability.

I reach this probability by looking within the whip count. I assume the 164 declared "no" votes will stay in the "no" column. To get to 218, Obama needs to win over 193 of the 244 undecided, a gargantuan task. Within the "no" column, there are 137 Republicans. Under a best case scenario, Boehner could corral 50 "yes" votes, which would require Obama to pick up 168 of the 200 Democrats, 84%. Many of these Democrats rode to power because of their opposition to Iraq, which makes it difficult for them to support military conflict. The only way to generate near unanimity among the undecided Democrats is if they choose to support the President (recognizing the political ramifications of a defeat) despite personal misgivings. The idea that all undecided Democrats can be convinced of this argument is relatively slim, especially as there are few votes to lose. In the best case scenario, the House could reach 223-225 votes, barely enough to get it through. Under the worst case, there are only 150 votes. Given the lopsided nature of the breakdown, the chance of House passage is about one in four.

While a failure in the House would put action against Syria in limbo, I have felt that the market has overstated the impact of a strike there, which would be limited in nature. Rather, investors should focus on the profound ripple through the power structure in Washington, which would greatly impact impending battles over spending and the debt ceiling. Currently, the government loses spending authority on September 30 while it hits the debt ceiling by the middle of October. Markets have generally felt that Washington will once again strike a last-minute deal and avert total catastrophe. Failure in the Syrian vote could change this. For the Republicans to beat Obama on a President's strength (foreign military action), they will likely be emboldened that they can beat him on domestic spending issues. Until now, consensus has been that the two sides would compromise to fund the government at sequester levels while passing a $1 trillion stand-alone debt ceiling increase. However, the right wing of Boehner's caucus has been pushing for more, including another $1 trillion in spending cuts, defunding of Obamacare, and a one year delay of the individual mandate. Already, Conservative PACs have begun airing advertisements, urging a debt ceiling fight over Obamacare. With the President rendered hapless on Syria, they will become even more vocal about their hardline resolution, setting us up for a showdown that will rival 2011's debt ceiling fight.

I currently believe the two sides will pass a short-term continuing resolution to keep the government open, and then the GOP will wage a massive fight over the debt ceiling. While Obama will be weakened, he will be unwilling to undermine his major achievement, his healthcare law. In all likelihood, both sides will dig in their respective trenches, unwilling to strike a deal, essentially in a game of chicken. If the House blocks Syrian action, it will take America as close to a default as it did in 2011. Based on the market action then, we can expect massive volatility in the final days of the showdown with the Dow falling 500 points in one session in 2011. As markets panicked over the potential for a U.S. default, we saw a massive risk-off trade, moving from equities into Treasuries. I think there is a significant chance we see something similar this late September into October. The Syrian vote has major implications on the power of Obama and the far-right when it comes to their willingness to fight over the debt ceiling. If the Syrian resolution fails, the debt ceiling fight will be even worse, which will send equities lower by upwards of 10%.

Investors must be prepared for this "black swan" event. Looking back to August 2011, stocks that performed the best were dividend paying, less-cyclical companies like Verizon (VZ), Wal-Mart (WMT), Coca-Cola (KO) and McDonald's (MCD) while high beta names like Netflix (NFLX) and Boeing (BA) were crushed. Investors also flocked into treasuries despite default risk while dumping lower quality bonds as spreads widened. The flight to safety helped treasuries despite U.S. government issues. I think we are likely to see a similar move this time. Assuming there is a Syrian "no" vote, I would begin to roll back my long exposure in the stock market and reallocate funds into treasuries as I believe yields could drop back towards 2.50%. Within the stock market, I think the less-cyclical names should outperform, making utilities and consumer staples more attractive. For more tactical traders, I would consider buying puts against the S&P 500 and look toward shorting higher-beta and defense stocks like Boeing and Lockheed Martin (LMT). I also think lower quality bonds would suffer as spreads widen, making funds like JNK vulnerable. Conversely, gold (GLD) should benefit from the fear trade. I would also like to address the potential that Congress does not vote down the Syrian resolution. First, news has broken that Russia has proposed Syria turn over its chemical stockpile. If Syria were to agree (Syria said it was willing to consider), the U.S. would not have to strike, canceling the congressional vote. The proposal can be found here. I strongly believe this is a delaying tactic rather than a serious effort. In 2005, Libya began to turn over chemical weapons; it has yet to complete the hand-off. Removing and destroying chemical weapons is an exceptionally challenging and dangerous task that would take years, not weeks, making this deal seem unrealistic, especially because a cease-fire would be required around all chemical facilities. The idea that a cease-fire could be maintained for months, essentially allowing Assad to stay in office, is hard to take seriously. I believe this is a delaying tactic, and Congress will have to vote within the next two weeks. The final possibility is that Democrats back their President and barely ram the Syria resolution through. I think the extreme risk of a full-blown debt stand-off to dissipate. However, Boehner has promised a strong fight over the debt limit that the market has largely ignored. I do believe the fight would still be worse than the market anticipates but not outright disastrous. As such, I would not initiate short positions, but I would trim some longs and move into less cyclical stocks as the risk would still be the debt ceiling fight leading to some drama not no drama. Remember, in politics everything is connected. Syria is not a stand-alone issue. Its resolution will impact the power structure in Washington. A failed vote in Congress is likely to make the debt ceiling fight even worse, spooking markets, and threatening default on U.S. obligations unless another last minute deal can be struck.

#### Destroys the global economy

DAVIDSON 9 – 15 – 13 co-founder and co-host of Planet Money, a co-production of the NYT and NPR [Adam Davidson, Our Debt to Society, <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&_r=1&>]

The Daily Treasury Statement, a public accounting of what the U.S. government spends and receives each day, shows how money really works in Washington. On Aug. 27, the government took in $29 million in repaid agricultural loans; $75 million in customs and duties; $38 million in the repayment of TARP loans; some $310 million in taxes; and so forth. That same day, the government also had bills to pay: $247 million in veterans-affairs programs; $2.5 billion to Medicare and Medicaid; $1.5 billion each to the departments of Education and Defense. By the close of that Tuesday, when all the spending and the taxing had been completed, the government paid out nearly $6 billion more than it took in.

This is the definition of a deficit, and it illustrates why the government needs to borrow money almost every day to pay its bills. Of course, all that daily borrowing adds up, and we are rapidly approaching what is called the X-Date — the day, somewhere in the next six weeks, when the government, by law, cannot borrow another penny. Congress has imposed a strict limit on how much debt the federal government can accumulate, but for nearly 90 years, it has raised the ceiling well before it was reached. But since a large number of Tea Party-aligned Republicans entered the House of Representatives, in 2011, raising that debt ceiling has become a matter of fierce debate. This summer, House Republicans have promised, in Speaker John Boehner’s words, “a whale of a fight” before they raise the debt ceiling — if they even raise it at all.

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history.

Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.

Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.

Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.

While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.

The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

#### Global nuke wars

Kemp 10—Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace [Geoffrey Kemp, 2010, *The East Moves West: India, China, and Asia’s Growing Presence in the Middle East*, p. 233-4]

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

### 1NC Solvency

#### Turn—war powers fight—wartime will force Obama to resist. The intractable battle creates a national diversion and impairs military wartime decisions

Lobel 8—Professor of Law @ University of Pittsburgh [Jules Lobel, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, Vol. 69, 2008, pg. 391]

The critical difficulty with a contextual approach is its inherent ambiguity and lack of clarity, which tends to sharply shift the balance of power in favor of a strong President acting in disregard of congressional will. For example, the application of the Feldman and Issacharoff test asking whether the congressional restriction makes realistic sense in the modern world would yield no coherent separation of powers answer if applied to the current Administration’s confrontation with Congress. It would undoubtedly embolden the President to ignore Congress’s strictures. The President’s advisors would argue that the McCain Amendment’s ban on cruel and inhumane treatment, or FISA’s requirement of a warrant, does not make realistic sense in the context of the contemporary realities of the war on terror in which we face a shadowy, ruthless nonstate enemy that has no respect for laws or civilized conduct, a conclusion hotly disputed by those opposed to the President’s policies. Focusing the debate over whether Congress has the power to control the treatment of detainees on the President’s claim that the modern realities of warfare require a particular approach will merge the separation of powers inquiry of who has the power with the political determination of what the policy ought to be. Such an approach is likely to encourage the President to ignore and violate legislative wartime enactments whenever he or she believes that a statute does not make realistic sense—that is, when it conflicts with a policy the President embraces. 53

The contextual approach has a “zone of twilight” quality that Justice Jackson suggested in Youngstown. 54 Often constitutional norms matter less than political realities—wartime reality often favors a strong President who will overwhelm both Congress and the courts. While it is certainly correct— as Jackson noted—that neither the Court nor the Constitution will preserve separation of powers where Congress is too politically weak to assert its authority, a fluid contextual approach is an invitation to Presidents to push beyond the constitutional boundaries of their powers and ignore legislative enactments that seek to restrict their wartime authority.

Moreover, another substantial problem with a contextual approach in the war powers context is that the judiciary is unlikely to resolve the dispute. 55 The persistent refusal of the judiciary to adjudicate the constitutionality of the War Powers Resolution strongly suggests that courts will often refuse to intervene to resolve disputes between the President and Congress over the constitutionality of a statute that a President claims impermissibly interferes with her conduct of an ongoing war. 56 This result leaves the political branches to engage in an intractable dispute over the statute’s constitutionality that saps the nation’s energy, diverts focus from the political issues in dispute, and endangers the rule of law.

Additionally, in wartime it is often important for issues relating to the exercise of war powers to be resolved quickly. Prompt action is not usually the forte of the judiciary.

If, however, a constitutional consensus exists or could be consolidated that Congress has the authority to check the President’s conduct of warfare, that consensus might help embolden future Congresses to assert their power. Such a consensus might also help prevent the crisis, chaos, and stalemate that may result when the two branches assert competing constitutional positions and, as a practical matter, judicial review is unavailable to resolve the dispute.

Moreover, the adoption of a contextual, realist approach will undermine rather than aid the cooperation and compromise between the political branches that is so essential to success in wartime. In theory, an unclear, ambiguous division of power between the branches that leaves each branch uncertain of its legal authority could further compromise and cooperation. However, modern social science research suggests that the opposite occurs. 57 Each side in the dispute is likely to grasp onto aspects or factors within the ambiguous or complex reality to support its own self-serving position. This self-serving bias hardens each side’s position and allows the dispute to drag on, as has happened with the ongoing, unresolved dispute over the constitutionality of the War Powers Resolution. Pg. 407-409

#### AND, War power fights undermine US deterrence

Newton 12—Professor of Law @ Vanderbilt University [Michael A. Newton, “Inadvertent Implications of the War Powers Resolution,” Case Western Reserve Journal of International Law, Vol. 45, No. 1, 2012]

The corollary to this modern reality, and the second of three inadvertent implications of the Resolution, is that our enemies now focus on American political will as the Achilles heel of our vast capabilities. Prior to the War Powers Resolution, President Eisenhower understood that it was necessary to "seek the cooperation of the Congress. Only with that can we give the reassurance needed to deter aggression." 62 President Clinton understood the importance of clear communication with the Congress and the American people in order to sustain the political legitimacy that is a vital element of modern military operations. Justifying his bombing of targets in Sudan, he argued that the "risks from inaction, to America and the world, would be far greater than action, for that would embolden our enemies, leaving their ability and their willingness to strike us intact."13 In his letter to Congress "consistent with the War Powers Resolution," the president reported that the strikes "were a necessary and proportionate response to the imminent threat of further terrorist attacks against U.S. personnel and facilities" and "were intended to prevent and deter additional attacks by a clearly identified terrorist threat."6 ' The following day, in a radio address to the nation, the president explained his decision to take military action, stating, "Our goals were to disrupt bin Laden's terrorist network and destroy elements of its infrastructure in Afghanistan and Sudan. And our goal was to destroy, in Sudan, the factory with which bin Laden's network gas."\*6 Citing "compelling evidence that the bin Laden network was poised to strike at us again" and was seeking to acquire chemical weapons, the president declared that we simply could not ignore the threat posed, and hence ordered the strikes. 66 Similarly, President Clinton understood that intervention in Bosnia could not be successful absent some national consensus, which had been slow to form during the long Bosnian civil war.6 1

Secretary of State George Schultz provided perhaps the most poignant and pointed example of this truism in his testimony to Congress regarding the deployment of US Marines into Lebanon to separate the warring factions in 1982. On September 21, 1983, he testified before the Senate Foreign Relations Committee and provided a chilling premonition of the bombing that would come only one month later and kill 241 Americans, which was the bloodiest day in the Marine Corps since the battle of Iwo Jima.6" Seeking to bolster legislative support and to better explain the strategic objectives, he explained that:

It is not the mission of our marines or of the [Multinational Force in Lebanon] as a whole to maintain the military balance in Lebanon by themselves. Nevertheless, their presence remains one crucial pillar of the structure of stability behind the legitimate Government of Lebanon, and an important weight in the scales.

To remove the marines would put both the Government and what we are trying to achieve in jeopardy. This is why our domestic controversy over the war powers has been so disturbing. Uncertainty about the American commitment can only weaken our effectiveness. Doubts about our staying power can only cause political aggressors to discount our presence or to intensify their attacks in hopes of hastening our departure.

An accommodation between the President and Congress to resolve this dispute will help dispel those doubts about our staying power and strengthen our political hand." Pg. 189-190

#### That risks nuclear war. Deterrence prevents Kim Jong-Un from igniting the tinder box

Kline 13—Comment Editor and Writer @ National Post [Jesse Kline (Master of Journalism degree from the University of British Columbia), “Deterrence is the best way to prevent war with North Korea,” National Post, April 9, 2013, pg. http://fullcomment.nationalpost.com/2013/04/09/jesse-kline-deterrence-is-the-best-way-to-prevent-war-with-north-korea/]

Another day, another provocation from North Korea. Last week the reclusive regime threatened to launch a nuclear strike against the United States, blocked South Korean workers from entering the Kaesong industrial complex and evacuated the Russian and British embassies, warning Western diplomats the country could not ensure their safety in the event of war. This week, the North has reportedly moved missile launchers to its east coast and threatened to shut down the industrial complex it jointly operates with the South. On Tuesday it warned1 foreigners to get out of South Korea because of the threat of "thermonuclear war." This all sounds bad, but there's little reason to panic, so long as the Obama administration makes it abundantly clear that any act of war will result in the full might of the U.S. military bearing down on North Korea.

Ever since the Korean War ended in 1953, the Kim regime has been bringing the peninsula to the brink and then backing off once the international community agrees to concessions. This is especially true any time South Korea elects a new president or conducts war games with the United States—two events that have taken place in recent weeks.

Appeasement seemed like a viable option until it became apparent that the North was developing weapons of mass destruction. As it turned out, constantly giving in to the North Koreans failed to stop them from developing a nuclear weapon and only encouraged the regime to continue playing games with the international community.

The North keeps playing these game because it works. By ratcheting up the rhetoric against the U.S. and South Korea, Kim Jong-Un is able to keep his population in a constant state of fear—always worried about the enemy at the gates. He is also able to shore up support from the military and justify spending money on defence instead of feeding the population, while pressuring the international community into giving aid to the cash-strapped country.

Kim Jong-Un is moving the world to the brink of war only because past experience has shown that he'll get something out of it. The truth is that there is very little chance of North Korea deliberately starting a conflict, as the regime is surely aware that it would be crushed by the American army in a head-to-head conflict.

The U.S. has put South Korea under its nuclear umbrella—i.e., a first strike against the South would trigger an American second strike. Barack Obama has also done a fairly good job of not showing weakness in the face of North Korean aggression by continuing joint war games with the South and flying nuclear-capable bombers to the peninsula. The only real threat of war occurs if either side trips up. And by preparing his forces for war, Kim Jong-Un has created a situation in which one wrong move by edgy soldiers guarding the demilitarized zone could ignite the tinder box.

Yet there is no reason to believe that standard deterrence mechanisms will not work in this situation. During the Cold War there was a very real threat of nuclear war between the United States and the Soviet Union, but it was prevented largely because of deterrence programs such as MAD (Mutually Assured Destruction). Other nuclear-armed rivals such as India and Pakistan have also prevented war using the same principals.  Kim Jong-Un may appear crazy, but there's no indication that he has a death wish.

However, as former U.S. secretary of state Henry Kissinger once said, "Deterrence requires a combination of power, the will to use it, and the assessment of these by the potential aggressor. Moreover, deterrence is the product of those factors and not the sum. If any one of them is zero, deterrence fails."

The North Koreans are betting that the American publicare in no mood for war, following Iraq and Afghanistan. And although war should be prevented at all costs, there probably would be support in the U.S. for the kind of fight the Americans are best at: Go in, kick ass and get out—nation building be damned. Flying B-2 bombers to Korea indicated that Washington was in no mood for games, but the announcement Sunday that the Pentagon will be delaying a planned missile test sends the opposite signal.

In order for deterrence to work, Washington has to be abundantly clear that any act of war will provoke a swift, and deadly, American response. And that any nuclear weapon—detonated anywhere in the world—using North Korean technology will result in Washington turning Pyongyang into a wasteland.

So long as Kim Jong-Un and his cronies believe there is a real and credible threat from the United States, there is very little to worry about. Cancelling planned displays of American firepower and not being explicit about U.S. support for countries such as South Korea and Japan, will only embolden North Korea—making the powder keg more likely to blow.

#### Their restriction is a smokescreen and will not be enforced

Nzelibe 7—Professor of Law @ Northwestern University [Jide Nzelibe, “Are Congressionally Authorized Wars Perverse?” Stanford Law Review, Vol. 59, 2007]

These assumptions are all questionable. As a preliminary matter, there is not much causal evidence that supports the institutional constraints logic. As various commentators have noted, Congress's bark with respect to war powers is often much greater than its bite. Significantly, skeptics like Barbara Hinckley suggest that any notion of an activist Congress in war powers is a myth and members of Congress will often use the smokescreen of "symbolic resolutions, increase in roll calls and lengthy hearings, [and] addition of reporting requirements" to create the illusion of congressional participation in foreign policy.' 0 Indeed, even those commentators who support a more aggressive role for Congress in initiating conflicts acknowledge this problem," but suggest that it could be fixed by having Congress enact more specific legislation about conflict objectives and implement new tools for monitoring executive behavior during wartime. 12

Yet, even if Congress were equipped with better institutional tools to constrain and monitor the President's military initiatives, it is not clear that it would significantly alter the current war powers landscape. As Horn and Shepsle have argued elsewhere: "[N]either specificity in enabling legislation ... nor participation by interested parties is necessarily optimal or self-fulfilling; therefore, they do not ensure agent compliance. Ultimately, there must be some enforcement feature-a credible commitment to punish ....Thus, no matter how much well-intentioned and specific legislation Congress passes to increase congressional oversight of the President's military initiatives, it will come to naught if members of Congress lack institutional incentives to monitor and constrain the President's behavior in an international crisis.

Various congressional observers have highlighted electoral disincentives that members of Congress might face in constraining the President's military initiatives. 14 Others have pointed to more institutional obstacles to congressional assertiveness in foreign relations, such as collective action problems. 15 Generally, lawmaking is a demanding and grueling exercise. If one assumes that members of Congress are often obsessed with the prospect of reelection, 16 then such members will tend to focus their scarce resources on district-level concerns and hesitate to second-guess the President's response in an international crisis. 17 Even if members of Congress could marshal the resources to challenge the President's agenda on national issues, the payoff in electoral terms might be trivial or non-existent. Indeed, in the case of the President's military initiatives where the median voter is likely to defer to the executive branch's judgment, the electoral payoff for members of Congress of constraining such initiatives might actually be negative. In other words, regardless of how explicit the grant of a constitutional role to Congress in foreign affairs might be, few members of Congress are willing to make the personal sacrifice for the greater institutional goal. Thus, unless a grand reformer is able to tweak the system and make congressional assertiveness an electorally palatable option in war powers, calls for greater congressional participation in war powers are likely to fall on deaf ears. Pg. 912-913

#### President will not abide. Congress will inevitably fall in line

Bell 4—Professor of Political Science @ Randolph-Macon College [Lauren Cohen Bell, “Following the Leaders or Leading the Followers? The US President's Relations with Congress,” Journal of Legislative Studies, Summer/Autumn, 2004, Vol. 10 Issue 2/3, pg. 193-205]

As noted ahove. Article I of the Constitution grants to the Congress the sole authority to make declarations of war. However, the president has the power to command US military personnel based on the provisions of Article II. Over the course of US history, the commander-in-chief power has been interpreted to permit presidents to commit troops to areas of conflict even in the absence of a formal declaration of war. Today, formal declarations of war are the exception rather than the rule; separation of powers expert Louis Fisher notes that through 1991 only five wars had ever been declared and that "in only one (the War of 1812) did members of Congress actually debate the merits of entering into hostilities'.'^ As Samuel Kemell and Gary Jacohson note: "[SJince 1989 U.S. armed forces have been almost continuously engaged somewhere in the world.''^

This was not always the case. Fisher points out that there is evidence of presidential restraint with regard to war-making by relating the story of President Grover Cleveland (1885-89; 1893-97), who refused to mobilise troops for a conflict with Cuba despite Congress' intention to declare war. In Fisher's account, Cleveland told the Congress: 'I will not mobilize the army ... I happen to know that we can buy the island of Cuba from Spain for $100,000,000, and a war will cost vastly more than that and will entail another long list of pensioners. It would be an outrage to declare war.''^ Yet, in the modem history of presidential-congressional relations, it is much more frequently the president who has mobilised American troops without consultation with the Congress and in the absence of a formal declaration of war. And it is clear that even when we consider Cleveland's actions, the president has been far more important to the conduct of American foreign policy than the Congress.

This circumstance led, in the aftermath of the war in Vietnam, to congressional passage of the War Powers Resolution in 1973. The War Powers Resolution (WPR) was an attempt to constrain presidential discretion with regard to committing troops oversees. Section 3 of the WPR requires that 'The president in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances".' Section 4 of the WPR gives the president 48 hours to provide a report to both Chambers of the Congress detailing the reason for committing troops, the authority under which he committed them and his prediction conceming the duration of the troops' engagement abroad.'^ Once the president has informed the Congress of the commitment of troops, and in the event that the Congress does not declare war, the WPR requires the president to end the engagement within 60 days, with the possibility of an additional 30 days' commitment in the event that the president certifies to the Congress that the additional time is necessary.^\*\* According to the Congressional Research Service (CRS), the research branch of the Library of Congress, since the War Powers Resolution was enacted over President Richard M. Nixon's 1973 veto, it has been invoked on 107 occasions (to 23 July 2003).^' Figure 2 illustrates both the absolute number of times as well as the rate of each president's exercise of war powers. As Figure 2 demonstrates, the rate of War Powers Resolution uses has continually increased since it took effect in 1974.

A reading of the WPR would seem to clarify the relationship between Congress and the president with regard to the exercise of national war powers. A close reading would also suggest that the president and Congress share war-making power. Yet no president has ever recognised the WPR as a constraint on his ability to move American armed forces around the globe or keep them in place as long as necessary. Moreover, presidents rarely abide by the provisions of the Resolution that require their consultation with the Congress. As CRS researcher Richard F. Grimmett notes, 'there has been very little consultation with Congress under the Resolution when consultation is defined to mean seeking advice prior to a decision to introduce troops'.^" And while the Congress has, from time to time, expressed its sense that troops should be withdrawn from conflicts or engagements abroad, in truth the Congress has relatively few options for dealing with a president that violates the WPR. Indeed, as the late presidency scholar Aaron Wildavsky notes, the Congress is much less likely to challenge presidents" foreign policy actions than it is willing to challenge presidents" domestic policy actions.'^'^ This is because presidents oversee an enormous national security apparatus and because the constituents represented by members of Congress rarely hold strong opinions on matters of foreign policy. As a result, congressional challenges to violations of the WPR consist mostly of holding oversight hearings and passing symbolic resolutions.''\* Moreover, once troops are committed abroad. Congress almost always falls in line with the president’s vision of the scope of the conflict and the need for a military presence. The members of Congress become reluctant to challenge a president who has troops on the ground and typically acquiesce to the president’s wishes when it comes to provisions for support. In this way, the president is able to exercise some leadership over the Congress, whose members generally find it politically expedient to follow the president on matters pertaining to the military or the conduct of America's relations with other countries. Pg. 200-202

### 1NC Backlash

**1. Europe isn’t the key partner anymore – not sufficient to ensure peace**

**Zaborowski 11** [Marcin, “How to Renew Transatlantic Relations in the 21st Century,” 3-30, The International Spectator, Vol 46, Issue 1, p. 101-113]

The value of this relationship is indisputable but its relative efficiency in delivering results is another matter. Clearly the relationship was effective during the Cold War and arguably in the 1990s, during the so-called unipolar moment. But with the emergence of new powers and the rise of multipolarity the exclusive focus on the health of transatlantic relations is both outdated and untenable. China is now the biggest holder of US government debt, it is already the world's third biggest economy and on the way to becoming the second. Brazil and India are also growing rapidly, defying the global economic crisis and emerging as the new pillars of the world economy. Another giant, Russia, was deeply affected by the crisis and lacks the dynamism of China or India, but its massive crude energy reserves and its status as a nuclear superpower ensure that it will remain a vital actor. The changing structure of the international order means in practice that a transatlantic consensus on, say, sanctioning Iran or Sudan or even on the Balkans is far less meaningful today than it would have been in the 1990s. This has led some observers to posit that, while indispensable, transatlantic relations are no longer sufficient in ensuring global peace and security.[5](http://www.tandfonline.com/doi/full/10.1080/03932729.2011.549757#FN0005) But, in reality, even these assessments may prove too optimistic since it is no longer apparent that a transatlantic consensus is, in fact, still indispensable. For example, during Obama's first year there were instances when the US was reaching a global deal with the major developing powers while Europe was either marginalised or even excluded. The climate change conference in Copenhagen would probably not have happened without the EU having fiercely lobbied for it and there is little doubt that the European agenda was more progressive than that of the US and other powers. However, the final deal was reached between the US and major developing economies with the EU not even present at the final negotiations. The other example is the disarmament negotiations, which are driven by the US and Russia, while Europe is put in the (untenable) position of either following or obstructing President Obama's initiative. In none of these cases has Europe been indispensable and this trend is only likely to grow in the future.

#### Environment is resilient

Easterbrook 95 (Gregg, Distinguished Fellow – Fullbright Foundation, A Moment on Earth, p. 25)

In the aftermath of events such as Love Canal or the Exxon Valdez oil spill, every reference to the environment is prefaced with the adjective "fragile." "Fragile environment" has become a welded phrase of the modern lexicon, like "aging hippie" or "fugitive financier." But the notion of a fragile environment is profoundly wrong. Individual animals, plants, and people are distressingly fragile. The environment that contains them is close to indestructible. The living environment of Earth has survived ice ages; bombardments of cosmic radiation more deadly than atomic fallout; solar radiation more powerful than the worst-case projection for ozone depletion; thousand-year periods of intense volcanism releasing global air pollution far worse than that made by any factory; reversals of the planet's magnetic poles; the rearrangement of continents; transformation of plains into mountain ranges and of seas into plains; fluctuations of ocean currents and the jet stream; 300-foot vacillations in sea levels; shortening and lengthening of the seasons caused by shifts in the planetary axis; collisions of asteroids and comets bearing far more force than man's nuclear arsenals; and the years without summer that followed these impacts. Yet hearts beat on, and petals unfold still. Were the environment fragile it would have expired many eons before the advent of the industrial affronts of the dreaming ape. Human assaults on the environment, though mischievous, are pinpricks compared to forces of the magnitude nature is accustomed to resisting.

### 1NC Yemen

**Trade disputes don’t escalate – solidified international norms**

**Ikenson 12** [March 5th, Daniel, [Daniel Ikenson](http://www.cato.org/people/daniel-ikenson) is director of the Herbert A. Stiefel Center for Trade Policy Studies at the Cato Institute,

 <http://www.cato.org/publications/free-trade-bulletin/trade-policy-priority-one-averting-uschina-trade-war>]

An emerging narrative in 2012 is that a proliferation of protectionist, treaty-violating, or otherwise illiberal Chinese policies is to blame for worsening U.S.-China relations. China trade experts from across the ideological and political spectra have lent credibility to that story. Business groups that once counseled against U.S. government actions that might be perceived by the Chinese as provocative have changed their tunes. The term "trade war" is no longer taboo.¶ The media have portrayed the United States as a victim of underhanded Chinese practices, including currency manipulation, dumping, subsidization, intellectual property theft, forced technology transfer, discriminatory "indigenous innovation" policies, export restrictions, industrial espionage, and other ad hoc impediments to U.S. investment and exports. ¶ Indeed, it is beyond doubt that certain Chinese policies have been provocative, discriminatory, protectionist, and, in some cases, violative of the agreed rules of international trade. But there is more to the story than that. U.S. policies, politics, and attitudes have contributed to rising tensions, as have rabble-rousing politicians and a confrontation-thirsty media. If the public's passions are going to be inflamed with talk of a trade war, prudence demands that the war's nature be properly characterized and its causes identified and accurately depicted.¶ Those agitating for tough policy actions should put down their battle bugles and consider that trade wars are never won. Instead, such wars claim victims indiscriminately and leave significant damage in their wake. Even if one concludes that China's list of offenses is collectively more egregious than that of the United States, the most sensible course of action — for the American public (if not campaigning politicians) — is one that avoids mutually destructive actions and finds measures to reduce frictions with China.¶ Nature of the U.S.-China Trade War¶ It should not be surprising that the increasing number of commercial exchanges between entities in the world's largest and second largest economies produce frictions on occasion. But the U.S.-China economic relationship has not descended into an existential call to arms**.** Rather, both governments have taken protectionist actions that are legally defensible or plausibly justifiable within the rules of global trade. That is not to say that those measures have been advisable or that they would withstand closer legal scrutiny, but to make the distinction that, unlike the free-for-all that erupted in the 1930s, these trade "skirmishes" have been prosecuted in a manner that speaks to a mutual recognition of the primacy of — if not respect for — the rules-based system of trade. And that suggests that the kerfuffle is containable and the recent trend reversible.1

#### No impact to indo-pak war

**Williscroft, 2** (R.G., Former NOAA Officer and Commentator for Defense Watch, “Don't Fear an India-Pakistan Nuclear War”, June 12, <http://www.sftt.us/dw06122002.html#4)//different> architecture, not enough radiation, recovery in 2 to 3 weeks

What might be the consequences of such an exchange? We have only one historical example against which we can measure potential damage from a nuclear strike. Both Hiroshima and Nagasaki were "paper cities," in the sense that a large portion of the residential areas consisted of flimsy traditional Japanese domestic dwellings constructed of light wood and paper. The architectural infrastructure of likely target areas in both Pakistan and India are dramatically different. This opens our analysis to significant speculation, since brick-and-mortar structures can absorb a lot more blast energy than paper and wood, and offer dramatically increased protection against radiation. Furthermore, modern nukes typically do not produce as much hard radiation as their ancestors, except for specifically designed "neutron" devices. These are designed to produce a high-level flood of initial high energy neutrons intended to kill living beings quickly and efficiently, while leaving as much infrastructure intact as possible. Both India and Pakistan would gain the greatest benefit from neutron devices, because of the very large armies each can deploy on short notice. Intelligence estimates indicate, however, that only Pakistan is likely to have a neutron device, but the evidence is circumstantial, based primarily on the certain knowledge that Pakistan has received material assistance from China, and it is likely that China has such devices. From intelligence estimates we know that Pakistan probably has 15 or so nuclear devices, based upon its ability to manufacture highly enriched uranium, which forms the basis of its nuclear program. They all may be sufficiently small to fit inside their ballistic missiles, and at least half may be neutron devices. India may have as many as 50 nukes based upon its ability to produce weapons grade plutonium, employed by its design. These devices probably range from relatively unsophisticated devices manufactured in the 1970s to fairly complex systems of recent manufacture. From these numbers one can assume that a total nuclear exchange might produce over 40 actual nuclear explosions, which assumes an Indian preemptive strike followed by full-scale retaliation by Pakistan, with 60-70 percent of the weapons actually exploding with a yield near their design parameters. If one assumes that the Pakistani devices are primarily anti-personnel weapons, the overall projections regarding death and destruction are significantly less than the numbers typically tossed around by politicians and journalists ignorant of nuclear weapons effects. Instead of 20 million killed in the first two or three exchanges, it is much more likely that the number of those killed will range from the high hundreds of thousands to the low millions, depending on whether the Indian bombers make it through Pakistani defenses to Islamabad. Because all the devices on both sides are relatively modern when compared with the bombs dropped on Japan, the global impact will be relatively small. Regional fallout will follow local wind patterns. Sensitive measuring devices will be able to pick up radioactive debris on a worldwide basis during the following months, but only because of the distinctive character of this fallout. The level will be well below normal background radiation from the sun and cosmic rays, and will pose absolutely no hazard to world populations. While a nuclear exchange would be horrific to the soldiers and civilians caught in the cross-fire and would vastly complicate our ongoing war on terror, the one thing Americans, Europeans and most of the rest of the world don't have to worry about is radiation poisoning from such an exchange. Obviously, we would lose Pakistan as an active partner in our ongoing Afghanistan operations, but other than a place from which to launch, it is arguable whether we are getting any other real value from our partnership anyway. Whatever complications we would experience in prosecuting our offensive against al Qaeda, they would experience in spades. An international effort would certainly mount to assist survivors. We would clearly be part of that effort, and this would tend to distract us from the reason we are there in the first place. Since the probable outcome of a nuclear exchange between India and Pakistan would be considerably smaller than current public perceptions, our level of involvement would also be significantly smaller. Ironically, if the Pakistanis rely on neutron devices, which really do very little damage to the surrounding countryside, the net effect may be far less hungry mouths impacting a food supply that will not be very much different than before the conflict. Within two or three weeks following such an exchange, the world should come to realize that the situation really is not so catastrophic. The world stock markets should recover quickly, and **most of the world** probably will **go back to business as usual**.

# 2NC

## CP

### 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.

#### OLC rulings are binding on the executive branch.

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.

The OLC receives "requests for opinions and legal advice from the Counsel to the President; general counsels of [the] O[ffice of] M[anagement and] Budget and other Executive Office of the President components; general counsels of Executive Branch departments and agencies; the Attorney General and other Department of Justice officials," [n71](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#n71) all of which have significant impact on how the executive branch interprets the law. [n72](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#n72) Although the OLC is a small government agency (a total of thirty-seven full-time employees, twenty-five of whom are attorneys with a budget of 7.6 million dollars), [n73](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#n73) the OLC wields significant inter-branch power due to its authority to review and opine on the constitutionality of proposed legislation, [n74](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#n74) specifically regarding separation of powers issues [n75](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#n75) pending within Congress, as well as its quasi-judicial  [\*237]  power [n76](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#n76) to issue binding determinations of the law within the executive branch and adjudicate executive branch intra-agency legal disputes. [n77](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#n77) The foundation of the OLC's authority to issue binding opinions on the rest of the executive branch is based on the authority of the Attorney General to issue such opinions, and administrative traditions within the Department of Justice and the executive branch. [n78](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#n78)

As a constitutional matter, the power of the Attorney General to issue opinions flows from the Article II power of the President. [n79](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#n79) In a 2007 opinion by Steven Bradbury, the OLC explained the Article II power as follows:
We nonetheless believe that an interpretation issued by the President that has not been repudiated (even if, as explained below, it is no longer formally in effect) should have  [\*238]  particular weight in our analysis of the position to be taken by the Executive Branch. Under Article II of the Constitution, the President has the authority to determine the Executive Branch's interpretation of the law: [n80](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 "n80)
The ordinary duties of officers prescribed by statute come under the general administrative control of the President by virtue of the general grant to him of the executive power, and he may properly supervise and guide their construction of the statutes under which they act in order to secure that unitary and uniform execution of the laws which Article II of the Constitution evidently contemplated in vesting general executive power in the President alone. [n81](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 "n81)
As discussed above, the Judiciary Act of 1789 established the position of the Attorney General,
whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments... . [n82](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 "n82)
This responsibility has been codified [n83](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#n83) and transferred to the OLC. [n84](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#n84) The exclusive authority held by the OLC to determine the interpretation of the law for the executive branch is based on the authority historically and statutorily bestowed upon the Attorney General - "because the Attorney General's opinions are treated as "final and conclusive' they necessarily become the executive branch interpretation of the law." [n85](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#n85)

During World War I, President Wilson issued Executive Order No. 2877 (May 31, 1918), in which he ordered, among other things, "that any opinion or ruling by the Attorney General upon any question of law arising in any Department, executive bureau, agency or office shall be treated as binding upon all departments,  [\*239]  bureaus, agencies or offices therewith concerned." [n86](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 "n86)Although the executive order was based on an Act of Congress, [n87](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 "n87) which lapsed six months after the end of World War I, the order continued to support the traditional foundation for the legal exclusivity and binding authority of Attorneys General opinions on the rest of the executive branch. [n88](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 "n88)

### AT: Perm Do CP

It’s severance—

The counterplan is neither “statutory” nor “judicial” and it doesn’t restrict authority – it addresses executive practice but leaves authority in place

Severance is a voting issue – the stable plan is the sole focus of the debate. We test one policy at a time. Scrapping it in the 2AC kills neg strategy

Authority is power vested in an agent by a principal

Oxford Dictionary of Law 2009

(“Authority,” Oxford University Press via Oxford Reference, Georgetown University Library)

authority

n.

1 Power delegated to a person or body to act in a particular way. The person in whom authority is vested is usually called an agent and the person conferring the authority is the principal.

Changing authority requires the principal – the agent only operates within the powers it has been given

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

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

### 2NC OLC – AT: Congress key to Perception/Credibility

#### The CP solves the warrant for congressional involvement --- Congress is perceived as credible because of transparency and inclusion of a deliberative voice --- mandatory publishing requirements ensure that executive legal justifications are open to public debate.

#### Executive self-binding solves credibility.

Eric A. Posner and Adrian Vermeule, Summer 2007. Kirkland & Ellis Professor of Law, The University of Chicago Law School; and Professor of Law, Harvard Law School. “The Credible Executive,” University of Chicago Law Review, http://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/74.3/74\_3\_Posner\_Vermeule.pdf.

Our aim in this Article is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it. We focus on emergencies and national security but cast the analysis within a broader framework. Our basic claim is that the credibility dilemma can be addressed by executive signaling. Without any new constitutional amendments, statutes, or legislative action, law and executive practice already contain resources to allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying policies to institutional mechanisms that impose heavier costs on ill-motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.

#### Domestic audience costs create international credibility.

Michael  Tomz, October 2007. Stanford University. “Domestic Audience Costs in International Relations: An Experimental Approach,” International Organization 61.4.

What makes international commitments credible? The answer may lie, in part, at the intersection of foreign affairs and domestic politics. Recent models of international relations assume that leaders would suffer “domestic audience costs” if they issued threats or promises and failed to follow through. Citizens, it is claimed, would think less of leaders who backed down than of leaders who never committed in the first place. In a world with audience costs, the prospect of losing domestic support—or even office—could discourage leaders from making empty threats and promises. The concept of domestic audience costs is now central to theories about military crises, and researchers have incorporated similar ideas into models of alliances, economic sanctions, foreign trade, foreign direct investment, monetary commitments, interstate bargaining, and international cooperation more generally. [1](http://journals.cambridge.org.proxy.library.emory.edu/action/displayFulltext?type=6&fid=1367916&jid=INO&volumeId=61&issueId=04&aid=1367908&bodyId=&membershipNumber=&societyETOCSession=&fulltextType=RA&fileId=S0020818307070282#fn1)

Despite the prominence of audience costs in international relations theories, it remains unclear whether and when audience costs exist in practice. Most empirical work on the topic is indirect. Fearon conjectured that audience costs are higher in democracies than in autocracies and explained why this gap would cause the two types of regimes to behave differently. [2](http://journals.cambridge.org.proxy.library.emory.edu/action/displayFulltext?type=6&fid=1367916&jid=INO&volumeId=61&issueId=04&aid=1367908&fulltextType=RA&fileId=S0020818307070282#fn2) Researchers have, therefore, checked for correlations between democracy and foreign policy. [3](http://journals.cambridge.org.proxy.library.emory.edu/action/displayFulltext?type=6&fid=1367916&jid=INO&volumeId=61&issueId=04&aid=1367908&fulltextType=RA&fileId=S0020818307070282#fn3) Although valuable, these tests do not reveal whether the effects of democracy stem from audience costs or from other differences between political regimes.

One could try to study audience costs directly, perhaps by examining the historical fate of leaders who issued threats and then backed down. The problem, which international relations scholars widely recognize, is strategic selection bias. [4](http://journals.cambridge.org.proxy.library.emory.edu/action/displayFulltext?type=6&fid=1367916&jid=INO&volumeId=61&issueId=04&aid=1367908&fulltextType=RA&fileId=S0020818307070282#fn4) If leaders take the prospect of audience costs into account when making foreign policy decisions, then in situations when citizens would react harshly against backing down, leaders would tend to avoid that path, leaving little opportunity to observe the public backlash. It would seem, therefore, that a direct and unbiased measure of audience costs is beyond reach.

This article aims to solve the empirical conundrum. The analysis is based on a series of experiments embedded in public opinion surveys. In each experiment, the interviewer describes a military crisis. Some participants are randomly assigned to a control group and told that the president does not get involved. Others are placed in a treatment condition in which the president escalates the crisis but ultimately backs down. All participants are then asked whether they approve of the way the president handled the situation. By comparing approval ratings in the “stay out” and “back down” conditions, one can measure audience costs directly without strategic selection bias.

In the remainder of this article, I demonstrate that constituents disapprove of leaders who make international threats and then renege. I further explain why many leaders regard disapproval as a political liability. Finally, as a step toward deepening our theoretical as well as empirical understanding of audience costs, I investigate why citizens react negatively to empty threats.

#### Institutional flaws make Congress less consistent and credible than the executive --- also makes them an ineffective check on executive over-reach.

Eric A. Posner and Adrian Vermeule, Summer 2007. Kirkland & Ellis Professor of Law, The University of Chicago Law School; and Professor of Law, Harvard Law School. “The Credible Executive,” University of Chicago Law Review, http://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/74.3/74\_3\_Posner\_Vermeule.pdf.

Like the executive, Congress has a credibility problem. Members of Congress may be well motivated or ill motivated; the public does not know. Thus, when Congress passes a resolution criticizing presidential action or refuses to delegate power that he seeks, observers do not know whether Congress or the president is right. Ill-motivated members of Congress will constrain public-spirited presidents; thus the Madisonian cure for the problem of executive credibility could be worse than the disease. Even if members of Congress are generally well motivated, Congress has a problem of institutional credibility that the president lacks. Although a voter might trust the member of Congress for whom she voted because she knows about his efforts on his district’s behalf, she will usually know nothing about other members of Congress, so when her representative is outvoted, she might well believe that the other members are ill motivated. And, with respect to her own representative, he will often lack credibility compared to the president because he has much less information. Further, the reputation of congressional leaders is only very loosely tied to the reputation of the institution, while there is a closer tie between the president’s reputation and the presidency. As a result, Congress is likely to act less consistently than the president, further reducing its relative credibility. Congressional lack of credibility undermines its ability to constrain the president: Congress can monitor the president and tell the public that the president has acted properly or improperly, but if the public does not believe Congress, then Congress’s power to check the president is limited.

#### The CP creates executive credibility through informal self-binding --- any president would face serious reputational costs if they reversed the decision to publish OLC decisions.

Eric A. Posner and Adrian Vermeule, Summer 2007. Kirkland & Ellis Professor of Law, The University of Chicago Law School; and Professor of Law, Harvard Law School. “The Credible Executive,” University of Chicago Law Review, http://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/74.3/74\_3\_Posner\_Vermeule.pdf.

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve selfbinding. 75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo. 76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of self-binding: 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so. 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding. 77 However, there may be large political costs to repealing the order. This effect does not depend on the courts’ willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a nodessert diet in order to raise the reputational costs of backsliding and thus commit himself, so, too, the executive’s issuance of a self-binding order can trigger reputational costs. In such cases, repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.

### 2NC OLC – AT: CP Links to Politics

#### The CP certainly doesn’t link to politics --- the CP has the President’s legal advisors deciding to advocate that he enforces a law differently. The president chooses to comply precisely in order to avoid political backlash. None of their evidence assumes this mechanism.

#### Mandatory disclosure doesn’t link either --- changes in agency design are not as controversial as specific policies because of a lack of interest groups and constituency effect.

Neal Kumar Katyal, 2006. Professor of Law @ Georgetown University. “Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within,” Yale Law Journal 115.9, The Most Dangerous Branch? Mayors, Governors, Presidents, and the Rule of Law: A Symposium on Executive Power (2006), pp. 2314-2349.

Before getting into the substance of the proposals, it is worth taking up a criticism that might be present off the bat. Aren't all proposals for bureaucratic reform bedeviled by the very forces that promote legislative inertia? If Congress can't be motivated to regulate any particular aspect of the legal war on terror, then how can it be expected to regulate anything more far-reaching? The answer lies in the fact that sometimes broad design choices are easier to impose by fiat than are specific policies.23

Any given policy proposal can get mired in a competition of special interests; indeed, that danger leads many to prefer executive action. Institutional design changes differ from these specific policy proposals because they cut across a plethora of interest groups and because the effects on constituencies are harder to assess due to the multiplicity of changes. The benefits of faction that Madison discussed in The Federalist No. 51 therefore arise; multitudes of interest groups find things to embrace in the system change. It is therefore not surprising that at the same time that Congress dropped the ball overseeing the legal war on terror it enacted the most sweeping set of changes to the executive branch in a half-century in the form of the Homeland Security Act of 2002.4 Indeed, as we shall see, that Act provides an object lesson: Design matters. And by altering bureaucratic arrangements, stronger internal checks can emerge.

#### Executive orders don’t require political capital --- bypasses legislative process.

Benjamin Sovacool and Kelly Sovacool, 2009. PhD, Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization; and Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of Singapore. “Preventing National Electricity-Water Crisis Areas in the United States,” Columbia Journal of Environmental Law , 34 Colum. J. Envtl. L. 333.

Executive Orders also save time in a second sense. The President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal. Executive Orders thus save presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horsetrading and compromise such legislative activity entails. 292 Speediness of implementation can be especially important when challenges require rapid and decisive action. After the September 11, 2001 attacks on the Pentagon and World Trade Center, for instance, the Bush Administration almost immediately passed Executive Orders forcing airlines to reinforce cockpit doors and freezing the U.S. based assets of individuals and organizations involved with terrorist groups. 293 These actions took Congress nearly four months to debate and subsequently endorse with legislation. Executive Orders therefore enable presidents to rapidly change law without having to wait for congressional action or agency regulatory rulemaking.

### 2NC OLC – AT: Presidential Circumvention

#### Presidents have strong incentives to follow OLC rulings and maintain OLC independence --- having a legitimate, external source of legal authorization gives presidents political cover --- if they pursued action without seeking OLC approval, it would lead to political pressure from other branches and the public --- that’s Morrison.

#### Internal checks like the OLC create strong dis-incentives for executive circumvention.

Peter Raven-Hansen, Spring 2009. Glen Earl Weston Research Professor of Law at George Washington University Law School. “EXECUTIVE SELF-CONTROLS: MADISON'S OTHER CHECK ON NATIONAL SECURITY INITIATIVES BY THE EXECUTIVE,” St. John's Journal of Legal Commentary, 23 St. John's J.L. Comm. 987, Lexis.

Agency culture is another internal check, perhaps the most important, but at the same time, the most nebulous. I am referring to an institutional self-  [\*990]  awareness, almost an institutional ego about the quality of its products (decisions, opinions, etc.) and about how its professional personnel differ from (are better than) everybody else in the Executive Branch. A classic example with which most of us (lawyers) are familiar is the "officer-of-the-Court" culture of Solicitor General's Office. [n5](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n5) The Office of the Legal Adviser to the State Department also has a distinctive culture. [n6](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n6) The Legal Adviser is the highest authority in international law. The Adviser is a representative of international law in the U.S. government - a voice not just for interpreting but, consistent with U.S. national interests, for advocating international law. [n7](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n7) The Office of Legal Counsel [hereinafter "OLC"] notoriously in the loop in the torture debate and other major national security initiatives by this Administration, historically had a distinctive culture, too, to which I will turn shortly.

The bedrock attributes of all these agency cultures is what I would call the lawyer culture. What is it? Well, we've all in this room been trained in it, so you can answer this for yourself. But as both a long-time trainer and long-past trainee, I can attest that the number one principle that we bring out without fail in every class in every law school in the United States is competency. It's no accident that the first rule of the ABA Model Rules of Professional Conduct is that "[a] lawyer shall provide competent representation to a client." [n8](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n8)

A competent lawyer researches thoroughly. She anticipates contrary arguments. She deals carefully with precedent. She analyzes and advises objectively. Thus, OLC alumnae declared as first principle that the OLC provide "accurate and honest appraisals of applicable law." [n9](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n9) The competent lawyer looks at the bad precedent, as well as the good, and tells the client about both. Business clients may hate their lawyers for being "nay-sayers,"  [\*991]  but the opposite of nay-sayer is "yes-man." Nay-saying objectivity is especially important in the small inner circle of presidential decision-making to counter the tendency towards groupthink and a vulnerability to sycophancy. Finally, a competent lawyer also respects precedent, at least so far as to explain it away when the client contemplates a departure. In national security law, where there are fewer relevant judicial precedents, prior OLC opinions may substitute, and respect for this "precedent" requires explaining away or distinguishing them. The drag of precedent may well make legal analysis inherently conservative, but that is just another way of saying that it serves as an internal check on government conduct informed by such analysis.

Fourth (and appropriately last because this is really an internal check that only comes into play when the rest have failed), is the check provided by threats to "go public" by leaking embarrassing information or publicly resigning. After 9/11, we have seen a series of leaks of OLC and Department of Defense legal analyses, and of details of legally controversial national security initiatives, such as the Terrorist Surveillance Program and coercive interrogation. While we have had almost no public protest resignations by senior government officers since the Saturday night massacre in the Watergate era, the press reported that then-Deputy Attorney General James Comey and thirty other Justice Department lawyers successfully threatened to resign in order to get the Terrorist Surveillance Program changed. [n10](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n10)

But do these kinds of internal checks really work? The internal checks on Congress of bicameralism and majority voting are both rooted in the text of the Constitution. The internal checks on the courts of the case and controversy requirement, the requirement for public trials, and the right to jury trial are also rooted in the text of the Constitution. But the internal checks on the Executive of inter-agency and intra-agency processes, office and lawyer culture, and even "going public" are not rooted in constitutional text. They are imposed - or, in the case of leaks, regulated - by the President or his designates. In other words, they are in substantial part dependent on the very persons they are designed to check. If President Bush or Vice President Cheney, or their delegates, imposes these checks, can't they just as easily remove or relax them?

Calling this the Dick Cheney objection is a shorthand for the assumption that the Vice President, in fact, did remove them or ignore them,  [\*992]  presumably acting with the President's approval. Key national security decisions were made in a small circle, centered on the Vice President's office. Jack Goldsmith, who was briefly in charge of Office of Legal Counsel during the Bush Administration, has asserted that a "War Council" of just five lawyers made some of the most controversial decisions, largely ignoring both the interagency process and any kind of thorough and effective intra-agency process as well. [n11](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n11) For example, they excluded even the National Security Advisor and Secretary of State Collin Powell from the decision to issue a military order authorizing military detention and trial by military commission; Powell reportedly first read about the military order in the newspapers, like the rest of us. [n12](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n12) Even when they were drafting that order and allegedly consulted some JAG experts, War Council lawyers reportedly showed the penultimate draft of the order only to the lead JAG lawyer, who was allowed to review it for only thirty minutes and was told "don't copy it or take it from the room." His recommendations were completely ignored in the final order. [n13](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n13) Similarly, Goldsmith reports that the senior lawyers in Justice were initially bypassed in the authorization of the Terrorist Surveillance Program. [n14](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n14) Indeed, Goldsmith reports that junior OLC lawyer and War Council member, John Yoo, sometimes even circumvented his own boss, the Attorney General. [n15](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n15)

Moreover, such by-passing or short-circuiting of the internal check of inter-agency and intra-agency review was intentional. It reflected a theory of unitary executive power developed in response to what some would call an anachronistic view of a weakened and beleaguered presidency, tracing its roots to the post-Watergate era in which Vice President Cheney served as Chief of Staff to President Ford (after serving in the Nixon White House). The ruthless application of the unitary executive theory - in part by blowing through [n16](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n16) contrary laws and internal checks - resulted in what one scholar calls the "unitary-executive-on-steroids," [n17](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n17) and what the Vice  [\*993]  President's lawyer, Dick Addington, himself described as, "push and push and push until some larger force makes us stop." [n18](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n18)

To rephrase the objection, then, if the President or Vice President can so easily blow through the internal checks on the Executive Branch that I've catalogued, how effective are they? Let me offer three brief answers.

First, neither the President nor the Vice President can systematically bypass such internal checks because neither actually does anything. They are only "Deciders." The President, after all, is not charged by the Constitution with executing the law, although we often say that in a sloppy paraphrase of the actual text. He's charged with "taking care that the laws be faithfully executed." [n19](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n19) The Decider is inevitably dependent on others to carry out his decision. He can issue a military order ordering trial by military commission for enemy combatants, but he must use the JAG lawyers ultimately to develop the procedures by which the commissions operate and to operate the commissions. He can order surveillance, but has to use career lawyers in the Justice Department to implement FISA, or even to circumvent it to operate the Terrorist Surveillance Program. The result is that he necessarily is going to run into some of the internal checks I have described, no matter how bent he is on blowing through them.

Secondly, while the President or Vice President, or their delegates, can try to change the architecture of decision making, (alter the inter-agency process), they cannot change the agency or lawyer culture nearly as quickly. The lawyer culture is implanted in law school and nurtured in practice, taking years and years to develop. As a result, it also takes years and years to root it out.

Take the torture memorandum [n20](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n20) written by John Yoo as an example. It is now notorious for its alleged role in promoting or justifying coercive interrogation. But it is also independently problematical to good lawyers because it arguably violates the first rule of lawyer culture; it is not competent. It ignores applicable laws and regulations. It fails to cite, let alone distinguish, the Steel Seizure Case[n21](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n21) when discussing an exclusive Commander-in-Chief power and the power of Congress to legislate on certain subjects. It ignores substantive due process case law on torture and police brutality that would have been more pertinent than the Medicare  [\*994]  regulations on which it relies. Dean Koh called it "perhaps the most clearly erroneous legal opinion I have ever read," [n22](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n22) and he's read a lot, both as an OLC alumnus himself and as a law professor. Another OLC alumnus says it is "dangerously flawed advice," "universally condemned," and "an extreme example of poor lawyering." [n23](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n23)

If you dismiss these criticisms as the views of cheese-eating, latte-sipping liberals, consider instead the opinion of a self-proclaimed legal conservative who served as head of the OLC for the Bush Administration. Jack Goldsmith looked at the torture memo and decided that he had to withdraw it. Not because he was uncomfortable exploring the contours of torture law. Not because torture is repugnant. Not because he rejected the necessity for enhanced interrogation. He had to withdraw it and a successor memo because they "were deeply flawed: sloppily reasoned, overbroad, and incautious in asserting extraordinary constitutional authorities on behalf of the President." [n24](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n24) That is, they violated the bedrock rule of lawyer competency. They also violated the OLC culture. Goldsmith said, "they lacked the tenor of detachment and caution that usually characterizes OLC work ... ." [n25](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n25) They were "wildly broader than was necessary to support what was actually being done."[n26](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n26)

Of course, you could still object that the lawyer culture did not stop their issuance, let alone any coercive interrogation that they could be read to authorize. You could say that their withdrawal came too late. You could say the memos that replaced them were not much better. You could say Jack Goldsmith is trying to have it both ways. But I think what you'd also have to say is that, if the damage was done despite the internal checks, it didn't stay done, thanks, in part, to the same checks.

A final answer to the Cheney objection is that many of the internal checks are imposed by the Executive in its own self-interest - the interest of avoiding an external check. The intra-agency FISA procedures which I summarized are driven by the prospect of FISC disapproval. The Executive uses the process in part to earn deference from the court. Other inter-agency and intra-agency procedures are driven by the possibility of  [\*995]  due process review. They anticipate procedures that courts might impose. Internal checks are also put in place and enforced to forestall new legislation, should Congress eventually examine the initiatives that result. It gives the President the argument that, "We vetted this carefully and oversaw it closely, so there is no need for new legislation [that is, a statutory check]."

#### Internal checks are superior --- less likely to trigger backlash or circumvention.

Shirin Sinnar, May 2013. Assistant Professor of Law, Stanford Law School. “Protecting Rights from Within? Inspectors General and National Security Oversight,” Stanford Law Review, 65 Stan. L. Rev. 1027, Lexis.

These limitations on traditional external checks on the executive - Congress and the courts - have led to increased academic interest in potential checks within the executive branch. Many legal scholars have argued that executive branch institutions supply, or ought to supply, an alternative constraint on executive national security power. Some argue that these institutions have comparative advantages over courts or Congress in addressing rights concerns; others characterize them as a second-best option necessitated by congressional enfeeblement and judicial abdication.

Thus, Neal Katyal argues that institutions within the executive branch can provide for the "internal separation of powers" in the foreign policy arena and champions bureaucracy as a check on presidential power. [n2](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.702883.4899287195&target=results_DocumentContent&returnToKey=20_T18155209187&parent=docview&rand=1379304281360&reloadEntirePage=true#n2) Samuel Issacharoff and Richard Pildes argue that internal dissension within the executive branch has historically protected civil liberties in wartime. [n3](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.702883.4899287195&target=results_DocumentContent&returnToKey=20_T18155209187&parent=docview&rand=1379304281360&reloadEntirePage=true#n3) Dawn Johnsen advocates that legal advisers within the executive branch serve to constrain unlawful executive action. [n4](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.702883.4899287195&target=results_DocumentContent&returnToKey=20_T18155209187&parent=docview&rand=1379304281360&reloadEntirePage=true#n4) Others contend that internal executive mechanisms have comparative advantages over judicial review: for instance, Gillian Metzger observes that such mechanisms can operate ex ante and continuously, rather than solely in response to justiciable challenges or problems that generate congressional attention, and argues that the policy recommendations of executive institutions may face less resistance than external critiques. [n5](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.702883.4899287195&target=results_DocumentContent&returnToKey=20_T18155209187&parent=docview&rand=1379304281360&reloadEntirePage=true#n5) Moreover, outside the United States, legal scholars also point to executive oversight institutions as necessary to mitigate inadequate judicial review of state national security activities. [n6](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.702883.4899287195&target=results_DocumentContent&returnToKey=20_T18155209187&parent=docview&rand=1379304281360&reloadEntirePage=true#n6)

### A2 – Adventurism

#### FLOW

## Solvency

### 2NC – Defense

#### Extend Nzelibe—Congress can’t and won’t enforce restrictions, 3 reasons—

#### 1. There’s empirics disprove the efficacy of Congressional restrictions. Their ev only says Congress *should* restrict not that Congress will follow through and enforce. Restrictions only exist to give an illusion of congressional participation and don’t actually curtail presidential powers.

#### 2. Electoral disincentives discourage enforcement—Congress will not second guess the president in a crisis or divert time from their district. Both actions harm future electoral prospects

#### 3. Congress will inevitably fall into line—they will find it politically expedient to follow the President. That’s Bell

#### 4. Congress will continue to rubberstamp war efforts. President controls the crisis-escalation agenda

Nzelibe 6—Jide Nzelibe, Professor of Law @ Northwestern University [“A positive theory of the war-powers constitution,” *Iowa Law Review*, 2006; 91(3) pg. 993-1062]

The theoretical framework laid out in this Article suggests that as long as the President has control over the crisis-escalation agenda, it is unlikely that either more sophisticated institutional tools or greater judicial intervention will significantly alter Congress's war-powers role. Once the President has escalated an international crisis and mobilized the domestic audience in favor of war, there is a strong tendency that Congress will follow suit and accede to the President's agenda. In other words, electoral factors are more likely to influence the congressional role in war-powers issues than empire-building concerns." Moreover, even if the courts force Congress to play a more active role by requiring that it authorize ex-ante all uses of force, the President's unique ability to shape public opinion even before a war is initiated will make it very likely that members of Congress will simply rubberstamp the President's use-of-force initiatives. Thus, although the courts can plausibly force Congress to play a more formal role in initiating wars, this does not mean that Congress will have any incentive to take such a task seriously. Pg. 1000

### 2NC – Turn

#### Showdown results in expanded Presidential authority. Public sentiment will force Congress to capitulate

Posner & Vermeule 07—Professor of Law @ The University of Chicago & Professor of Law @ Harvard Law School [Eric A. Posner & Adrian Vermeule, “Constitutional Showdown,” University of Chicago Law School, John M. Olin Law & Economics Working Paper NO. 348, July 2007, pg. http://ssrn.com/abstract\_id=1002996

Public constitutional sentiment is the bedrock, but that does not mean that it will be profound or even intelligent. There is no reason to believe that public constitutional sentiment actually reflects the optimal allocation of authority: it may be that public constitutional sentiment is simply uninformed, or is heavily influenced by the private interests of groups or elites. It might be that social welfare is maximized if Congress has the authority to terminate the war, but public constitutional sentiment nonetheless places that authority with the president. Our focus is not on whether public constitutional sentiment is optimal but what, given that sentiment, is the optimal way for Congress and the president to act. We will bracket the possibility that Congress and the president may care sufficiently about the public interest, while knowing that public constitutional sentiment is uninformed and bad for the country, that they would cooperate in allocating powers and avoid impasses which would be resolved by public constitutional sentiment. This possibility is not absurd: it is reflected in the views of people who oppose proposals for constitutional conventions because of the risk that the constitution that emerges will be worse than the constitution that we have. However, if Congress and the president can maintain such an allocation of powers voluntarily, then, by definition, showdowns do not occur. Thus, we can ignore this possibility for purposes of our discussion.

If public constitutional sentiment will ultimately settle the question of whether Congress or the president has the power to terminate the war, why do showdowns occur? One might think that Congress and the president will simply resolve their dispute by consulting public constitutional settlement. The alternative would only be a showdown that would last long enough to rouse the public, and the paralysis of government during this interval could damage both institutions and ruin the electoral chances of their occupants. Pg. 16 -17,

#### The expansion will include AUMF 2.0 that increases US drone strikes and undermines the rule of law

Brooks 13—Professor of Law @ Georgetown University [Rosa Brooks (Senior Fellow @ New America Foundation, Former Counselor to the Undersecretary of Defense for Policy @ Department of Defense, Former Special Coordinator for Rule of Law and Humanitarian Policy @ DOD and Recipient of the Secretary of Defense Medal for Outstanding Public Service), “Mission Creep in the War on Terror” Foreign Policy | MARCH 14, 2013, pg. http://www.foreignpolicy.com/articles/2013/03/14/mission\_creep\_in\_the\_war\_on\_terror?page=0,0]

With Option 3 -- lie, lie, lie -- off the table, and fudging and obfuscation growing harder to comfortably sustain, the thoughts of administration officials turn naturally to Option 2: change the law. Thus, as the Washington Post reported last weekend, some administration officials are apparently considering asking Congress for a new, improved "AUMF 2.0," one that would place U.S. drone policy on firmer legal footing.

Just who is behind this notion is unclear, but the idea of a revised AUMF has been gaining considerable bipartisan traction outside the administration. In a recent Hoover Institution publication, for instance, Bobby Chesney, who served in the Obama Justice Department, teams up with Brookings's Ben Wittes and Bush administration veterans Jack Goldsmith and Matt Waxman to argue for a revised AUMF -- one that can provide "a new legal foundation for next-generation terrorist threats."

I'm as fond of the rule of law as the next gal, so in a general sense, I applaud the desire to ensure that future executive branch counterterrorist activities are consistent with the laws passed by Congress. But "laws" and "the rule of law" are two different animals, and an expanded new AUMF is a bad idea.

Sure, legislative authorization for the use of force against "next generation" terrorist threats would give an additional veneer of legality to U.S. drone policy, and make congressional testimony less uncomfortable for John Brennan and Eric Holder. But an expanded AUMF would also likely lead to thoughtless further expansion of targeted killings. This would be strategically foolish, and would further undermine the rule of law.

## Europe

### EU

**Alliances are resilient --- institutional incentives mean states wont opt for new security arrangements even when they don’t like the alliance anymore.**

Celeste A. **Wallander**, Autumn **2000**. Director and Senior Fellow of the Russia and Eurasia Program at the Center for Strategic and International Studies, Professor in the School of International Service at American University, PhD Political Science @ Yale. “Institutional Assets and Adaptability: NATO After the Cold War,” International Organization 54, Ebsco.

Alliances can be more than simply pieces of paper or aggregations of military power: as explicit, persistent, and connected sets of rules that prescribe behavioral roles and constrain activity, sometimes alliances are institutions. To understand why they are created, how they affect security relations, and whether they will persist, we need to develop hypotheses that draw on institutional theory.6 Analysts have turned to institutional theory to explain the persistence of NATO, focusing on the alliance’s high degree of institutionalization as a central explanatory variable.7 States create costly institutions in anticipation of the cooperation they will be able to achieve. Institutional maintenance entails costs, but these costs are generally lower than those involved in creating new institutions. Changed circumstances, **such as shifts in the distribution of power, changes in national policies**, or the appearance of new cooperation problems are likely to alter the original cost/benefit relationship. Yet if the **marginal costs of maintaining an existing institution outweigh the considerable costs of creating an entirely new set** of norms, rules, and procedures, **states will choose to sustain existing arrangements rather than abandon them**.8 In addition, abandoning an existing institution risks competitive bargaining over alternative equilibria, with the chance that states will fail to agree, forcing them to settle for suboptimal outcomes.9 Other things being equal, then, the more institutionalized a security coalition, the more likely it is to persist in the face of change in its environment.

## Yemen

### Trade

**No impact – empirically denied. Fo real.**

**Jin-Seo, 4-17-11**

[Cho, South Korea Times, “Beware of Asia's political shock, not Arab oil shock,” <http://www.koreatimes.co.kr/www/news/biz/2011/04/328_85316.html>]

\*cites Thierry de Montbrial, head of the Institut Francais des Relation Internationals, a major think tank in France

If East Asia is a fault line of a global political economy, another crack may lie underneath the Middle East. After all, more than a half of the world's oil reserves are concentrated in this desert region. Oil price has already risen to the degree that this year it alone is expected to push up this year's world inflation by 1.8 percentage points and dampen economic output by 1.4 percentage points, according to estimates by Samsung Economic Research Institute. But Montbrial says that the revolutions have little to do with oil production and oil prices will not rise so much as to hurt the global economy seriously. "As far as oil is concerned, I do not believe the 'peak oil theory' at all. It is the kind of theory that traces an extremely fragile hypothesis," he said. "In the first oil shock of the 1970s, all the pessimists were saying exactly what they are repeating now. Historically, we have observed the price of oil is extremely volatile. Each time the price goes up, we say that it is for some structural, long term reasons. But for most of them it is because of short term reasons, such as fear of short-term cuts and political difficulties."

### Indo Pkak

**No miscalc**

**Manor 2**

(James, Fellow of the Woodrow Wilson International Center for Scholars, International Herald Tribune, “How a war could go nuclear; India and Pakistan”, May 27, L/N)

A misperception by either side that the other had launched or was about to launch a nuclear strike. This is slightly more likely, but not a serious danger. Some Pakistanis argue that conventional bombs might cause an immense blast that could be misconstrued by one side as a nuclear strike. Indian and foreign analysts discount such a possibility because it would not entail the release of radiation.Radiation might be released if conventional bombs struck a nuclear facility or a nuclear weapons cache, another concern that Pakistanis stress. But neutral observers doubt that this would be misperceived as a first use of nuclear weapons, because it is extremely unlikely that such an event would produce a nuclear detonation.The launching of missiles containing conventional explosives might be seen at the receiving end as an impending nuclear strike, and this could trigger a nuclear response. Some foreign analysts play down this risk because they doubt that either side has miniaturized its nuclear weapons sufficiently to put them on missiles. But senior Indian and Pakistani officials believe that it is just possible that the other has this capability. Besides, it takes only a few minutes for a missile to travel from one of these countries to the other. If either side launched missiles with conventional warheads against the other, the latter would not be able to respond until after the missiles had struck. It would thus become apparent that no nuclear attack had been made.

# 1NR Round 5

## Politics

### 2NC Overview

#### Disad outweighs and turns the case

#### Economic collapse increases the propensity for international conflict -- rogue nations and developed nations go to war due to economic decline and transitions of power uncertainty in power balances results in catastrophic nuclear change.

#### Prefer our impact – the economy works as a conflict dampner – we won’t go to war with a strong economy

#### Turns trade – self-imposed financial crisis send a signal of weakness in US trade policy – that causes their impact

#### Recession will collapse into protectionism.

Panzer 7—Michael J. Panzner, Faculty Member specializing in Equities, Trading, Global Capital Markets and Technical Analysis at the New York Institute of Finance, 25-year veteran of the global stock, bond, and currency markets who has worked in New York and London for HSBC, Soros Funds, ABN Amro, Dresdner Bank, and J.P. Morgan Chase, 2007 (“Geopolitics,” *Financial Armageddon: Protecting Your Future from Four Impending Catastrophes*, Published by Kaplan Publishing, ISBN 141959608X, p. 130-138)

With the United States losing its place at the head of the economic table, the energizing force that has long led the charge for open markets and free trade will itself retreat into isolation and protectionism. In fact, the American public, spurred by feelings of anxiety, fear, distrust, and paranoia, will likely raise a growing clamor for barbwire and poured concrete as well as legal barriers. The turnaround in attitudes toward porous borders and the disintegration of one of the world’s leading marketplaces for other nations’ goods and services will parallel anti-American sentiment sweeping across the globe. For many, America’s long-time paternalistic arrogance and self-appointed role as global police officer, economic authoritarian, and enforcer of the Judeo-Christian ethic was seen as tolerable only when others either stood to benefit or had little choice.

But with the cult of consumerism crumbling, the economy in a tailspin, the nation’s financial system being consumed from within, public finances in tatters, and military resources stretched to the breaking point, outsiders will no longer have an incentive to ignore the new reality: the end of American hegemony. [end page 130]

Economic and financial shocks will reverberate back and forth between rich and poor, allies and adversaries, producers and consumers, and mature and developing nations. A siege mentality will take hold, where survival and gaining an advantage are the primary goals and “every man for himself” becomes the guiding principle.

#### Growth is necessary for environmental transition—resource access.

Ben-Ami 11 — Daniel Ben-Ami, journalist and author, regular contributor to *spiked*, has been published in the *American*, the *Australian*, Economist.com, *Financial Times*, the *Guardian*, the *Independent*, *Novo* (Germany), *Ode* (American and Dutch editions), *Prospect*, *Shanghai Daily*, the *Sunday Telegraph*, the *Sunday Times*, and *Voltaire* (Sweden), 2011 (“Growth is good,” *Ode*, June, Available Online at http://www.odemagazine.com/doc/print/75/growth-is-good, Accessed 08-16-2011)

But is this notion of environmental limits really true? It is certainly the case that, say, building a factory can lead to pollution. However, it is also true that economic growth can generate the resources to clean up the environment and mold it to benefit human beings. That is why, as a general rule, developed countries are less polluted and cleaner than developing ones.

Typically, countries experience an environmental transition as they develop. In the early stages, cities may be grossly unsanitary and factories might billow filthy smoke. But as they become richer, these cities clean things up. In London, my hometown, cholera was widespread in the mid-19th century as raw human waste flowed into the Thames River. Then the authorities built an extensive sewage system, a pioneering civil engineering project at the time, and the problem was solved.

If anything, today’s developing countries potentially have it easier. They do not need to reinvent sewage systems or modern medicine. Instead, they just need to generate the resources to be able to afford the type of infrastructure already available in the West.

#### Turns leadership and soft power

Lieberthal and O’Hanlon 12 — Kenneth G. Lieberthal, Director of the John L. Thornton China Center and Senior Fellow in Foreign Policy and Global Economy and Development at the Brookings Institution, former Professor at the University of Michigan, served as special assistant to the president for national security affairs and senior director for Asia on the National Security Council, holds a Ph.D. from Columbia University, and Michael E. O'Hanlon, Director of Research and Senior Fellow in Foreign Policy at the Brookings Institution, Visiting Lecturer at Princeton University, Adjunct Professor at Johns Hopkins University, holds a Ph.D. from Princeton University, 2012 (“The Real National Security Threat: America's Debt,” *Los Angeles Times*, July 10th, Available Online at http://www.brookings.edu/research/opinions/2012/07/10-economy-foreign-policy-lieberthal-ohanlon, Accessed 07-12-2012)

. Lastly, American economic weakness undercuts U.S. leadership abroad. Other countries sense our weakness and wonder about our purported decline. If this perception becomes more widespread, and the case that we are in decline becomes more persuasive, countries will begin to take actions that reflect their skepticism about America's future. Allies and friends will doubt our commitment and may pursue nuclear weapons for their own security, for example; adversaries will sense opportunity and be less restrained in throwing around their weight in their own neighborhoods. The crucial Persian Gulf and Western Pacific regions will likely become less stable. Major war will become more likely. When running for president last time, Obama eloquently articulated big foreign policy visions: healing America's breach with the Muslim world, controlling global climate change, dramatically curbing global poverty through development aid, moving toward a world free of nuclear weapons. These were, and remain, worthy if elusive goals. However, for Obama or his successor, there is now a much more urgent big-picture issue: restoring U.S. economic strength. Nothing else is really possible if that fundamental prerequisite to effective foreign policy is not reestablished.

### U Wall

#### WE’ll control Uniqueness – Debt Ceiling will get lifted – evidence cites Insiders that expect the GOP to back off the games – that’s Bloomberg.

#### AND – THE LINK DETERMINES the way you read Uniqueness - Obama’s POLITICAL STANDING determines the momentum – it’s conclusive – he’s trying to set the agenda and will succeed. Plan flips uniqueness.

PACE 9 – 12 – 13 AP White House Correspondent [Julie Pace, Syria debate on hold, Obama refocuses on agenda, <http://www.fresnobee.com/2013/09/12/3493538/obama-seeks-to-focus-on-domestic.html>

With a military strike against Syria on hold, President Barack Obama tried Thursday to reignite momentum for his second-term domestic agenda. But his progress could hinge on the strength of his standing on Capitol Hill after what even allies acknowledge were missteps in the latest foreign crisis.

"It is still important to recognize that we have a lot of things left to do here in this government," Obama told his Cabinet, starting a sustained White House push to refocus the nation on matters at home as key benchmarks on the budget and health care rapidly approach.

"The American people are still interested in making sure that our kids are getting the kind of education they deserve, that we are putting people back to work," Obama said.

The White House plans to use next week's five-year anniversary of the 2008 financial collapse to warn Republicans that shutting down the government or failing to raise the debt limit could drag down the still-fragile economy. With Hispanic Heritage Month to begin Monday, Obama is also expected to press for a stalled immigration overhaul and urge minorities to sign up for health care exchanges beginning Oct. 1.

Among the events planned for next week is a White House ceremony highlighting Americans working on immigrant and citizenship issues. Administration officials will also promote overhaul efforts at naturalization ceremonies across the country. On Sept. 21, Obama will speak at the Congressional Black Caucus Gala, where he'll trumpet what the administration says are benefits of the president's health care law for African-Americans and other minorities.

Two major factors are driving Obama's push to get back on track with domestic issues after three weeks of Syria dominating the political debate. Polls show the economy, jobs and health care remain Americans' top concerns. And Obama has a limited window to make progress on those matters in a second term, when lame-duck status can quickly creep up on presidents, particularly if they start losing public support.

Obama already is grappling with some of the lowest approval ratings of his presidency. A Pew Research Center/USA Today poll out this week put his approval at 44 percent. That's down from 55 percent at the end of 2012.

Potential military intervention in Syria also is deeply unpopular with many Americans, with a Pew survey finding that 63 percent opposing the idea. And the president's publicly shifting positions on how to respond to a deadly chemical weapons attack in Syria also have confused many Americans and congressional lawmakers.

"In times of crisis, the more clarity the better," said Sen. Lindsey Graham, R-S.C., a strong supporter of U.S. intervention in Syria. "This has been confusing. For those who are inclined to support the president, it's been pretty hard to nail down what the purpose of a military strike is."

For a time, the Obama administration appeared to be barreling toward an imminent strike in retaliation for the Aug. 21 chemical weapons attack. But Obama made a sudden reversal and instead decided to seek congressional approval for military action.

Even after administration officials briefed hundreds of lawmakers on classified intelligence, there appeared to be limited backing for a use-of-force resolution on Capitol Hill. Rather than face defeat, Obama asked lawmakers this week to postpone any votes while the U.S. explores the viability of a deal to secure Syria's chemical weapons stockpiles.

That pause comes as a relief to Obama and many Democrats eager to return to issues more in line with the public's concerns. The most pressing matters are a Sept. 30 deadline to approve funding to keep the government open — the new fiscal year begins Oct. 1 — and the start of sign-ups for health care exchanges, a crucial element of the health care overhaul.

On Wednesday, a revolt by tea party conservatives forced House Republican leaders to delay a vote on a temporary spending bill written to head off a government shutdown. Several dozen staunch conservatives are seeking to couple the spending bill with a provision to derail implementation of the health care law.

The White House also may face a fight with Republicans over raising the nation's debt ceiling this fall. While Obama has insisted he won't negotiate over the debt limit, House Speaker John Boehner on Thursday said the GOP will insist on curbing spending.

"You can't talk about increasing the debt limit unless you're willing to make changes and reforms that begin to solve the spending problem that Washington has," the Ohio Republican said.

#### Will pass – multiple warrants -

#### A. Obama controls the message

EASLEY 9 – 18 – 13 Politics USA Staff [Jason Easley, Obama’s Genius Labeling of GOP Demands Extortion Has Already Won The Debt Ceiling Fight, <http://www.politicususa.com/2013/09/18/obamas-genius-labeling-gop-demands-extortion-won-debt-ceiling-fight.html>]

Obama use of the term extortion to describe the House Republican debt ceiling demands was a step forward in a strategy that has already made it a near certainty that he will win this standoff.

President Obama effectively ended any Republican hopes of getting a political victory on the debt ceiling when he called their demands extortion. Nobody likes being extorted. The American people don’t like feeling like they are being shaken down. The White House knows this, which is why they are using such strong language to criticize the Republicans. Obama is doing the same thing to House Republicans that he has been doing to the entire party for the last few years. The president is defining them before they can define themselves.

Obama is taking the same tactics that he used to define Mitt Romney in the summer of 2012 and applying them to John Boehner and his House Republicans. While Republicans are fighting among themselves and gearing up for another pointless run at defunding Obamacare, the president is already winning the political battle over the debt ceiling. His comments today were a masterstroke of strategy that will pay political dividends now and in the future. If the president is successful anytime a Republican talks about defunding Obamacare, the American people will think extortion. Republicans keep insisting on unconstitutional plots to kill Obamacare, and the president is calling them out on it.

Republicans haven’t realized it yet, but while they are chasing the fool’s gold of defunding Obamacare they have already lost on the debt ceiling. By caving to the lunatic fringe in his party, John Boehner may have handed control of the House of Representatives back to Democrats on a silver platter.

While Republicans posture on Obamacare, Obama is routing them on the debt ceiling.

#### GOP will act – just talk

IB TIMES 8 – 31 – 13 [Government Shutdown 2013: Republicans ‘Can’t Afford To,’ Says AFL-CIO, <http://www.ibtimes.com/government-shutdown-2013-republicans-cant-afford-says-afl-cio-1402078>]

With budget battles set to heat up in the fall and time running out for lawmakers to hash out a debt and deficit solution, some in the labor sector aren’t breaking a sweat over recent failed talks between the White House and Republicans -- some of whom have threatened a government shutdown should they not get their own way.

Republicans’ talk of a government shutdown is essentially hogwash. That’s the view expressed by AFL-CIO President Richard Trumka in an interview on Bloomberg TV’s “Political capital with Al Hunt,” to air this weekend.

“There is no crisis here, and I don’t think the Republicans are going to shut down the government,” Trumka said in a transcript. “They can’t afford to. Some of their best political people, their best donors are going to get hurt in the process. It hurts the economy. And I don’t think they’re going to do it.”

That’s not to say Trumka doesn’t expect the Republicans to play games before cooler heads prevail.

“I’m just saying they’re not going to shut down the government over either one of those,” he said on the program. “They’ll talk through things, and [John] Boehner’s already offered a short-term extension, and we’ll see what happens.”

### AT: Thumpers

#### Obama’s shifting to the economy

CBS News 9/16/13, Lindsey Boerma, “After weeks of focus on Syria, Obama pivots to the economy,” http://www.cbsnews.com/8301-250\_162-57603030/after-weeks-of-focus-on-syria-obama-pivots-to-the-economy/

Facing an overwhelmingly united front against his request for U.S. intervention in Syria, President Obama will pivot to the economy Monday, five years after the Lehman Brothers' collapse on Wall Street signaled the start of the nation's ongoing financial crisis.¶ Small business owners, construction workers, homeowners, consumers and tax cut recipients who have benefited from the administration's economic recovery moves will flank the president in the White House Rose Garden for remarks trumpeting the "progress we have made to grow the economy and create 7.5 million private sector jobs" during the past five years, according to a White House official.¶ Could GOP hostility to Obamacare force a government shutdown?¶ The timing is right: In just over two weeks, on Oct. 1, the government could shut down should lawmakers fail to strike a budget deal to replace the expiring continuing resolution.¶ It's also opportune, politically, for the president, who for the past several weeks has been mired in trying to win over a largely skeptical audience since asking Congress to OK his request for military intervention in civil war-torn Syria.

#### Everything else is “OFF THE STOVE”

ATLANTIC WIRE 9 – 13 – 13 <http://www.theatlanticwire.com/politics/2013/09/john-boehners-negotiations-are-going-worse-john-kerrys/69385/>

Capitol Hill Republicans have returned their focus to the war with the white house up the street over the national debt, Obamacare, and how to use one to stop the other. The combination of the August recess and the now-delayed Syria vote has meant nearly six weeks of legislative inaction, despite looming deadlines. Issues like immigration reform have been taken off the stove completely, given how quickly Congress needs to act on a measure that will authorize funding for the government and, slightly less quickly, an increase to the debt ceiling. Both things which could have been addressed earlier in the year, of course, but, thanks to Congress' near-historic inaction, weren't. With an October 1 deadline for funding the government, House Majority Leader Eric Cantor has threatened to cancel the House's September recess. That recess would have begun two weeks after the House returned from its August recess.

#### Obama is focusing – dropping Summers proves

GLOBE & MAIL 9 – 17 – 13 <http://www.theglobeandmail.com/report-on-business/with-summers-out-of-running-a-fractious-fall-looms-in-washington/article14357991/>

Ms. Warren was one of four Democrats on the banking committee who said they would vote against Prof. Summers. That meant the White House would have had to have sought Republican support to get Prof. Summers through the committee stage of the nomination process and onto the Senate floor. That’s more political capital than the President currently has to spend.

“Republicans would have wanted something in return,” Mr. Bosworth said. “It wasn’t worth it.”

More of the contentious fiscal showdowns that have characterized Mr. Obama’s relationship with the Republican-led House of Representatives are on the horizon.

While the U.S. government’s fiscal year ends on Sept. 30, Democrats and Republicans appear nowhere near agreement on a new budget, despite promises earlier in the year that they would do so. Failure to come up with a fiscal plan, or extend existing spending authority, would force the government to cease operations.

#### Syria didn’t cost capital – agenda looks the same

GLOBE & MAIL 9 – 16 – 13 http://www.theglobeandmail.com/news/world/obama-faces-fall-showdown-with-congress/article14329090/

With war against Syria averted, or perhaps postponed, U.S. President Barack Obama can turn again to September’s anticipated battles against his still-implacable Republican opponents.

Looming is a Sept. 30 deadline for Congress to fund ongoing government operations – everything from food stamps to new bullets – and a showdown is shaping up between a weakened President and Republicans riven by their own divisions.

#### Democrats will line up on fiscal votes

NYT 9 – 18 – 13 As Budget Fight Looms, Obama Sees Defiance in His Own Party, <http://www.nytimes.com/2013/09/18/us/politics/as-budget-fight-looms-obama-sees-defiance-in-his-own-party.html?pagewanted=all&_r=0>

Howard Dean, the former Democratic Party chairman and Vermont governor, said discord was unsurprising. “You don’t see a lot of lock step among Democrats under any circumstances, so I don’t find it at all surprising that they would disagree with him about N.S.A. or Syria,” he said. But he predicted the looming fiscal clash would consolidate support again. “I can guarantee you the Democrats are going to unite around the president when the Republicans try to shut the government down.”

Phil Schiliro, Mr. Obama’s legislative director in his first term, said Democrats were still willing to take tough votes when they believed in the issue. “But if they genuinely believe the substance is wrong and the politics are bad, the president’s going to have a tougher time,” he said. “And that’s what’s going on.”

### Link

#### This isn’t your traditional political capital disad – this is a major backlash to the presidency disad. Kreiner is explicit – the check on authority will gut his agenda. AND Seeking Alpha is explicit – a major vote on war powers would DESTROY the debt ceiling fight by emboldening the right-wing in congress – they’ll fight back when they smell blood in the water.

#### AND – Obama needs a strong hand to keep them focused

LANGENKAMP 13 Global political analyst at ECR Research and Interest & Currency Consultants [Andy Langenkamp, Obama to Take Over Baton From Fed?, 7-12-13, <http://www.huffingtonpost.com/andy-langenkamp/obama-to-take-over-baton-_b_3571885.html>]

Risky fiscal fall

As the U.S. Fed is not planning to boost the asset markets for much longer, growth will have to come from the private sector albeit with help from the government. However, it remains to be seen if politicians in the United States will be able to contribute to a healthy base for economic growth later this year.

As growth has picked up, concerns over the fiscal health of the United States have receded into the background. The fiscal problems may be out of the limelight, but they have not gone away. A relatively quiet summer will be followed by a hectic fall. Democrats and Republicans will cross fiscal swords. On October 1st, the U.S. federal budget runs out, the sequester for the fiscal year 2014 takes effect, and the U.S. will hit the debt ceiling. In 2014 too, the U.S. federal government may well need a so-called "continuing resolution" just to keep going.

Political hot potatoes

The fiscal debate is not the only "interesting" item on the agenda in the last part of the year. Political issues that could make waves in Q4 are the Keystone XL pipeline from Canada to the U.S., immigration law reform, the ongoing story of Obamacare, and the nomination of the next Fed chairperson.

The above issues give the president some bargaining chips as he attempts to strike a fiscal deal. Maybe he can deliver a grand bargain via package deals. But equally, debate will then spiral out of control and create an (even more) poisonous atmosphere in Washington.

Scandals threat to Obama?

Lately, Obama has been under attack from various sides. Several scandals threaten to undermine his reputation. AP and Fox journalists have been spied upon and the Internal Revenue Service has deliberately targeted organizations linked to the Tea Party for extra scrutiny. Meanwhile, the effects of the affair surrounding the deadly assault on the U.S. consulate in Benghazi (Libya) are lingering on. The latest uproar of course concerns the National Security Agency's snooping activities. This has led to a global outcry and has undermined Obama's reputation and political power abroad.

Obama's weakened hand reduces the chance that he can move the fiscal agenda forward. Meanwhile, Mr. Obama seems increasingly preoccupied with his legacy. U.S. presidents want to leave their mark on world affairs as the end of their last term approaches. Several have tried to solve the thorny Israeli-Palestinian problem (Clinton made a brave but ultimately naive and fruitless attempt). Obama appears to focus on, among others, reducing the world's nuclear stockpile -- witness his recent speech in Berlin -- and closing Guantánamo Bay.

Still some cards up his sleeves?

The U.S. president still has some political capital at his disposal. His approval rating (50 percent) may not be spectacular but it exceeds the dismal endorsement of Congress (15 percent). Many voters still give him the benefit of the doubt; just 26 percent of Americans are satisfied with the direction the U.S. is taking, but Obama's ratings indicate many do not believe he is to blame for their disappointment. In any case, the presidential "approval premium" has not been this high since Reagan. Perhaps this will give Mr. Obama the courage to get down to business in Q4 and take decisive steps towards restoring the fiscal health of America.

#### BAD BLOOD could disrupt everything

SAHADI 9 – 12 – 13 CNN Money Staff [Jeanne Sahadi, The never-ending charade of debt ceiling fights, CNN MONEY 9 – 12 – 13 http://money.cnn.com/2013/09/12/news/economy/debt-ceiling/index.html?iid=EL]

Lawmakers are tied up in knots over increasing the debt ceiling this fall. But they eventually will. The only question is how messy the process will be.

Why assume they'll raise it? Because they have no real choice if they want to avoid a U.S. default. A default would hurt the economy and markets, and most lawmakers know this. That's why they regularly raise the debt ceiling before it comes to that.

In fact, since 1940, Congress has effectively approved 79 increases to the debt ceiling. That's an average of more than one a year.

How do they raise it? Sometimes lawmakers have raised it by small amounts, other times by large amounts. And sometimes they've raised it "temporarily" with provisions for a "snap-back" to a lower level.

Since it's a politically tough vote, they occasionally devise clever ways to tacitly approve increases without ever having to publicly record a "yes" vote.

For example, as part of the deal to resolve the 2011 debt ceiling war, Congress approved a plan that let President Obama raise the debt limit three times unless both the House and Senate passed a "joint resolution of disapproval." Such a measure never materialized. And even if it had, the president could have vetoed it.

Then this past February, lawmakers decided to temporarily "suspend" the debt ceiling.

Under this scheme, Treasury was able to continue borrowing to pay the country's bills until May 19. At that point, the debt limit automatically reset to the old cap plus whatever Treasury borrowed during the suspension period.

What does raising the debt ceiling accomplish? Despite some politicians' incorrect assertions, raising the debt ceiling does not give the government a "license to spend more."

It simply lets Treasury borrow the money it needs to pay all U.S. bills in full and on time. Those bills are for services already performed and entitlement benefits already approved by Congress. In other words, it's a license to pay the bills the country incurs as a result of past decisions made by lawmakers from both parties over the years.

Refusing to raise the debt ceiling is "not like cutting up your credit cards. It's like cutting up your credit card bills," said historian Joseph Thorndike, who has written about past debt crises.

How high is it today? The debt ceiling was reset at $16.699 trillion on May 19, up from the $16.394 trillion where it was before the suspension.

Since then, Treasury has been forced to use "extraordinary measures" to keep the country from breaching the limit.

Treasury Secretary Jack Lew said those measures will be exhausted by mid-October, after which he will only have $50 billion on hand, plus incoming revenue to pay what's owed. Sounds like a lot, but it won't last long.

How long will it last? An analysis by the Bipartisan Policy Center estimates that the Treasury will no longer be able to pay all bills in full and on time at some point between Oct. 18 and Nov. 5.

So, you're saying they only have a few weeks to work this out? Yup.

House Republicans say they will demand spending cuts and fiscal reforms in exchange for their support of a debt ceiling increase. The White House, meanwhile, has said it won't negotiate quid pro quos.

The question is when will Republicans or the White House -- or both - bend in the standoff? If recent history is any guide it likely will be just in the nick of time.

And there's no telling how creative the deal they cut will be.

But any bad blood created along the way almost certainly would poison other budget negotiations.

### Drones Link

#### Despite unpopularity of using Targeted Killing—Critics aren’t touching it because to do so would DESTROY obama’s agenda

HUGHES 2/6/13 White House Correspondent—The Washington Examiner [Brian Hughes, Obama's base increasingly wary of drone program, http://washingtonexaminer.com/obamas-base-increasingly-wary-of-drone-program/article/2520787]

The heightened focus on President Obama's targeted killings of American terror suspects overseas has rattled members of his progressive base who have stayed mostly silent during an unprecedented use of secret drone strikes in recent years.

During the presidency of George W. Bush, Democrats, including then-Sen. Obama, hammered the administration for employing enhanced interrogation techniques, which critics labeled torture.

Liberals have hardly championed the president's drone campaign but have done little to force changes in the practice, even as the White House touts the growing number al Qaeda casualties in the covert war.

The issue grates on some Democrats who backed Obama over Hillary Clinton because of her vote in favor of the war in Iraq, only to see the president ignore a campaign promise to close the detainee holding camp in Guantanamo, Cuba, and mount a troop surge in Afghanistan.

With the confirmation hearing Thursday for John Brennan, Obama's nominee for CIA director -- and the architect of the drone program -- Democrats will have a high-profile opportunity to air their concerns over the controversial killings.

"You watch and see -- the left wing of the party will start targeting Obama over this," said Larry Sabato, a political scientist at the University of Virginia. "It's inevitable. The drumbeat will increase as time goes on, especially with each passing drone strike."

Obama late Wednesday decided to share with Congress' intelligence committees the government's legal reasoning for conducting drones strikes against suspected American terrorists abroad, the Associated Press reported. Lawmakers have long demanded to see the full document, accusing the Obama administration of stonewalling oversight efforts.

Earlier in the day, one Democrat even hinted at a possible filibuster of Brennan if given unsatisfactory answers about the drone program.

"I am going to pull out all the stops to get the actual legal analysis, because with out it, in effect, the administration is practicing secret law," said Sen. Ron Wyden, D-Ore., a member of the Senate Select Intelligence Committee. "This position is no different [than] that the Bush administration adhered to in this area, which is largely 'Trust us, we'll make the right judgments.' "

In a Justice Department memo released this week, the administration argued it could order the killing of a suspected American terrorist even with no imminent threat to the homeland.

White House press secretary Jay Carney insisted on Wednesday that the administration had provided an "unprecedented level of information to the public" about the drone operations. Yet, questions remain about who exactly orders the killings, or even how many operations have been conducted.

"There's been more noise from senators expressing increased discomfort [with the drone program]," said Joshua Foust, a fellow at the American Security Project. "For Brennan, there's going to be more opposition from Democrats than Republicans. It's not just drones but the issue of torture."

Facing concerns from liberals, Brennan had to withdraw his name from the running for the top CIA post in 2008 over his connections to waterboarding during the Bush administration.

Since becoming president, Obama has championed and expanded most of the Bush-era terror practices that he decried while running for the White House in 2008.

It's estimated that roughly 2,500 people have died in drone strikes conducted by the Obama administration.

However, most voters have embraced the president's expanded use of drone strikes. A recent Pew survey found 62 percent of Americans approved of the U.S. government's drone campaign against extremist leaders. And some analysts doubted whether Democratic lawmakers would challenged Obama and risk undermining his second-term agenda.

"Democrats, they're going to want the president to succeed on domestic priorities and don't want to do anything to erode his political capital," said Christopher Preble, vice president for defense and foreign policy studies at the Cato Institute. "It's just so partisan right now. An awful lot of [lawmakers] think the president should be able to do whatever he wants."

### 2NC/1NR—Losers Lose

#### Losers LOSE—perception matters

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

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context,

In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not.

Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies

The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

### AT: Debt Ceiling – XO

#### Obama explicitly ruled out using the 14th amendment.

Washington Post, 9/10/2013. “We could breach the debt ceiling as soon as Oct. 18. Here’s what happens next,” http://www.washingtonpost.com/blogs/wonkblog/wp/2013/09/10/we-could-breach-the-debt-ceiling-as-soon-as-oct-18-heres-what-happens-next/.

Third, as we've discussed before, the Obama administration could try to find some extraordinary way to get around the debt ceiling. Some Democrats have suggested that Obama can just [declare the ceiling unconstitutional](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/01/11/senate-democrats-to-obama-ignore-the-debt-ceiling/) under the 14th Amendment. Others have suggested that he should [mint a platinum coin](http://www.washingtonpost.com/blogs/wonkblog/wp/2012/12/07/could-two-platinum-coins-solve-the-debt-ceiling-crisis/) to fund the government (yes, really). But administration officials [have explicitly ruled out](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/01/12/treasury-we-wont-mint-a-platinum-coin-to-sidestep-the-debt-ceiling/) these moves.

Treasury Secretary Jack Lew has insisted there are only two ways the debt ceiling fight can go: Either Congress lifts the debt ceiling, or the U.S. government defaults. Obama is "not going to be negotiating over the debt limit," Lew [told CNBC](http://www.cnbc.com/id/100990014) in August. "Congress has already authorized funding, committed us to make expenditures. We're now in a place where the only question is, will we pay the bills that the United States has incurred?"

decisions.

### AT: Alt Causes

#### Econ up – key indicators

Reuters 9/19/13 (“US leading economic indicator up 0.7 percent in August, beats forecast. http://www.reuters.com/article/2013/09/19/us-usa-economy-index-idUSBRE98I0LO20130919)

(Reuters) - An index of U.S. leading indicators advanced by more than expected in August as the economy shrugged off higher borrowing costs and the lingering impact of tax increases and Washington budget cuts, that posed a headwind for U.S. growth and hiring.

The private sector Conference Board said on Thursday that its Leading Economic Index (LEI) gained 0.7 percent to 96.6 last month, compared to a 0.5 percent rise in July.

"If the LEI's six-month growth rate, which has nearly doubled, continues in the coming months, economic growth should gradually strengthen through the end of the year," said Conference Board economist Ataman Ozyildirim in a statement.

Economists polled by Reuters had forecast the index to rise 0.6 percent in August. The Conference Board revised its July reading down slightly from a previously reported 0.6 percent increase.

# 2NR

### Econ high

#### Econ up – key indicators

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### Syria

#### Syria didn’t cost capital – agenda looks the same

GLOBE & MAIL 9 – 16 – 13 [http://www.theglobeandmail.com/news/world/obama-faces-fall-showdown-with-congress/article14329090/](http://www.theglobeandmail.com/news/world/obama-faces-fall-showdown-with-congress/article14329090/%22%20%5Ct%20%22_blank)

With war against Syria averted, or perhaps postponed, U.S. President Barack Obama can turn again to September’s anticipated battles against his still-implacable Republican opponents.

Looming is a Sept. 30 deadline for Congress to fund ongoing government operations – everything from food stamps to new bullets – and a showdown is shaping up between a weakened President and Republicans riven by their own divisions.

Then, some time in October, the U.S. Treasury will face another crisis as it reaches its borrowing limit. Without an increase, which some Republicans want to block, the U.S. government could face default. Meanwhile, hopes for progress on major policy initiatives such immigration reform, long expected to be the big legislative issue this fall, are fading.

As hostile as relations are, some observers suggest theaverted showdown over Syria – it’s now widely accepted that Congress would have rejected Mr. Obama’s call for an authorization of force had it gone to a vote – didn’t make things any worse.

“We don’t know what September would have looked like in the absence of the Syria issue but my guess is that it would have looked an awful lot like it looks today,” said Sarah Binder, a senior fellow at the Brookings Institutionwho watches Congress closely.

“These divisions over spending and size of government have been with us all along and the [Republican] opposition to Obama has been quite strong all along. … Set aside the issue of Syria and really nothing has changed.”