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## 1

First Off, politics

Obama singularly focused on the fiscal crisis—his political capital will resolve it before shutdown and default

Jonathan Allen, Politico, 9/19/13, GOP battles boost President Obama, dyn.politico.com/printstory.cfm?uuid=17961849-5BE5-43CA-B1BC-ED8A12A534EB

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

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

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

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

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

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

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

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

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

And it’s so important to the president’s strategy that White House officials didn’t consider postponing Monday’s rollout of the most partisan and high-stakes phase even when a shooter murdered a dozen people at Washington’s Navy Yard that morning.

The basic storyline, well under way over the summer, was to have the president point to parts of his agenda, including reducing the costs of college and housing, designed to strengthen the middle class; use them to make the case that he not only saved the country from economic disaster but is fighting to bolster the nation’s finances on both the macro and household level; and then argue that Republicans’ desire to lock in the sequester and leverage a debt-ceiling increase for Obamacare cuts would reverse progress made.

The president is on firm ground, White House officials say, because he stands with the public in believing that the government shouldn’t shut down and that the country should pay its bills.

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

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

Raising or Lowering Political Costs by Affecting Presidential Political Capital

Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea."

While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races." Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.6°

In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's highest second-term domestic priorities, such as Social Security and immigration reform, failedperhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.

When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena

That spills-over to government shutdown and US default—that kills the economy and US credibility

Norm Ornstein, resident scholar at the American Enterprise Institute, 9/1/13, Showdowns and Shutdowns, www.foreignpolicy.com/articles/2013/09/01/showdowns\_and\_shutdowns\_syria\_congress\_obama

Then there is the overload of business on the congressional agenda when the two houses return on Sept. 9 -with only nine legislative days scheduled for action in the month. We have serious confrontations ahead on spending bills and the debt limit, as the new fiscal year begins on Oct. 1 and the debt ceiling approaches just a week or two thereafter. Before the news that we would drop everything for an intense debate on whether to strike militarily in Syria, Congress-watchers were wondering how we could possibly deal with the intense bargaining required to avoid one or more government shutdowns and/or a real breach of the debt ceiling, with devastating consequences for American credibility and the international economy.

Beyond the deep policy and political divisions, Republican congressional leaders will likely use both a shutdown and the debt ceiling as hostages to force the president to cave on their demands for deeper spending cuts. Avoiding this end-game bargaining will require the unwavering attention of the same top leaders in the executive and legislative branches who will be deeply enmeshed in the Syria debate. The possibility -even probability -of disruptions caused by partial shutdowns could complicate any military actions. The possibility is also great that the rancor that will accompany the showdowns over fiscal policy will bleed over into the debate about America and Syria.

Extinction

Kemp 10

Geoffrey Kemp, 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, 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.

## 2

CP text:

The executive branch of the United States federal government should issue and enforce an executive order to change supervision of the drone program from Title 50 of the United States Code to Title 10 of the United States Code. The order should also establish a bipartisan independent executive branch commission to change supervision of the drone program from Title 50 of the United States Code to Title 10 of the United States Code.

Self-restraint is durable and sends a credible signal

Eric Posner, The University of Chicago Law School Professor, and Adrian Vermeule, Harvard Law School Professor of Law, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

The Madisonian system of oversight has not totally failed. Sometimes legislators overcome the temptation to free ride; sometimes they invest in protecting the separation of powers or legislative prerogatives. Sometimes judges review exercises of executive discretion, even during emergencies. But often enough, legislators and judges have no real alternative to letting executive officials exercise discretion unchecked. The Madisonian system is a partial failure; compensating mechanisms must be adopted to fill the area of slack, the institutional gap between executive discretion and the oversight capacities of other institutions. Again, the magnitude of this gap is unclear, but plausibly it is quite large; we will assume that it is.

It is often assumed that this partial failure of the Madisonian system unshackles and therefore benefits ill-motivated executives. This is grievously incomplete. The failure of the Madisonian system harms the well-motivated executive as much as it benefits the ill-motivated one. Where Madisonian oversight fails, the well-motivated executive is a victim of his own power. Voters, legislators, and judges will be wary of granting further discretion to an executive whose motivations are uncertain and possibly nefarious. The partial failure of Madisonian oversight thus threatens a form of inefficiency, a kind of contracting failure that makes potentially everyone, including the voters, worse off.

Our central question, then, is what the well-motivated executive can do to solve or at least ameliorate the problem. The solution is for the executive to complement his (well-motivated) first-order policy goals with second-order mechanisms for demonstrating credibility to other actors. We thus do not address the different question of what voters, legislators, judges, and other actors should do about an executive who is ill motivated and known to be so. That project involves shoring up or replacing the Madisonian system to block executive dictatorship. Our project is the converse of this, and involves finding new mechanisms to help the well-motivated executive credibly distinguish himself as such.

IV. Executive Signaling: Law and Mechanisms

We suggest that the executive's credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.

This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by "government" or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by "the people" to bind "themselves" against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations. n72 Whether or not this picture is coherent, n73 it is not the question we examine here, although some of the relevant considerations are similar. n74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. [\*895]

Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types.

We begin with some relevant law, then examine a set of possible mechanisms -emphasizing both the conditions under which they might succeed and the conditions under which they might not -and conclude by examining the costs of credibility.

A. A Preliminary Note on Law and Self-Binding

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 self-binding. n75 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. n76 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. n77 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 no-dessert 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.

## 3

War Powers

Executive war power primacy now—the plan flips that

Eric Posner, 9/3/13, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever.

It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.”

Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him.

The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.)

People who celebrate the president for humbly begging Congress for approval also apparently don’t realize that his understanding of the law—that it gives him the option to go to Congress—maximizes executive power vis-à-vis Congress. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.

The plan splinters presidential power

Jack Goldsmith, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, p. 228-31

Another cost of lawfare is the fragmentation of authority within the executive branch during war. The Commander in Chief traditionally had unified hierarchical command over the executive branch that empowered him to act quickly and that promoted accountability to the public by identifying him as the person responsible for all executive action. This understanding has broken down in the last decade. We have seen how consequential independent inspectors general are in checking the presidency's national security goals. Lawyers too have gained more independence and power that the President cannot effectively control, especially in the military, but in other pockets of the executive branch as well. These lawyers enforce the law (when they interpret it correctly), but they also attenuate the unity of accountability and command. The increasing involvement of courts and other outside actors in military and intelligence decisions does not violate the theory of the unitary executive, but it has a similar effect on the executive branch. As we have seen, judicial review of wartime tactics has all sorts of hard-to-see constraining consequences on presidential decision-making. The decentralized legal enforcers that have risen in power in the last decade splinter the Commander in Chief's executive unity like nothing in American wartime history. Benjamin Wittes closes his book Detention and Denial by speculating what would happen if a prisoner released from GTMO is later found in an al Qaeda leadership position. "We have no accountability when our system fails," he says, before asking, "Were these releases the fault of courts (whose threats of review spurred them), the Bush administration (which carried them out), . . . or the left and the international community (which ruthlessly pushed for them)?"' The problem is deeper and wider than Wittes describes. It is deeper because he does not mention the independent players inside the executive branch who shape and constrain presidential action through investigation and legal interpretation. And it is broader because it applies far beyond the detention context to surveillance, targeting, and every element of the war on terrorism. Moreover, the opposite of Wittes's speculation is also possible, indeed likely: the President will be blamed when something goes wrong even if because of the splintering of executive authority, he lacked the effective power to do what in retrospect should have been done. Distributed accountability can bring many benefits, but its undoubted costs are the difficulty of identifying the locus of accountability when something goes wrong, and the possibility that the leader of the flattened organization will be blamed even though he lacked effective control. A related cost of lawfare is the weakening of wartime presidential initiative and dispatch. When more eyes have to review an operation in advance, it takes longer. Covert operations have many layers of review and approval beginning with many in the CIA and moving up through other bureaucracies to the President. Decisions on the targets in this war often go through a similarly extensive review process for targets off the traditional battlefield, and less extensive but still elaborate reviews for targets on a tradi-tional battlefield. In general, all military and intelligence actions of any significance have elaborate and law-heavy preclearance processes. These up-front reviews delay action and can be so burdensome to negotiate that they result in otherwise useful and appropriate actions not being taken at all. Another factor slowing down and sometimes precluding executive action is the anticipated personal and professional costs of accountability. The rise of powerful, networked, and harshly critical NGOs has meant that not only top government officials, but midlevel ones as well, are subject to vivid, reputation-harming charges published globally on the Internet, as well as the possibility of lawsuits in the United States and abroad. The "mere threat of lawsuits and legal charges effectively bullies American decision makers, alters their actions, intimidates our security forces, and limits our country's ability to gather intelligence," says Donald Rumsfeld, lamenting lawfare's effect.' Stripped of its negative connotations, Rumsfeld's judgment—which in less colorful terms applies to every accountability constraint described in this book—should not be controversial. "Bullying" and "intimidating" are forms of influencing, and influencing government behavior to make it more prudent and lawful is the point of the legalized accountability mechanisms. "I think people should think twice; I think that's a good thing," says the ACLU's Jameel Jaffer upon learning about the effect of legal scrutiny and criticism on government officials. "I don't want people to think twice about doing things that are both in the national interest and consistent with the law but if by think twice you mean think twice before sticking a man in a box with a bug, then absolutely, think twice," he adds, referring to one of the Bush administration's most controversial interrogation techniques.' There is no doubt that lawfare significantly influences and constrains officials, not only by direct prohibitions but also, and more significantly, by getting them to "think twice" about what they are doing. The hard question is whether this influence goes too far. The bug-in-the-box is now prohibited by law, partly as a result of Jaffer's efforts, but in many cases what is in the national interest and what is lawful are not black and white, but rather various shades of gray. Government officials every day have to decide how far to push into this gray area. The accountability mechanisms give them pause and lead them not to push as far into the darker shades. Whether that leads them to a place in the gray area where they should be or short of where they should be depends on facts about the future that no one has, as well as one's view of the relevant law, which is not always clear. As a result of the last decade executive officials up and down the chain of command are much more sensitive to law and accountability, and many worry that this sensitivity leads to excessive caution. It is hard to know if they are right, but Jaffer's opposite and easy-sounding injunction—follow the law and act in the national security interest—is far too simple.

It spills over to destabilize all presidential war powers.

Heder ’10

(Adam, J.D., magna cum laude , J. Reuben Clark Law School, Brigham Young University, “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is **no constitutional provision** on whether Congress has the legislative power to **limit, end, or otherwise redefine the scope of a war**. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 **the same cannot be said about Congress’s legislative authority** to terminate or limit a war in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully **declined to grant Congress such powers**. And as this Article argues, granting Congress this power would be **inconsistent with the general war powers structure of the Constitution.** Such a reading of the Constitution would **unnecessarily empower Congress** and **tilt the scales heavily in its favor**. More over, it would strip the President of his Commander in Chief authority to direct the movement of troops at a time **when the Executive’s expertise is needed.** 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

That goes nuclear

Li ‘9

Zheyao, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modem state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

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The affirmative re-inscribes the primacy of liberal legalism as a method of restraint—that paradoxically collapses resistance to Executive excesses.

**Margulies ‘11**

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In an observation more often repeated than defended, we are told that the attacks of September 11 “changed everything.” Whatever merit there is in this notion, it is certainly true that 9/11—and in particular the legal response set in motion by the administration of President George W. Bush—left its mark on the academy. Nine years after 9/11, it is time to step back and assess these developments and to offer thoughts on their meaning. In Part II of this essay, we analyze the post-9/11 scholarship produced by this “emergency” framing. We argue that legal scholars writing in the aftermath of 9/11 generally fell into one of three groups: unilateralists, interventionists, and proceduralists. Unilateralists argued in favor of tilting the allocation of government power toward the executive because the state’s interest in survival is superior to any individual liberty interest, and because the executive is best able to understand and address threats to the state. Interventionists, by contrast, argued in favor of restraining the executive (principally through the judiciary) precisely to prevent the erosion of civil liberties. Proceduralists took a middle road, informed by what they perceived as a central lesson of American history.1 Because at least some overreaction by the state is an inevitable feature of a national crisis, the most one can reasonably hope for is to build in structural and procedural protections to preserve the essential U.S. constitutional framework, and, perhaps, to minimize the damage done to American legal and moral traditions. Despite profound differences between and within these groups, legal scholars in all three camps (as well as litigants and clinicians, including the authors) shared a common perspective—viz., that repressive legal policies adopted by wartime governments are temporary departures from hypothesized peacetime norms. In this narrative, metaphors of bewilderment, wandering, and confusion predominate. The country “loses its bearings” and “goes astray.” Bad things happen until at last the nation “finds itself” or “comes to its senses,” recovers its “values,” and fixes the problem. Internment ends, habeas is restored, prisoners are pardoned, repression passes. In a show of regret, we change direction, “get back on course,” and vow it will never happen again. Until the next time, when it does. This view, popularized in treatments like All the Laws but One, by the late Chief Justice Rehnquist,2 or the more thoughtful and thorough discussion in Perilous Times by Chicago’s Geoffrey Stone,3 quickly became the dominant narrative in American society and the legal academy. **This narrative also figured heavily in the many challenges to Bush-era policies,** including by the authors. The narrative permitted litigators and legal scholars to draw upon what elsewhere has been referred to as America’s “civic religion”4 and to cast the courts in the role of hero-judges5 **whom we hoped would restore legal order.**6 But by framing the Bush Administration’s response as the latest in a series of regrettable but temporary deviations from a hypothesized liberal norm, the legal academy ignored the more persistent, and decidedly illiberal, authoritarian tendency in American thought to demonize communal “others” during moments of perceived threat. Viewed in this light, what the dominant narrative identified as a brief departure caused by a military crisis is more accurately seen as part of a recurring process of intense stigmatization tied to periods of social upheaval, of which war and its accompanying repressions are simply representative (and particularly acute) illustrations. It is worth recalling, for instance, that the heyday of the Ku Klux Klan in this country, when the organization could claim upwards of 3 million members, was the early-1920s, and that the period of greatest Klan expansion began in the summer of 1920, almost immediately after the nation had “recovered” from the Red Scare of 1919–20.7 Klan activity during this period, unlike its earlier and later iterations, focused mainly on the scourge of the immigrant Jew and Catholic, and flowed effortlessly from the anti-alien, anti-radical hysteria of the Red Scare. Yet this period is almost entirely unaccounted for in the dominant post-9/11 narrative of deviation and redemption, which in most versions glides seamlessly from the madness of the Red Scare to the internment of the Japanese during World War II.8 And because we were studying the elephant with the wrong end of the telescope, we came to a flawed understanding of the beast. In Part IV, we argue that the interventionists and unilateralists came to an incomplete understanding by focusing almost exclusively on what Stuart Scheingold called “the myth of rights”—the belief that if we can identify, elaborate, and secure judicial recognition of the legal “right,” **political structures and policies will adapt their behavior to the requirements of the law** and change will follow more or less automatically.9 Scholars struggled to define the relationship between law and security primarily through exploration of structural10 and procedural questions, and, to a lesser extent, to substantive rights. And they examined the almost limitless number of subsidiary questions clustered within these issues. Questions about the right to habeas review, for instance, generated a great deal of scholarship about the handful of World War II-era cases that the Bush Administration relied upon, including most prominently Johnson v. Eisentrager and Ex Parte Quirin. 11 Regardless of political viewpoint, a common notion among most unilateralist and interventionist scholars was that when law legitimized or delegitimized a particular policy, **this would have a direct and observable effect on actual behavior**. The premise of this scholarship, in other words, was that policies “struck down” by the courts, or credibly condemned as lawless by the academy, would inevitably be changed—and that this should be the focus of reform efforts. Even when disagreement existed about the substance of rights or even which branch should decide their parameters, it reflected shared acceptance of the primacy of law, often to the exclusion of underlying social or political dynamics. Eric Posner and Adrian Vermeule, for instance, may have thought, unlike the great majority of their colleagues, that the torture memo was “standard fare.”12 But their position nonetheless accepted the notion that if the prisoners had a legal right to be treated otherwise, then the torture memo authorized illegal behavior and must be given no effect.13 Recent developments, however, cast doubt on two grounding ideas of interventionist and unilateralist scholarship—viz., that post-9/11 policies were best explained as responses to a national crisis (and therefore limited in time and scope), and that the problem was essentially legal (and therefore responsive to condemnation by the judiciary and legal academy). One might have reasonably predicted that in the wake of a string of Supreme Court decisions limiting executive power, apparently widespread and bipartisan support for the closure of Guantánamo during the 2008 presidential campaign, and the election of President Barack Obama, which itself heralded a series of executive orders that attempted to dismantle many Bush-era policies, the nation would be “returning” to a period of respect for individual rights and the rule of law. Yet the period following Obama’s election has been marked by an increasingly retributive and venomous narrative surrounding Islam and national security. **Precisely when the dominant narrative would have predicted change** and redemption, we have seen retreat and retrenchment. This conundrum is not adequately addressed by dominant strands of post-9/11 legal scholarship. In retrospect, it is surprising that much post-9/11 scholarship appears to have set aside critical lessons from previous decades as to the relationship among law, society and politics.14 Many scholars have long argued in other contexts that rights—or at least the experience of rights—are subject to political and social constraints, particularly for groups subject to historic marginalization. Rather than self-executing, rights are better viewed as contingent political resources, capable of mobilizing public sentiment and generating social expectations.15 From that view, a victory in Rasul or Boumediene no more guaranteed that prisoners at Guantánamo would enjoy the right to habeas corpus than a victory in Brown v. Board16 guaranteed that schools in the South would be desegregated.17 Rasul and Boumediene, therefore, should be seen as part (and probably only a small part) of a varied and complex collection of events, including the fiasco in Iraq, the scandal at the Abu Ghraib prison, and the use of warrantless wiretaps, as well as seemingly unrelated episodes like the official response to Hurricane Katrina. These and other events during the Bush years merged to give rise to a powerful social narrative critiquing an administration committed to lawlessness, content with incompetence, and engaged in behavior that was contrary to perceived “American values.”18 Yet the very success of this narrative, culminating in the election of Barack Obama in 2008, produced quiescence on the Left, even as it stimulated massive opposition on the Right. The result has been the emergence of a counter-narrative about national security that has produced a vigorous social backlash such that most of the Bush-era policies will continue largely unchanged, at least for the foreseeable future.19 Just as we see a widening gap between judicial recognition of rights in the abstract and the observation of those rights as a matter of fact, there appears to be an emerging dominance of proceduralist approaches, which take as a given that rights dissolve under political pressure, and, thus, are best protected by basic procedural measures. But that stance falls short in its seeming readiness to trade away rights in the face of political tension. First, it accepts the tropes du jour surrounding radical Islam—namely, that it is a unique, and uniquely apocalyptic, threat to U.S. security. In this, proceduralists do not pay adequate heed to the lessons of American history and sociology. And second, it endorses too easily the idea that procedural and structural protections will protect against substantive injustice in the face of popular and/or political demands for an outcome-determinative system that cannot tolerate acquittals. Procedures only provide protection, however, if there is sufficient political support for the underlying right. Since the premise of the proceduralist scholarship is that such support does not exist, it is folly to expect the political branches to create meaningful and robust protections. In short, a witch hunt does not become less a mockery of justice when the accused is given the right to confront witnesses. And a separate system (especially when designed for demonized “others,” such as Muslims) cannot, by definition, be equal. In the end, we urge a fuller embrace of what Scheingold called “the politics of rights,” which recognizes the contingent character of rights in American society. We agree with Mari Matsuda, who observed more than two decades ago that rights are a necessary but not sufficient resource for marginalized people with little political capital.20 To be effective, therefore, we must look beyond the courts and grapple with the hard work of long-term change with, through and, perhaps, in spite of law. These are by no means new dilemmas, but the post-9/11 context raises difficult and perplexing questions that deserve study and careful thought as our nation settles into what appears to be a permanent emergency.

Legalism underpins the violence of empire and creates the conditions of possibility for liberal violence.

Dossa ‘99

Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

No discipline in the rationalized arsenal of modernity is as rational, impartial, objective as the province of law and jurisprudence, in the eyes of its liberal enthusiasts. Law is the exemplary countenance of the conscious and calculated rationality of modern life, **it is the** emblematic face of liberal civilization. Law and legal rules symbolize the spirit of science, the march of human progress. As Max Weber, the reluctant liberal theorist of the ethic of rationalization, asserted: judicial formalism enables the legal system to operate like a technically **rational machine**. Thus it guarantees to individuals and groups within the system a relative of maximum of freedom, and greatly increases for them the possibility of predicting the legal consequences of their action. In this reading, law encapsulates the western capacity to bring order to nature and human beings, to turn the ebb and flow of life into a "rational machine" under the tutelage of "judicial formalism".19 Subjugation of the Other races in the colonial empires was motivated by power and rapacity, but it was justified and indeed rationalized, by an appeal to the civilizing influence of religion and law: western Christianity and liberal law. To the imperialist mind, "the civilizing mission of law" was fundamental, though Christianity had a part to play in this program.20 Liberal colonialists visualized law, civilization and progress as deeply connected and basic, they saw western law as neutral, universally relevant and desirable. The first claim was right in the liberal context, the second thoroughly false. In the liberal version, the mythic and irrational, emblems of thoughtlessness and fear, had ruled all life-forms in the past and still ruled the lives of the vast majority of humanity in the third world; in thrall to the majesty of the natural and the transcendent, primitive life flourished in the environment of traditionalism and lawlessness, hallmarks of the epoch of ignorance. By contrast, liberal ideology and modernity were abrasively unmythic, rational and controlled. Liberal order was informed by knowledge, science, a sense of historical progress, a continuously improving future. But this canonical, secular, bracing self-image, is tendentious and substantively illusory: it blithely scants the bloody genealogy and the extant historical record of liberal modernity, liberal politics, and particularly liberal law and its impact on the "lower races" (Hobson). In his Mythology of Modern Law, Fitzpatrick has shown that the enabling claims of liberalism, specifically of liberal law, are not only untenable but implicated in canvassing a racist justification of its colonial past and in eliding the racist basis of the structure of liberal jurisprudence.21 Liberal law is mythic in its presumption of its neutral, objective status. Specifically, the liberal legal story of its immaculate, analytically pure origin obscures and veils not just law's own ruthless, violent, even savage and disorderly trajectory, but also its constitutive association with imperialism and racism.22 In lieu of the transcendent, divine God of the "lower races", modern secular law postulated the gods of History, Science, Freedom. Liberal law was to be the instrument for realizing the promise of progress that the profane gods had decreed. Fitzpatrick's invasive surgical analysis lays bare the underlying logic of law's self-articulation in opposition to the values of cultural-racial Others, and its strategic, continuous reassertion of liberalism's superiority and the civilizational indispensability of liberal legalism. Liberal law's self-presentation presupposes a corrosive, debilitating, anarchic state of nature inhabited by the racial Others and lying in wait at the borders of the enlightened modern West. This mythological, savage Other, creature of raw, natural, unregulated fecundity and sexuality, justified the liberal conquest and control of the racially Other regions.23 Law's violence and resonant savagery on behalf of the West in its imperial razing of cultures and lands of the others, has been and still is, justified in terms of the necessary, beneficial spread of liberal civilization. Fitzpatrick's analysis parallels the impassioned deconstruction of this discourse of domination initiated by Edward Said's Orientalism, itself made possible by the pioneering analyses of writers like Aime Cesaire and Frantz Fanon. Fitzpatrick's argument is nevertheless instructive: his focus on law and its machinations unravels the one concrete province of imperial ideology that is centrally modern and critical in literally transforming and refashioning the human nature of racial Others. For liberal law carries on its back the payload of "progressive", pragmatic, **instrumental modernity**, its ideals of order and rule of law, its articulation of human rights and freedom, its ethic of procedural justice, its hostility to the sacred, to transcendence or spiritual complexity, its recasting of politics as the handmaiden of the nomos, its valorization of scientism and rationalization in all spheres of modern life. Liberal law is not synonymous with modernity tout court, but it is the exemplary voice of its rational spirit, **the custodian of its civilizational ambitions.** For the colonized Others, no non-liberal alternative is available: a non-western route to economic progress is inconceivable in liberal-legal discourse. For even the truly tenacious in the third world will never cease to be, in one sense or another, the outriders of modernity: their human condition condemns them to **playing perpetual catch-up**, eternally subservient to Western economic and technological superiority in a epoch of self-surpassing modernity.24 If the racially Other nations suffer exclusion globally, the racially other minorities inside the liberal loop enjoy the ambiguous benefits of inclusion. As legal immigrants or refugees, they are entitled to the full array of rights and privileges, as citizens (in Canada, France, U.K., U.S—Germany is the exception) they acquire civic and political rights as a matter of law. Formally, they are equal and equally deserving. In theory liberal law is inclusive, but concretely it is routinely **partial and invidious**. Inclusion is conditional: it depends on how robustly the new citizens wear and deploy their cultural difference. Two historical facts account for this phenomenon: liberal law's role in western imperialism and the Western claim of civilizational superiority that pervades the culture that sustains liberal legalism. Liberal law, as the other of the racially Other within its legal jurisdiction, differentiates and locates this other in the enemy camp of the culturally raw, irreducibly foreign, making him an unreliable ally or citizen. Law's suspicion of the others socialized in "lawless" cultures is instinctive and undeniable. Liberal law's constitutive bias is in a sense incidental: the real problem is racism or the racist basis of liberal ideology and culture.25 The internal racial other is not the juridical equal in the mind of liberal law but the juridically and humanly inferior Other, the perpetual foreigner.

The alternative is to vote negative to endorse political, rather than legal restrictions on Presidential war powers authority.

**Goldsmith ‘12**

Jack, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, p. 205-209

DAVID BRIN is a science-fiction writer who in 1998 turned his imagination to a nonfiction book about privacy called The Transparent Society. Brin argued that individual privacy was on a path to extinction because government surveillance tools—tinier and tinier cameras and recorders, more robust electronic snooping, and bigger and bigger databases—were growing irreversibly more powerful. His solution to this attack on personal space was not to erect privacy walls, which he thought were futile, but rather to induce responsible government action by turning the surveillance devices on the government itself. A government that citizens can watch, Brin argued, is one subject to criticism and reprisals for its errors and abuses, and one that is more careful and responsible in the first place for fear of this backlash. A transparent government, in short, is an accountable one. "If neo-western civilization has one great trick in its repertoire, a technique more responsible than any other for its success, that trick is accountability," Brin argues, "[e]specially the knack—which no other culture ever mastered—of making accountability apply to the mighty."' Brin's notion of reciprocal transparency is in some ways the inverse of the penological design known as a "panopticon," made famous by the eighteenth-century English utilitarian philosopher Jeremy Bentham. Bentham's brother Samuel had designed a prison in Paris that allowed an "inspector" to monitor all of the inmates from a central location without the prisoners knowing whether or when they were being watched (and thus when they might be sanctioned for bad behavior). Bentham described the panopticon prison as a "new mode of obtaining power of mind over mind" because it allowed a single guard to control many prisoners merely by conveying that he might be watching.' The idea that a "watcher" could gain enormous social control over the "watched" through constant surveillance backed with threats of punishment has proved influential. Michel Foucault invoked Bentham's panopticon as a model for how modern societies and governments watch people in order to control them.' George Orwell invoked a similar idea three decades earlier with the panoptical telescreen in his novel 1984. More recently, Yale Law School professor Jack Balkin used the panopticon as a metaphor for what he calls the "National Surveillance State," in which governments "use surveillance, data collection, and data mining technologies not only to keep Americans safe from terrorist attacks but also to prevent ordinary crime and deliver social services." The direction of the panopticon can be reversed, however, creating a "synopticon" in which many can watch one, including the government.' The television is a synopticon that enables millions to watch the same governmental speech or hearing, though it is not a terribly robust one because the government can control the broadcast. Digital technology and the Internet combine to make a more powerful synopticon that allows many individuals to record and watch an official event or document in sometimes surprising ways. Video recorders placed in police stations and police cars, cell-phone video cameras, and similar tools increase citizens' ability to watch and record government activity. This new media content can be broadcast on the Internet and through other channels to give citizens synoptical power over the government—a power that some describe as "sousveillance" (watching from below)! These and related forms of watching can have a disciplining effect on government akin to Brin's reciprocal transparency. The various forms of watching and checking the presidency described in this book constitute a vibrant presidential synopticon. Empowered by legal reform and technological change, the "many"—in the form of courts, members of Congress and their staff, human rights activists, journalists and their collaborators, and lawyers and watchdogs inside and outside the executive branch—constantly gaze on the "one," the presidency. Acting alone and in mutually reinforcing networks that crossed organizational boundaries, these institutions extracted and revealed information about the executive branch's conduct in war—sometimes to adversarial actors inside the government, and sometimes to the public. The revelations, in turn, forced the executive branch to account for its actions and enabled many institutions to influence its operations. The presidential synopticonalso promoted responsible executive action merely through its broadening gaze. One consequence of a panopticon, in Foucault's words, is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."' The same thing has happened in reverse but to similar effect within the executive branch, where officials are much more careful merely by virtue of being watched. The presidential synopticon is in some respects not new. Victor Davis Hanson has argued that "war amid audit, scrutiny, and self-critique" has been a defining feature of the Western tradition for 2,500 years.' From the founding of the nation, American war presidents have been subject to intense scrutiny and criticism in the unusually open society that has characterized the United States. And many of the accountability mechanisms described in this book have been growing since the 1970s in step with the modern presidency. What is new, however, is the scope and depth of these modern mechanisms, their intense legalization, and their robust operation during wartime. In previous major wars the President determined when, how, and where to surveil, target, detain, transfer, and interrogate enemy soldiers, often without public knowledge, and almost entirely without unwanted legal interference from within the executive branch itself or from the other branches of government.' Today these decisions are known inside and outside the government to an unprecedented degree and are heavily regulated by laws and judicial decisions that are enforced daily by lawyers and critics inside and outside the presidency. Never before have Congress, the courts, and lawyers had such a say in day-to-day military activities; never before has the Commander in Chief been so influenced, and constrained, by law. This regime has many historical antecedents, but it came together and hit the Commander in Chief hard for the first time in the last decade. It did so because of extensive concerns about excessive presidential power in an indefinite and unusually secretive war fought among civilians, not just abroad but at home as well. These concerns were exacerbated and given credibility by the rhetoric and reality of the Bush administration's executive unilateralism—a strategy that was designed to free it from the web of military and intelligence laws but that instead galvanized forces of reaction to presidential power and deepened the laws' impact. Added to this mix were enormous changes in communication and collaboration technologies that grew to maturity in the decade after 9/11. These changes helped render executive branch secrets harder to keep, and had a flattening effect on the executive branch just as it had on other hierarchical institutions, making connections between (and thus accountability to) actors inside and outside the presidency much more extensive.

## 1nc squo solves

Obama’s regulating the drone program—solves sustainability and signal

Corn 13

David Corn, Washington bureau chief of Mother Jones magazine and an MSNBC commentator, Mother Jones, May 23, 2013, " Obama's Counterterrorism Speech: A Pivot Point on Drones and More?", http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties

So Obama's speech Thursday on counterterrorism policies—which follows his administration's acknowledgment yesterday that it had killed four Americans (including Anwar al-Awlaki, an Al Qaeda leader in Yemen)—is a big deal, for with this address, Obama is self-restricting his use of drones and shifting control of them from the CIA to the military. And the president has approved making public the rules governing drone strikes.

The New York Times received the customary pre-speech leak and reported:

A new classified policy guidance signed by Mr. Obama will sharply curtail the instances when unmanned aircraft can be used to attack in places that are not overt war zones, countries like Pakistan, Yemen and Somalia. The rules will impose the same standard for strikes on foreign enemies now used only for American citizens deemed to be terrorists.

Lethal force will be used only against targets who pose "a continuing, imminent threat to Americans" and cannot feasibly be captured, Attorney General Eric H. Holder Jr. said in a letter to Congress, suggesting that threats to a partner like Afghanistan or Yemen alone would not be enough to justify being targeted.

These moves may not satisfy civil-liberties-minded critics on the right and the left. Obama is not declaring an end to indefinite detention or announcing the closing of Gitmo—though he is echoing his State of the Union vow to revive efforts to shut down that prison. Still, these moves would be unimaginable in the Bush years. Bush and Cheney essentially believed the commander in chief had unchallenged power during wartime, and the United States, as they saw it, remained at war against terrorism. Yet here is Obama subjecting the drone program to a more restrictive set of rules—and doing so publicly. This is very un-Cheney-like. (How soon before the ex-veep arises from his undisclosed location to accuse Obama of placing the nation at risk yet again?)

Despite Obama's embrace of certain Bush-Cheney practices and his robust use of drones, the president has tried since taking office to shift US foreign policy from a fixation on terrorism. During his first days in office, he shied away from using the "war on terrorism" phrase. And his national security advisers have long talked of Obama's desire to reorient US foreign policy toward challenges in the Pacific region. By handing responsibility for drone strikes to the military, Obama is helping CIA chief John Brennan, who would like to see his agency move out of the paramilitary business and devote more resources to its traditional tasks of intelligence gathering and analysis.

With this speech, Obama is not renouncing his administration's claim that it possesses the authority to kill an American overseas without full due process. The target, as Holder noted in that letter to Congress, must be a senior operational leader of Al Qaeda or an associated group who poses an "imminent threat of violent attack against the United States" and who cannot be captured, and Holder stated that foreign suspects now can only be targeted if they pose "a continuing, imminent threat to Americans." (Certainly, there will be debates over the meaning of "imminent," especially given that the Obama administration has previously used an elastic definition of imminence.) And Obama is not declaring an end to the dicey practice of indefinite detention or a conclusion to the fight against terrorism.

But the speech may well mark a pivot point. Not shockingly, Obama is attempting to find middle ground, where there is more oversight and more restraint regarding activities that pose serious civil liberties and policy challenges. The McCainiacs of the world are likely to howl about any effort to place the effort to counter terrorism into a more balanced perspective. The civil libertarians will scoff at half measures. But Obama, at the least, is showing that he does ponder these difficult issues in a deliberative manner and is still attempting to steer the nation into a post-9/11 period. That journey, though, may be a long one.

## 1nc solvency frontline

DOD shift doesn’t solve transparency

Matthew Waxman, 3/20/13, Going Clear, www.foreignpolicy.com/articles/2013/03/20/going\_clear

In truth, critics often underestimate oversight of CIA activities and overestimate the openness of military operations. Even if the Pentagon conducts all U.S. drone strikes, the operational details will still be shrouded in secrecy, the CIA will still provide targeting information, and much of the congressional oversight will still be conducted behind closed doors (though it will shift from the intelligence committees to the armed services committees). The CIA is also subject to some statutory congressional reporting requirements that the Defense Department is not. That said, moving all strikes under Defense Department control and eliminating their officially covert status will probably allow executive branch officials and members of Congress to speak more clearly and openly about general policy in this area.

Targeted killing regulation is impossible

Alston, professor – NYU Law, ‘11

(Philip, 2 Harv. Nat'l Sec. J. 283)

Despite the existence of a multiplicity of techniques by which the CIA might be held to account at the domestic level, the foregoing survey demonstrates that there is no evidence to conclude that any of them has functioned effective-ly in relation to the expanding practices involving targeted killings. The CIA Inspector General's Office has been unable to exact accountability and proposals to expand or strengthen his role run counter to almost all official actions taken in relation to his work. The President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board are lauded by some for their potential, but there is no indication that they scrutinize activities such as targeted killings policy or practice, and many indications that they view their role as being to support rather than monitor the intelligence community. The Privacy and Civil Liberties Oversight Board remains dormant. Congressional oversight has been seriously deficient and far from manifesting an appetite to scrutinize the CIA's targeted killings policies, a range of senior members of congress are on record as favoring a hands-off policy. And a combination of the political question doctrine, the state secrets privilege, and a reluctance to prosecute, ensure that the courts have indeed allowed the CIA to fall into a convenient legal grey hole. Finally, civil society has been largely stymied by the executive and the courts in their efforts to make effective use of freedom of information laws. All that remains is the media, and most of what they obtain through leaks come from government sources that are deliberately "spinning" the story in their own favor. Simi-lar conclusions have been reached in closely related contexts. Thus, for example, Kitrosser's survey of official responses to the warrantless wiretapping initiated after 9/11 led her to conclude that it was a shell [\*406] game, involving "an indefinite bi-partisan, cross-administration, cross-institutional pattern of accountability-avoidance." n450

In brief, at least in relation to targeted killings, the CIA enjoys almost complete impunity and is not subject to any form of meaningful internal or external accountability. Whether from the perspective of democratic theory or of interna-tional accountability for violations of the right to life, this is deeply problematic. One solution to this that has been sug-gested by some commentators is to follow the precedent set by Israel in its efforts to ensure legal oversight of its target killings programs. We turn now to examine the feasibility and desirability of pursuing such an option.

Military will backlash, prevents implementation

Yoo, professor of law – U California, Berkeley, ‘9

(John, 58 Duke L.J. 2277)

As conditions worsened in Iraq after the fall of Saddam Hussein's regime, the military became more critical of Sec-retary Rumsfeld. Military officers anonymously criticized the Secretary for refusing to send enough troops to pacify the country, and generally attacked him for ignoring their advice and counsel. In an April 2006 act known in the military as the "revolt of the generals," dozens of senior retired military officers called for Rumsfeld's resignation for allegedly mismanaging the war. n73 In 2006, retired general Gregory Newbold, former director of operations of the Joint Chiefs, wrote an essay in Time declaring that it was his "sincere view ... that the commitment of forces to this fight was done with a casualness and swagger that are the special province of those who have never had to execute these missions - or bury the results." n74 Part of the impetus for the revolt was the deeper lesson, taken by the officer corps from Vietnam, that the military had been too subservient to civilian leaders and that they should talk straight to the political leadership about their views. Ironically, the 2007-08 surge in forces in Iraq and the improvement in the country's rebuilding came against the advice of the senior military leadership, which had decided that the size of the American footprint in Iraq was part of the problem. n75¶ Dissension over Iraq was matched by contention over the continuing war on terrorism. Perhaps the most public ex-ample was Congress's consideration of the Military Commissions Act of 2006 [\*2290] (MCA), n76 which established rules for the detention and military trials of terrorists. In November 2001, President Bush issued an executive order es-tablishing military commissions, in the form of a military tribunal, to try al Qaeda members and their allies for war crimes. n77 Some members of the military's Judge Advocate Generals (JAG) corps wanted to use courts-martial instead, but civilian leaders in the Pentagon favored commissions, which promised a flexible balance between the need for an open, fair proceeding and the need to keep national security secrets. In Hamdan v. Rumsfeld, n78 the Supreme Court held that the tribunals had to operate according to the lines set out in Common Article 3 of the Geneva Conventions, n79 set-ting off Congress's consideration of the 2006 Act. During congressional hearings, JAGs for the Marines and the Army testified that commission rules withholding classified evidence from the defendant, but not his lawyer, would still vio-late the Geneva Conventions, whereas the civilian representative of the Department of Justice testified to the opposite effect. n80¶ Military disagreement over civilian policy in the war on terrorism extended back to the beginning of the conflict. JAGs challenged President Bush's decision in February 2002, after extensive debate within the executive branch, that members of al Qaeda and the Taliban were not to receive the status of prisoners of war under the Geneva Conventions. n81 After that decision, JAGs reportedly cooperated with private human rights groups to challenge the decision in federal court. Once uniformed lawyers were appointed to represent detainees in the military commission process, they [\*2291] dispensed with the secrecy and filed suit against the Bush administration directly. n82 Members of the uniformed military also challenged the legality of holding suspected al Qaeda at the U.S. Navy Station at Guantanamo Bay, Cuba. n83 Ac-cording to media reports, JAGs representing detainees in the military commission process met with members of Con-gress to seek their assistance in reversing Bush administration policies on detainees. n84 Congress's enactment of the MCA hewed closely to civilian preferences on the commissions and the designation of al Qaeda as illegal combatants. Although the Supreme Court, in Boumediene v. Bush, n85 reversed the MCA's effort to prohibit federal habeas corpus review over the detainees at Guantanamo Bay, n86 it has not yet addressed the substance of the MCA.¶ All of this has led historians and political scientists to warn of a crisis in civil-military relations. Russell Weigley, a prominent military historian, compared General Powell's resistance to intervention in Bosnia to General McClellan's reluctance to engage General Lee during the Civil War. n87 By 2002, Richard Kohn, a distinguished military historian, had already concluded that "civilian control of the military has weakened in the United States and is threatened today." n88 According to Kohn, "the American military has grown in influence to the point of being able to impose its own per-spective on many policies and decisions." n89 He detects "no conspiracy but repeated efforts on the part of the armed forces to frustrate or evade civilian authority when that opposition seems likely to preclude outcomes the military dis-likes." n90 He believes that civilian-military relations in that period are as poor as in any other period in American histo-ry. n91 Michael Desch argues that the high tensions in civil-military relations are due [\*2292] not to the military but to the civilians, which have violated Huntington's advice in favor of "objective control" by giving the military broad dis-cretion over tactics and operations while keeping final say over politics and grand strategy. n92 In a 1999 study, Desch found that civilians prevailed in almost all of the seventy-five civil-military disputes from 1938 to 1997, but that the military has won in seven or eight of the twelve post-Cold War conflicts. n93 Some attribute this discord to the regular give-and-take inherent in the civil-military relationship, whereas others believe that the military has grown bold in ques-tioning the foreign policy decisions of the civilian leadership. n94

## paki defense

No Pakistan collapse and it doesn't escalate

Dasgupta 13

Sunil Dasgupta is Director of the University of Maryland Baltimore County Political Science Program at the Universities at Shady Grove and non-resident Senior Fellow at the Brookings Institution, East Asia Forum, February 25, 2013, "How will India respond to civil war in Pakistan?", http://www.eastasiaforum.org/2013/02/25/how-will-india-respond-to-civil-war-in-pakistan/

As it is, India and Pakistan have gone down to the nuclear edge four times — in 1986, 1990, 1999 and 2001–02. In each case, India responded in a manner that did not escalate the conflict. Any incursion into Pakistan was extremely limited. An Indian intervention in a civil war in Pakistan would be subject to the same limitations — at least so long as the Pakistani army maintains its integrity.

Given the new US–India ties, the most important factor in determining the possibility and nature of Indian intervention in a possible Pakistani civil war is Washington. If the United States is able to get Kabul and Islamabad to work together against the Taliban, as it is trying to do now, then India is likely to continue its current policy or try to preserve some influence in Afghanistan, especially working with elements of the Northern Alliance.

India and Afghanistan already have a strategic partnership agreement in place that creates the framework for their bilateral relationship to grow, but the degree of actual cooperation will depend on how Pakistan and the Taliban react. If Indian interests in Afghanistan come under attack, New Delhi might have to pull back. The Indian government has been quite clear about not sending troops to Afghanistan.

If the United States shifts its policy to where it has to choose Kabul over Islamabad, in effect reviving the demand for an independent Pashtunistan, India is likely to be much more supportive of US and Afghan goals. The policy shift, however, carries the risk of a full-fledged proxy war with Pakistan in Afghanistan, but should not involve the prospect of a direct Indian intervention in Pakistan itself.

India is not likely to initiate an intervention that causes the Pakistani state to fail. Bill Keller of the New York Times has described Pakistani president Asif Ail Zardari as overseeing ‘a ruinous kleptocracy that is spiraling deeper into economic crisis’. But in contrast to predictions of an unravelling nation, British journalist-scholar Anatol Lieven argues that the Pakistani state is likely to continue muddling through its many problems, unable to resolve them but equally predisposed against civil war and consequent state collapse. Lieven finds that the strong bonds of family, clan, tribe and the nature of South Asian Islam prevent modernist movements — propounded by the government or by the radicals — from taking control of the entire country.

Lieven’s analysis is more persuasive than the widespread view that Pakistan is about to fail as a state. The formal institutions of the Pakistani state are surprisingly robust given the structural conditions in which they operate. Indian political leaders recognise Pakistan’s resilience. Given the bad choices in Pakistan, they would rather not have anything to do with it. If there is going to be a civil war, why not wait for the two sides to exhaust themselves before thinking about intervening? The 1971 war demonstrated India’s willingness to exploit conditions inside Pakistan, but to break from tradition requires strong, countervailing logic, and those elements do not yet exist. Given the current conditions and those in the foreseeable future, India is likely to sit out a Pakistani civil war while covertly coordinating policy with the United States.

No loose nukes

Cohen & Zenko 12 (Michael and Micah, Fellow at the Century Foundation AND Fellow in the Center for Preventive Action at the Council on Foreign Relations, “Clear and Present Safety,” Foreign Affairs, Vol. 91, Iss. 2, EBSCO)

Pakistan represents another potential source of loose nukes. The United States' military strategy in Afghanistan, with its reliance on drone strikes and cross-border raids, has actually contributed to instability in Pakistan, worsened U.S. relations with Islamabad, and potentially increased the possibility of a weapon falling into the wrong hands. Indeed, Pakistani fears of a U.S. raid on its nuclear arsenal have reportedly led Islamabad to disperse its weapons to multiple sites, transporting them in unsecured civilian vehicles. But even in Pakistan, the chances of a terrorist organization procuring a nuclear weapon are infinitesimally small. The U.S. Department of Energy has provided assistance to improve the security of Pakistan's nuclear arsenal, and successive senior U.S. government officials have repeated what former Secretary of Defense Robert Gates said in January 2010: that the United States is "very comfortable with the security of Pakistan's nuclear weapons."

## 1nc terrorism

No risk of nuke terror

**Mueller 10** (John, professor of political science at Ohio State, Calming Our Nuclear Jitters, Issues in Science and Technology, Winter, <http://www.issues.org/26.2/mueller.html>)

Politicians of all stripes preach to an anxious, appreciative, and very numerous choir when they, like President Obama, proclaim atomic terrorism to be “the most immediate and extreme threat to global security.” It is the problem that, according to Defense Secretary Robert Gates, currently keeps every senior leader awake at night. This is hardly a new anxiety. In 1946, atomic bomb maker J. Robert Oppenheimer ominously warned that if three or four men could smuggle in units for an atomic bomb, they could blow up New York. This was an early expression of a pattern of dramatic risk inflation that has persisted throughout the nuclear age. In fact, although expanding fires and fallout might increase the effective destructive radius, the blast of a Hiroshima-size device would “blow up” about 1% of the city’s area—a tragedy, of course, but not the same as one 100 times greater. In the early 1970s, nuclear physicist Theodore Taylor proclaimed the atomic terrorist problem to be “immediate,” explaining at length “how comparatively easy it would be to steal nuclear material and step by step make it into a bomb.” At the time he thought it was already too late to “prevent the making of a few bombs, here and there, now and then,” or “in another ten or fifteen years, it will be too late.” Three decades after Taylor, we continue to wait for terrorists to carry out their “easy” task. In contrast to these predictions, terrorist groups seem to have exhibited only limited desire and even less progress in going atomic. This may be because, after brief exploration of the possible routes, they, unlike generations of alarmists, have discovered that the tremendous effort required is scarcely likely to be successful. The most plausible route for terrorists, according to most experts, would be to manufacture an atomic device themselves from purloined fissile material (plutonium or, more likely, highly enriched uranium). This task, however, remains a daunting one, requiring that a considerable series of difficult hurdles be conquered and in sequence. Outright armed theft of fissile material is exceedingly unlikely not only because of the resistance of guards, but because chase would be immediate. A more promising approach would be to corrupt insiders to smuggle out the required substances. However, this requires the terrorists to pay off a host of greedy confederates, including brokers and money-transmitters, any one of whom could turn on them or, either out of guile or incompetence, furnish them with stuff that is useless. Insiders might also consider the possibility that once the heist was accomplished, the terrorists would, as analyst Brian Jenkins none too delicately puts it, “have every incentive to cover their trail, beginning with eliminating their confederates.” If terrorists were somehow successful at obtaining a sufficient mass of relevant material, they would then probably have to transport it a long distance over unfamiliar terrain and probably while being pursued by security forces. Crossing international borders would be facilitated by following established smuggling routes, but these are not as chaotic as they appear and are often under the watch of suspicious and careful criminal regulators. If border personnel became suspicious of the commodity being smuggled, some of them might find it in their interest to disrupt passage, perhaps to collect the bounteous reward money that would probably be offered by alarmed governments once the uranium theft had been discovered. Once outside the country with their precious booty, terrorists would need to set up a large and well-equipped machine shop to manufacture a bomb and then to populate it with a very select team of highly skilled scientists, technicians, machinists, and administrators. The group would have to be assembled and retained for the monumental task while no consequential suspicions were generated among friends, family, and police about their curious and sudden absence from normal pursuits back home. Members of the bomb-building team would also have to be utterly devoted to the cause, of course, and they would have to be willing to put their lives and certainly their careers at high risk, because after their bomb was discovered or exploded they would probably become the targets of an intense worldwide dragnet operation. Some observers have insisted that it would be easy for terrorists to assemble a crude bomb if they could get enough fissile material. But Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland‘s Spiez Laboratory, bluntly conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint the terrorist group would most certainly be forced to redesign. They also stress that the work is difficult, dangerous, and extremely exacting, and that the technical requirements in several fields verge on the unfeasible. Stephen Younger, former director of nuclear weapons research at Los Alamos Laboratories, has made a similar argument, pointing out that uranium is “exceptionally difficult to machine” whereas “plutonium is one of the most complex metals ever discovered, a material whose basic properties are sensitive to exactly how it is processed.“ Stressing the “daunting problems associated with material purity, machining, and a host of other issues,” Younger concludes, “to think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is farfetched at best.” Under the best circumstances, the process of making a bomb could take months or even a year or more, which would, of course, have to be carried out in utter secrecy. In addition, people in the area, including criminals, may observe with increasing curiosity and puzzlement the constant coming and going of technicians unlikely to be locals. If the effort to build a bomb was successful, the finished product, weighing a ton or more, would then have to be transported to and smuggled into the relevant target country where it would have to be received by collaborators who are at once totally dedicated and technically proficient at handling, maintaining, detonating, and perhaps assembling the weapon after it arrives. The financial costs of this extensive and extended operation could easily become monumental. There would be expensive equipment to buy, smuggle, and set up and people to pay or pay off. Some operatives might work for free out of utter dedication to the cause, but the vast conspiracy also requires the subversion of a considerable array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals competent and capable enough to be effective allies are also likely to be both smart enough to see boundless opportunities for extortion and psychologically equipped by their profession to be willing to exploit them. Those who warn about the likelihood of a terrorist bomb contend that a terrorist group could, if with great difficulty, overcome each obstacle and that doing so in each case is “not impossible.” But although it may not be impossible to surmount each individual step, the likelihood that a group could surmount a series of them quickly becomes vanishingly small. Table 1 attempts to catalogue the barriers that must be overcome under the scenario considered most likely to be successful. In contemplating the task before them, would-be atomic terrorists would effectively be required to go though an exercise that looks much like this. If and when they do, they will undoubtedly conclude that their prospects are daunting and accordingly uninspiring or even terminally dispiriting. It is possible to calculate the chances for success. Adopting probability estimates that purposely and heavily bias the case in the terrorists’ favor—for example, assuming the terrorists have a 50% chance of overcoming each of the 20 obstacles—the chances that a concerted effort would be successful comes out to be less than one in a million. If one assumes, somewhat more realistically, that their chances at each barrier are one in three, the cumulative odds that they will be able to pull off the deed drop to one in well over three billion. Other routes would-be terrorists might take to acquire a bomb are even more problematic. They are unlikely to be given or sold a bomb by a generous like-minded nuclear state for delivery abroad because the risk would be high, even for a country led by extremists, that the bomb (and its source) would be discovered even before delivery or that it would be exploded in a manner and on a target the donor would not approve, including on the donor itself. Another concern would be that the terrorist group might be infiltrated by foreign intelligence. The terrorist group might also seek to steal or illicitly purchase a “loose nuke“ somewhere. However, it seems probable that none exist. All governments have an intense interest in controlling any weapons on their territory because of fears that they might become the primary target. Moreover, as technology has developed, finished bombs have been out-fitted with devices that trigger a non-nuclear explosion that destroys the bomb if it is tampered with. And there are other security techniques: Bombs can be kept disassembled with the component parts stored in separate high-security vaults, and a process can be set up in which two people and multiple codes are required not only to use the bomb but to store, maintain, and deploy it. As Younger points out, “only a few people in the world have the knowledge to cause an unauthorized detonation of a nuclear weapon.” There could be dangers in the chaos that would emerge if a nuclear state were to utterly collapse; Pakistan is frequently cited in this context and sometimes North Korea as well. However, even under such conditions, nuclear weapons would probably remain under heavy guard by people who know that a purloined bomb might be used in their own territory. They would still have locks and, in the case of Pakistan, the weapons would be disassembled. The al Qaeda factor The degree to which al Qaeda, the only terrorist group that seems to want to target the United States, has pursued or even has much interest in a nuclear weapon may have been exaggerated. The 9/11 Commission stated that “al Qaeda has tried to acquire or make nuclear weapons for at least ten years,” but the only substantial evidence it supplies comes from an episode that is supposed to have taken place about 1993 in Sudan, when al Qaeda members may have sought to purchase some uranium that turned out to be bogus. Information about this supposed venture apparently comes entirely from Jamal al Fadl, who defected from al Qaeda in 1996 after being caught stealing $110,000 from the organization. Others, including the man who allegedly purchased the uranium, assert that although there were various other scams taking place at the time that may have served as grist for Fadl, the uranium episode never happened. As a key indication of al Qaeda’s desire to obtain atomic weapons, many have focused on a set of conversations in Afghanistan in August 2001 that two Pakistani nuclear scientists reportedly had with Osama bin Laden and three other al Qaeda officials. Pakistani intelligence officers characterize the discussions as “academic” in nature. It seems that the discussion was wide-ranging and rudimentary and that the scientists provided no material or specific plans. Moreover, the scientists probably were incapable of providing truly helpful information because their expertise was not in bomb design but in the processing of fissile material, which is almost certainly beyond the capacities of a nonstate group. Kalid Sheikh Mohammed, the apparent planner of the 9/11 attacks, reportedly says that al Qaeda’s bomb efforts never went beyond searching the Internet. After the fall of the Taliban in 2001, technical experts from the CIA and the Department of Energy examined documents and other information that were uncovered by intelligence agencies and the media in Afghanistan. They uncovered no credible information that al Qaeda had obtained fissile material or acquired a nuclear weapon. Moreover, they found no evidence of any radioactive material suitable for weapons. They did uncover, however, a “nuclear-related” document discussing “openly available concepts about the nuclear fuel cycle and some weapons-related issues.” Just a day or two before al Qaeda was to flee from Afghanistan in 2001, bin Laden supposedly told a Pakistani journalist, “If the United States uses chemical or nuclear weapons against us, we might respond with chemical and nuclear weapons. We possess these weapons as a deterrent.” Given the military pressure that they were then under and taking into account the evidence of the primitive or more probably nonexistent nature of al Qaeda’s nuclear program, the reported assertions, although unsettling, appear at best to be a desperate bluff. Bin Laden has made statements about nuclear weapons a few other times. Some of these pronouncements can be seen to be threatening, but they are rather coy and indirect, indicating perhaps something of an interest, but not acknowledging a capability. And as terrorism specialist Louise Richardson observes, “Statements claiming a right to possess nuclear weapons have been misinterpreted as expressing a determination to use them. This in turn has fed the exaggeration of the threat we face.” Norwegian researcher Anne Stenersen concluded after an exhaustive study of available materials that, although “it is likely that al Qaeda central has considered the option of using non-conventional weapons,” there is “little evidence that such ideas ever developed into actual plans, or that they were given any kind of priority at the expense of more traditional types of terrorist attacks.” She also notes that information on an al Qaeda computer left behind in Afghanistan in 2001 indicates that only $2,000 to $4,000 was earmarked for weapons of mass destruction research and that the money was mainly for very crude work on chemical weapons. Today, the key portions of al Qaeda central may well total only a few hundred people, apparently assisting the Taliban’s distinctly separate, far larger, and very troublesome insurgency in Afghanistan. Beyond this tiny band, there are thousands of sympathizers and would-be jihadists spread around the globe. They mainly connect in Internet chat rooms, engage in radicalizing conversations, and variously dare each other to actually do something. Any “threat,” particularly to the West, appears, then, principally to derive from self-selected people, often isolated from each other, who fantasize about performing dire deeds. From time to time some of these people, or ones closer to al Qaeda central, actually manage to do some harm. And occasionally, they may even be able to pull off something large, such as 9/11. But in most cases, their capacities and schemes, or alleged schemes, seem to be far less dangerous than initial press reports vividly, even hysterically, suggest. Most important for present purposes, however, is that any notion that al Qaeda has the capacity to acquire nuclear weapons, even if it wanted to, looks farfetched in the extreme. It is also noteworthy that, although there have been plenty of terrorist attacks in the world since 2001, all have relied on conventional destructive methods. For the most part, terrorists seem to be heeding the advice found in a memo on an al Qaeda laptop seized in Pakistan in 2004: “Make use of that which is available … rather than waste valuable time becoming despondent over that which is not within your reach.” In fact, history consistently demonstrates that terrorists prefer weapons that they know and understand, not new, exotic ones. Glenn Carle, a 23-year CIA veteran and once its deputy intelligence officer for transnational threats, warns, “We must not take fright at the specter our leaders have exaggerated. In fact, we must see jihadists for the small, lethal, disjointed, and miserable opponents that they are.” al Qaeda, he says, has only a handful of individuals capable of planning, organizing, and leading a terrorist organization, and although the group has threatened attacks with nuclear weapons, “its capabilities are far inferior to its desires.” Policy alternatives The purpose here has not been to argue that policies designed to inconvenience the atomic terrorist are necessarily unneeded or unwise. Rather, in contrast with the many who insist that atomic terrorism under current conditions is rather likely— indeed, exceedingly likely—to come about, I have contended that it is hugely unlikely. However, it is important to consider not only the likelihood that an event will take place, but also its consequences. Therefore, one must be concerned about catastrophic events even if their probability is small, and efforts to reduce that likelihood even further may well be justified. At some point, however, probabilities become so low that, even for catastrophic events, it may make sense to ignore them or at least put them on the back burner; in short, the risk becomes acceptable. For example, the British could at any time attack the United States with their submarine-launched missiles and kill millions of Americans, far more than even the most monumentally gifted and lucky terrorist group. Yet the risk that this potential calamity might take place evokes little concern; essentially it is an acceptable risk. Meanwhile, Russia, with whom the United States has a rather strained relationship, could at any time do vastly more damage with its nuclear weapons, a fully imaginable calamity that is substantially ignored. In constructing what he calls “a case for fear,” Cass Sunstein, a scholar and current Obama administration official, has pointed out that if there is a yearly probability of 1 in 100,000 that terrorists could launch a nuclear or massive biological attack, the risk would cumulate to 1 in 10,000 over 10 years and to 1 in 5,000 over 20. These odds, he suggests, are “not the most comforting.” Comfort, of course, lies in the viscera of those to be comforted, and, as he suggests, many would probably have difficulty settling down with odds like that. But there must be some point at which the concerns even of these people would ease. Just perhaps it is at one of the levels suggested above: one in a million or one in three billion per attempt.

No extinction

Mueller 99 John, Prof. Pol. Sci. @ Ohio State and Karl Mueller, June, (Foreign Affairs, l/n)

Nuclear weapons clearly deserve the “weapons of mass destruction” designation because they can indeed destroy masses of people in a single blow. Even so, it is worth noting that any nuclear weapons acquired by terrorist groups or rogue states, at least initially, are likely to be small. Contrary to exaggerated Indian and Pakistani claims, for example, independent analyses of their May 1998 nuclear tests have concluded that the yields were Hiroshima-sized or smaller. Such bombs can cause horrible though not apocalyptic damage. Some 70,000 people died in Hiroshima and 40,000 in Nagasaki. People three miles away from the blast sites received only superficial wounds even when fully exposed, and those inside bomb shelters at Nagasaki were uninjured even though they were close to ground zero. Some buildings of steel and concrete survived, even when they were close to the blast centers, and most municipal services were restored within days. A Hiroshima-sized bomb exploded in a more fire-resistant modern city would likely be considerably less devastating. Used against well-prepared, dug-in, and dispersed troops, a small bomb might actually cause only limited damage. If a single such bomb or even a few of them were to fall into dangerous hands, therefore, it would be terrible, though it would hardly threaten the end of civilization.

Drones Prevent Pakistan collapse

Curtis 7/15/13

Lisa Curtis is a senior research fellow at the Heritage Foundation, The National Interest, July 15, 2013, "Pakistan Makes Drones Necessary", http://nationalinterest.org/commentary/pakistan-makes-drones-necessary-8725?page=show

But until Islamabad cracks down more aggressively on groups attacking U.S. interests in the region and beyond, drones will remain an essential tool for fighting global terrorism. Numbering over three hundred and fifty since 2004, drone strikes in Pakistan have killed more than two dozen Al Qaeda operatives and hundreds of militants targeting U.S. and coalition forces.

President Obama made clear in his May 23 speech at the National Defense University that Washington would continue to use drones in Pakistan’s tribal border areas to support stabilization efforts in neighboring Afghanistan, even as it seeks to increase transparency and tighten targeting of the drone program in the future. Obama also defended the use of drones from a legal and moral standpoint, noting that by preemptively striking at terrorists, many innocent lives had been saved.

The most compelling evidence of the efficacy of the drone program came from Osama bin Laden himself, who shortly before his death contemplated moving Al Qaeda operatives from Pakistan into forested areas of Afghanistan in an attempt to escape the drones’ reach, according to Peter Bergen, renowned author of Manhunt: The Ten-Year Search for Bin Laden from 9/11 to Abbottabad.

How to Reduce the Need for Drones

The continuation of drone strikes signals U.S. frustration with Pakistan’s unwillingness to crack down consistently and comprehensively on groups that find sanctuary in Pakistan’s tribal areas. There continue to be close ties between the Pakistan military and the Taliban-allied Haqqani Network, which attacks U.S. forces in Afghanistan and undermines the overall U.S. and NATO strategy there.

The most recent U.S. drone attack inside Pakistani territory occurred last week against militants from the Haqqani Network located in North Waziristan, along the border with Afghanistan. In early June, drone missiles also targeted a group of fighters in Pakistan that were preparing to cross over into Afghanistan. On both occasions, the Pakistani Foreign Ministry condemned the attacks as counterproductive and said they raised serious questions about human rights.

No doubt a better alternative to the drones would be Pakistani action against terrorist sanctuaries. But Pakistan has stonewalled repeated U.S. requests for operations against the Haqqani network.

In addition to continuing drone strikes as necessary, the U.S. should further condition military aid to Pakistan based on its willingness to crack down on the Haqqani Network. In early June, the House of Representatives approved language in the FY 2014 National Defense Authorization Act that conditions reimbursement of Coalition Support Funds (CSF) pending Pakistani actions against the Haqqani network. Hopefully, the language will be retained in the final bill.

The United States provides CSF funds to reimburse Pakistan for the costs associated with stationing some one hundred thousand Pakistani troops along the border with Afghanistan. Pakistan has received over $10 billion in CSF funding over the last decade. One must question the worth of having troops stationed in this region if they refuse to go after one of the most dangerous terrorist groups.

Details of the relationship between the Pakistan military and the Haqqani Network are laid out in a recent book, Fountainhead of Jihad: The Haqqani Nexus, 1973–2012 by Vahid Brown and Don Rassler. The book highlights that Pakistan is actively assisting the Haqqani network the same way it has over the last twenty years, through training, tactical field advice, financing and material support. The assistance, the authors note, helps to sustain the Haqqani group and enhance its effectiveness on the battlefield.

Drones Help Pakistan

It is no secret that the drone strikes often benefit the Pakistani state. On May 29, for example, a drone missile strike killed the number two leader of the Pakistani Taliban (also referred to as the Tehrik-e-Taliban Pakistan or TTP), Waliur Rehman. The TTP has killed hundreds of Pakistani security forces and civilians in terrorist attacks throughout the country since its formation in 2007. Furthermore, the group conducted a string of suicide attacks and targeted assassinations against Pakistani election workers, candidates, and party activists in the run-up to the May elections, declaring a goal of killing democracy.

Complicating the picture even further is the fact that Pakistan’s support for the Haqqani network indirectly benefits the Pakistani Taliban. The Haqqanis play a pivotal role in the region by simultaneously maintaining ties with Al Qaeda, Pakistani intelligence and anti-Pakistan groups like the TTP. With such a confused and self-defeating Pakistani strategy, Washington has no choice but to rely on the judicious use of drone strikes.

Complicated Relationship

The U.S. will need to keep a close eye on the tribal border areas, where there is a nexus of terrorist groups that threaten not only U.S. interests but also the stability of the Pakistani state. Given that Pakistan is home to more international terrorists than almost any other country and, at the same time, has one of the fastest growing nuclear arsenals, the country will remain of vital strategic interest for Washington for many years to come.

Though the drone issue will continue to be a source of tension in the relationship, it is doubtful that it alone would derail ties. The extent to which the United States will continue to rely on drone strikes ultimately depends on Islamabad’s willingness to develop more decisive and comprehensive counterterrorism policies that include targeting groups like the Haqqani Network.

## 1nc drone prolif frontline

No drone prolif—capabilities and costs

Zenko, Douglas Dillon fellow in the Center for Preventive Action – CFR, ‘13

(Micah, “U.S. Drone Strike Policies”, Council Special Report No. 65, January)

There are also few examples of armed drone sales by other countries. After the United States, Israel has the most developed and varied drone capabilities; according to the Stockholm International Peace Research Institute (SIPRI), Israel was responsible for 41 percent of drones exported between 2001 and 2011.57 While Israel has used armed drones in the Palestinian territories and is not a member of the MTCR, it has pre- dominantly sold surveillance drones that lack hard points and electrical engineering. Israel reportedly sold the Harop, a short-range attack drone, to France, Germany, Turkey, and India. Furthermore, Israel allows the United States to veto transfers of weapons with U.S.-origin technology to select states, including China.58 Other states invested in developing and selling surveillance drones have reportedly refrained from selling fully armed versions. For example, the UAE spent five years building the armed United-40 drone with an associated Namrod missile, but there have been no reported deliveries.59 A March 2011 analysis by the mar- keting research firm Lucintel projected that a “fully developed [armed drone] product will take another decade.”60

Based on current trends, it is unlikely that most states will have, within ten years, the complete system architecture required to carry out distant drone strikes that would be harmful to U.S. national interests. However, those candidates able to obtain this technology will most likely be states with the financial resources to purchase or the industrial base to manufacture tactical short-range armed drones with limited firepower that lack the precision of U.S. laser-guided munitions; the intelligence collection and military command-and-control capabilities needed to deploy drones via line-of-sight communications; and cross- border adversaries who currently face attacks or the threat of attacks by manned aircraft, such as Israel into Lebanon, Egypt, or Syria; Russia into Georgia or Azerbaijan; Turkey into Iraq; and Saudi Arabia into Yemen. When compared to distant U.S. drone strikes, these contingen- cies do not require system-wide infrastructure and host-state support. Given the costs to conduct manned-aircraft strikes with minimal threat to pilots, it is questionable whether states will undertake the significant investment required for armed drones in the near term.

# 2nc

## transparency – 2nc

Executive transparency solves the aff – ups the cost of miscalculation and poor decision making

More ev Transparency solves

John Harwood, Major, J.D. and LL.M., Judge Advocate in USAF, Fall 2012, ARTICLE: KNOCK, KNOCK; WHO'S THERE? ANNOUNCING TARGETED KILLING PROCEDURES AND THE LAW OF ARMED CONFLICT, 40 Syracuse J. Int'l L. & Com. 1

While the law may not require states to publicly disclose their targeting procedures and an analysis for each individual targeted killing during armed conflict, as a matter of policy **the U.S. should provide enough information to allow the public to be satisfied that the government is fulfilling its international obligations**. The speeches of the nation's prominent national security lawyers are a good start; however, the government should continue to provide information on the processes and procedures of the targeted killing program, where operational and intelligence considerations allow.

As a beginning point, now that the existence of the targeted killing program is an acknowledged fact, the government should disclose whether the legal structures of aerial targeting are being followed by all the departments and agencies of the government who are engaged in targeted killings. The legal principles that the Air Force and the Department of Defense follow in aerial targeting are well-known and publicly available. While our enemies have occasionally sought to use our adherence to lawful targeting procedures to their benefit, n114 this openness has not been shown to be a hindrance to air-based military operations. n115

Second, the government should discuss in general terms the process of vetting targets and approving them for targeted killing. While covertness and operational security should protect the disclosure of the details of any individual strike, a general description of the procedures would "credibly convey to the public that [the government's] decisions about who is being targeted - [\*26] especially when the target is a U.S. citizen - are sound." n116 The basis of these disclosures, however, should be rooted in policy - as shown, there is no requirement under LOAC to divulge military targeting procedures during an armed conflict.

VI. Conclusion

International observers and human rights groups have rightly scrutinized targeted killing programs for compliance with international law. All programs, procedures, and operations should be subject to rigorous scrutiny; as noted by Mr. Brennan, "there is no more consequential a decision than deciding whether to use lethal force against another human being." n117 Because the subject matter is so weighty, there are no sacred cows in armed conflict. Too often, however, IHRL has been the prism through which criticism of the targeted killing program has come. Rather than providing a license to kill, as is feared by Alston and others, LOAC provides a robust legal framework for analyzing the legality of targeted killings.

To its credit, the **Obama** administration **has taken steps to reassure the public that the targeted killing program is being conducted in a lawful manner**; most notably by dispatching high-level officials and attorneys to speak openly and publicly. There is more that could be done, however, without compromising intelligence and ongoing operations. The administration could begin by requiring the CIA to conduct all aerial targeting in accordance with the well-established principles of military aerial targeting, and then publicize this requirement. This would rebut the claim that the CIA's operational-level targeting decisions are being made in a lawless vacuum.

Also, the administration could provide a basic, on-the-record description of the strategic-level target vetting process, rather than the non-specific "just trust us" statements previously made by Mr. Brennan and others. n118 While **these steps** may not placate the [\*27] critics of targeted killing, and fall far short of what Professor Alston calls for, they **would** help to reassure the public and the international community that the U.S. is committed to the rule of law during armed conflict.

Executive transparency is sufficient—solves backlash and modeling

Roth, executive director – Human Rights Watch, April ‘13

(Kenneth, “What Rules Should Govern US Drone Attacks?” The New York Review of Books)

At the very least, the CIA’s drone program, the source of most of the controversy, should be transferred to the Pentagon, with its stronger tradition of accountability to the law. That should be accompanied by a new policy of transparency about which laws govern drone attacks, and about why people are targeted, as well as prompt investigation whenever there is a credible allegation of civilian casualties or inappropriate targeting. The aim should be to open to independent scrutiny—by Congress, the courts, the press, and the public—many aspects of the drone program that have unjustifiably been kept secret (however open that secret may be) and treat drone attacks like normal military or police operations.

Any program that kills on the basis of secret intelligence risks abuse. The administration could go a long way toward minimizing the possibility of illegal killings—and discouraging others from acting in kind—if it explicitly recognized clear limits in the law governing drone attacks and allowed as much independent consideration of its compliance as possible.

## --- solves modeling

Solves drone modeling

Twomey, JD candidate – Trinity College Dublin, 3/14/’13

(Laura, “Setting a Global Precedent: President Obama's Codification of Drone Warfare,” Cambridge Journal of International and Comparative Law Blog)

It is clear that, as the first State to deploy remote targeting technology in a non international armed conflict, the legal framework forged by the US during President Obama's second term will set significant precedent for the future practice of the estimated 40 States developing their own drone technology.

On 7 March 2013, members of the European Parliament expressed deep concern about the “unwelcome precedent” the programme sets, citing its “destabilising effect on the international legal framework” that “destroys ... our common legal heritage.” This 'destabilising effect' arises from the classified and seemingly amorphous substantive legal basis for the programme and the apparent lack of procedural standards in place. It remains to be seen if the classified 'rulebook' will be released for public scrutiny, and allay these concerns.

Reliance on international law in world order is based on consent, consensus, good faith and, crucially in this instance, reciprocity. The US programme may harbour short term gains in the pursuit of al-Qaeda operatives, however, if the aforementioned substantive legal justifications continue to be invoked, it risks engendering long term disadvantages. Pursuing this policy encourages other States to adopt similar policies. Administration officials have cited particular concern about setting precedent for Russia, Iran and China, all of which are developing their own remote targeting technology.

It is therefore suggested that the Administration should take this opportunity to codify the rules, clarify terms where ambiguity may currently allow for broader interpretations, and to bring its regulations in line with the existing framework of international law. This legal framework should then be made available to the public, with covert operational necessities redacted. This could set a valuable legal precedent, of particular importance at this turning point wherein international law must adapt to the 21st century model of warfare, a model which lacks a clear enemy and a demarcated battlefield.

## at: perm solves link

Fiat means that Obama loses the fight over the plan—that destroys the agenda.

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

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.

That’s particularly true for the budget debate and the plan

Carrie Budoff Brown, Jake Sherman, Politico, 9/4/13, President Obama’s political capital spreads thin, dyn.politico.com/printstory.cfm?uuid=59456290-12C8-4DCA-970E-0856C9FA6E6C

President Barack Obama faced a heavy lift in Congress this fall when his agenda included only budget issues and immigration reform.

Now with Syria in the mix, **the president appears ready to spend a lot of the political capital that he would have kept in reserve for his domestic priorities.**

A resolution authorizing the use of force in Syria won’t make it through the House or the Senate without significant cajoling from the White House. That means Obama, who struggles to get Congress to follow his lead on almost everything, could burn his limited leverage convincing Democrats and Republicans to vote for an unpopular military operation **that even the president says he could carry out** with or **without their approval**.

“The only effect is — and I don’t mean this to be dismissive in any way — it will be taking up some time and there be some degree of political capital expended by all,” said Sen. Bob Corker (R-Tenn.), the Foreign Relations Committee ranking member who helped draft the Senate resolution. “At the end of the day, it’s a tough vote for anybody because the issue is trying to draft an authorization knowing that they’re going to implement it.”

The West Wing says it’s too early to know how Obama’s surprise decision to seek congressional authorization will affect the rest of his agenda, but his advisers are betting that a win could usher in other domestic successes. A failed vote, however, would undoubtedly weaken him.

A senior administration official said the effort could build some trust between the White House and Republicans that might ease tensions in negotiations over the budget and other issues.

White House aides have long argued that success begets success. Their latest test of that theory was the broad bipartisan Senate vote for comprehensive immigration reform bill, which was supposed to compel the House to act. So far, it has not — and House Republicans don’t think the Syria vote will be any different.

“The idea that passing the authorization for use of military force in Syria would give the administration more leverage in future political debates is absurd**,”** one senior GOP leadership aide said. “They are currently spending political capital they don’t have.”

No matter how it plays out, the sudden emergence of a fight over Syria presents both political and logistical challenges for Congress and the White House.

House Republicans were already grumbling about the prospect of several perilous votes this fall — first on raising the debt limit and extending government funding, then on a package of reforms to the immigration system. White House aides began hearing skepticism from Republican leaders that they could force a debt limit hike through the chamber and then press for passage of even a pared-back immigration bill.

Adding a vote on military intervention in Syria could create even more friction between the Obama administration and House Republicans, as lawmakers are being put in a position of potentially voting against their party leaders. House Speaker John Boehner (R-Ohio) and Majority Leader Eric Cantor (R-Va.) are backing Obama, but the vast majority of the conference appears to oppose the resolution, at least at this point.

## --- durable fiat / at: rollback

And executive orders have the force of law:

Oxford Dictionary of English 2010

(Oxford Reference, Georgetown Library)

executive order

▶ noun US (Law) a rule or order issued by the President to an executive branch of the government and having the force of law.

Executive orders are permanent

Duncan, Associate Professor of Law at Florida A&M, Winter 2010

(John C., “A Critical Consideration of Executive Orders,” 35 Vt. L. Rev. 333, Lexis)

The trajectory of the evolution of the executive power in the United States, as seen through the prism of the growing edifice of executive orders have become increasingly formal and permanent. The evolution of executive power in the United States has shifted executive orders from mere legislative interpretation to ancillary legislation. **Executive orders continue to influence subsequent presidents**. The elaboration of executive order promulgation, as an autopoietic process was necessary to the very existence of presidential power. That is, the mechanisms for formalizing executive orders have always existed in the executive power in a government whose legitimacy lives in written pronouncements treated as delicate, sacred, and worth protecting at all cost. **Part of this formalization is** a consequence of **the reverence for precedent**. Thus, **prior presidents influence future presidents**, less because future presidents wish to mimic their predecessors, but more **because future presidents act within an edifice their predecessors have already erected**. Thus, the growth and elaboration of an ever more robust structure of executive orders resembles an autopoietic process. n561

## 2nc – your ev

Shift to DOD solves

**Zenko, 13**

(Micah Zenko, the Douglas Dillon Fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). He currently serves as vice chair of the World Economic Forum Global Agenda Council on Terrorism. Previously, he worked for five years at Harvard University's Kennedy School of Government, and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, Council on Foreign Relations, Center for Preventive Care, “Reforming U.S. Drone Strike Policies,” January 2013, Council Special Report No. 65, 6/15/13, EGM)

**The president should direct that U.S. drone strikes be conducted as DOD Title 10 operations. That decision would enhance U.S. national security** in the following ways: **Improve the transparency and legitimacy of targeted killings,** including what methods are used to prevent civilian harm**. Focus the finite resources of the CIA on its original core missions** of intelligence collection, analysis, and early warning. (There is no reason for the CIA to maintain a redundant fleet of armed drones, or to conduct military operations that are inherently better suited to JSOC, the premier specialized military organization. As "traditional military activities" under U.S. law, these belong under Title 10 operations.) **Place all drone strikes under a single international legal framework, which would be clearly delineated for military operations and can therefore be articulated publicly. Unify congressional oversight** of specific operations under the armed services committee, which would end the current situation whereby there is confusion over who has oversight responsibility. **Allow U.S. government officials to counter myths and misinformation about targeted killings at home and abroad** **by acknowledging responsibility for its own strikes. Increase pressure on other states to be more transparent in their own conduct** of military and paramilitary operations in nonbattlefield settings **by establishing the precedent that the Obama administration claims can have a normative influence on how others use drones**

# solvency

## 2nc squo solves

Obama has unapologetically and publically restricted drone strikes to within zones of active hostilities and a more stable base of targets – this solves all their signal claims and moots any 1ac internal link from before March 30th –

Obama is committed to transitioning drones to the DOD now

Klaidman 13 (Daniel, The Daily Beast, “Exclusive: No More Drones for CIA”, Mar 19, 2013, <http://www.thedailybeast.com/articles/2013/03/19/exclusive-no-more-drones-for-cia.html>, ZBurdette)

At a time when controversy over the Obama administration’s drone program seems to be cresting, the CIA is close to taking a major step toward getting out of the targeted killing business. Three senior U.S. officials tell The Daily Beast that the White House is poised to sign off on a plan to shift the CIA’s lethal targeting program to the Defense Department.

The move could potentially toughen the criteria for drone strikes, **strengthen** the program’s **accountability, and increase transparency**. Currently, the government maintains parallel drone programs, one housed in the CIA and the other run by the Department of Defense. The proposed plan would unify the command and control structure of targeted killings and create a uniform set of rules and procedures. The CIA would maintain a role, but the military would have operational control over targeting. Lethal missions would take place under Title 10 of the U.S. Code, which governs military operations, rather than Title 50, which sets out the legal authorities for intelligence activities and covert operations. “This is a big deal,” says one senior administration official who has been briefed on the plan. “It would be a pretty strong statement.”

**Officials anticipate a phased-in transition** in which the CIA’s drone operations would be gradually shifted over to the military, a process that could take as little as a year. Others say it might take longer but would occur during President Obama’s second term. “**You can’t just flip a switch**, but it’s on a reasonably fast track,” says one U.S. official. During that time, CIA and DOD operators would begin to work more closely together to ensure a smooth hand-off. The CIA would remain involved in lethal targeting, at least on the intelligence side, but would not actually control the unmanned aerial vehicles. Officials told The Daily Beast that a potential downside of the agency’s relinquishing control of the program was the loss of a decade of expertise that the CIA has developed since it has been prosecuting its war in Pakistan and beyond. At least for a period of transition, CIA operators would likely work alongside their military counterparts to target suspected terrorists.

The policy shift is part of a larger White House initiative known internally as “institutionalization,” an effort to set clear standards and procedures for lethal operations. More than a year in the works, the interagency process has been driven and led by John Brennan, who until he became CIA director earlier this month was Obama’s chief counterterrorism adviser. Brennan, who has presided over the administration’s drone program from almost day one of Obama’s presidency, has grown uncomfortable with the ad hoc and sometimes shifting rules that have governed it. Moreover, Brennan has publicly stated that he would like to see the CIA move away from the kinds of paramilitary operations it began after the September 11 attacks, and return to its more traditional role of gathering and analyzing intelligence.

Lately, Obama has signaled his own desire to place the drone program on a firmer legal footing, as well as to make it more transparent. He obliquely alluded to the classified program during his State of the Union address in January. “In the months ahead,” he declared, “I will continue to work with Congress to ensure that not only our targeting, detention, and prosecution of terrorists remain consistent with our laws and systems of checks and balances, but that our efforts are even more transparent to the American people and to the world.”

Shortly after taking office, Obama dramatically ramped up the drone program, in part because the government’s targeting intelligence on the ground had vastly improved and because the precision technology was very much in line with the new commander in chief’s “light footprint” approach to dealing with terrorism. As the al Qaeda threat has metastasized, U.S. drone operations have spread to more remote, unconventional battlefields in places like Yemen and Somalia. With more strikes, there have been more alleged civilian casualties. Adding to the mounting pressure for the administration to provide a legal and ethical rationale for its targeting polices was the killing of Anwar al-Awlaki, a senior commander of al Qaeda’s Yemen affiliate, who also happened to be a U.S. citizen. (Two weeks later, his 16-year-old son was killed in a drone strike, which U.S. officials have called an accident.) The recent nomination of Brennan to head the CIA became a kind of proxy battle over targeted killings and the administration’s reluctance to be more forthcoming about the covert program. At issue were a series of secret Justice Department legal opinions on targeted killing that the administration had refused to make public or turn over to Congress.

It looks like the White House may now be preparing to launch a campaign to counter the growing perception—with elites if not the majority of the public—that Obama is running a secretive and legally dubious killing machine. For weeks, though the White House has not confirmed it, administration officials have been whispering about the possibility that Obama would make a major speech about counterterrorism policy, including efforts to institutionalize—but also reform—the kinds of lethal operations that have been a hallmark of his war on terrorism. With an eye on posterity, Obama may feel the time has come to demonstrate publicly that his policies, for all of the criticism, have stayed within the law and American values. “Barack Obama has got to be concerned about his legacy,” says one former adviser. “He doesn’t want drones to become his Guantánamo.”

But for the president to step out publicly on the highly sensitive subject of targeted killings, he’s going to have to do more than simply give an eloquent speech. An initiative like shifting the CIA program to the military, as well as other aspects of the institutionalization plan, may be just what he needs.

Their guardian card doesn’t answer this sufficiently – just says Obama is still committed to the use of drones – not that’s he still committed to the use of drones under the CIA!

# pakistan

## —pakistan backlash inevitable

Their ev says Pakistanis are fed up with the government – the plan doesn’t resolve that – here’s a card – bye bye Pakistan scenario

Daniel Markey is senior fellow for India, Pakistan, and South Asia at the Council on Foreign Relations, 13 [“A New Drone Deal For Pakistan,” Foreign Affairs, July 16, http://www.foreignaffairs.com/articles/139584/daniel-markey/a-new-drone-deal-for-pakistan?page=show]

For all its successes, **the U.S. drone program in Pakistan is unlikely to survive much longer in its current form.** Less than a week after his election on May 11, Pakistan’s new prime minister, Nawaz Sharif, reportedly declared to his cabinet that “the policy of protesting against drone strikes for public consumption, **while working behind the scenes to make them happen,** is not on.” This fall, Pakistan’s national and provincial assemblies will elect a new president, likely a Sharif loyalist, and the prime minister will also select a new army chief. It is safe to say that **these men are unlikely to follow their predecessors in offering tacit endorsements** of the United States' expansive counterterrorism efforts. ¶ In other words, **the United States is going to have to hammer out a new drone deal with Pakistan** in the years ahead, one that is sensitive to Pakistan's own concerns and objectives. This will likely mean that Washington will face new constraints in its counterterrorism operations. But managed with care, a new agreement could put the targeted killing campaign against al Qaeda on firmer political footing without entirely eliminating its effectiveness.¶ Ever since its inception in 2004, the U.S. drone campaign in Pakistan has been stumbling along shaky legal and strategic ground. At various points in time, Washington and Islamabad constructed different fictions to enable the drone campaign. Before launching the first drone strike that killed Taliban leader Nek Muhammad in June 2004, Washington sought personal authorization from then President and army chief Pervez Musharraf. For several years thereafter, the Pakistani army claimed responsibility for all drone strikes, publicly denying (however implausibly) American intervention.¶ But the program’s remarkable success in killing al Qaeda and Taliban leaders, combined with the otherwise largely unaddressed problem of sanctuaries in Pakistan’s tribal areas, encouraged U.S. officials to expand their list of targets. As the program grew, and especially as Washington killed militants with suspected links to Pakistan’s own military and intelligence services, such as members of the Afghan Taliban–affiliated Haqqani Network, Pakistani officials shed the fiction that the strikes were their own. Islamabad instead bowed to what it perceived as a powerful domestic consensus against the drones and criticized the United States in increasingly shrill terms for violating Pakistan’s territorial sovereignty. Privately, however, Musharraf and his immediate successors -- including the civilian government led by the Pakistan People’s Party (PPP) and the army under General Kayani -- continued to greenlight the drone program.¶ As the drone strikes mounted, the hypocrisy of the official Pakistani position became ever more difficult to hide. Opposition politician and former cricket star Imran Khan made the criticism of drones a centerpiece of his Tehreek-e-Insaf (PTI) party’s election campaign in 2011 and 2012. And in early 2012, the Pakistani parliament unequivocally denounced the drone strikes and called for them to end. This unmistakable sovereign act called into question oft-repeated U.S. claims that Pakistan actually provides “tacit consent” for the drone campaign.¶ Pakistan's current and future leaders, starting with Nawaz Sharif, will have little reason to implicate themselves in the drone hypocrisy of their predecessors. Sharif is on sounder political footing than his predecessor, but -- as his top lieutenants are already signaling -- **he cannot weather the political storm** that is likely to result if the United States appears to blithely **disregard his authority**. Washington’s failure to shift its policy would lead Islamabad to escalate its diplomatic protests.¶ One step in this escalation has already happened, with Pakistan taking its case against drones to the international community by way of the United Nations. If Pakistani frustration mounts without yielding results, one can imagine Sharif’s new army chief threatening to shoot U.S. drones from the sky, just as past Pakistani leaders have threatened to take down helicopters that cross into the nation’s airspace. At that stage, Washington would likely pull the drones from normal operation rather than play a high-stakes game of chicken. (Indeed, Washington has a habit of taking extended breaks from drone strikes at sensitive periods: for instance, there were no strikes for over six weeks after the so-called Salala incident at the Afghan border.)¶ **The question is whether Washington and Islamabad** **can find a deal** that addresses Pakistani concerns without depriving the United States of a counterterrorism tool that has been more effective, at least in a tactical sense, than any other. **Short of ending the drone program altogether,** **the only way** that Pakistan’s leaders can credibly claim to assert their sovereign authority -- and thereby prove their nationalist credentials to political allies and adversaries alike -- **is if Washington cedes to Islamabad** a greater degree of **control over the program**, especially when it comes to target selection.¶ At one extreme, **this would mean** doing what a number of Pakistani leaders (including General Musharraf) have requested for years: **placing the drones under Pakistani command**. Of course, given the highly sensitive nature of drone technology, along with the fact that U.S. officials do not adequately trust their Pakistani counterparts to deploy the drones in ways that would effectively eliminate top terrorist leaders, **this solution remains off the table in nearly any conceivable future.**¶ Somewhat less pie-in-the-sky, if still unrealistic at this stage, would be the idea of disarming U.S. drones and leaving Pakistani forces to act as the “trigger pullers” whenever terrorist targets are identified. Strikes would then be launched by Pakistani Air Force jets, helicopters, or perhaps even artillery, and would use U.S. intelligence for target selection. This solution also has an assortment of practical problems, from the time lag between identifying targets and shooting at them to, once again, U.S. officials’ lack of faith in their Pakistani counterparts’ ability and desire to act on that intelligence in the first place.¶ Then there is the option of crafting a “dual-key” authority at the operational level, perhaps by informing Pakistani officers in real time as drone strikes are launched and by implementing a mutually acceptable mechanism through which Islamabad could veto a specific strike, or at least raise it up the chain of command in a timely manner. Versions of a dual-key approach have been tried in the past, with some success. **But given the fraught terms of cooperation between Washington and Islamabad in recent years, it is hard to imagine U.S. officials accepting this sort of arrangement**, at least not yet. The real-time nature of the decision process would limit the potential for unwanted leaks or tip-offs to targets, but U.S. officials would still be wary that Pakistani officials could acquire too much knowledge of the drone program and its capabilities. If political trust improves over time, however, this might be a useful model for cooperation.¶A final option -- and the only realistic compromise at present -- would be for Washington to seek Islamabad’s pre-authorization for specific targets and zones for strikes. The United States would retain full operational control over drone missions, and unlike the earliest stage in the drone program, when Musharraf’s explicit approval was required to kill Nek Muhammad, this process could provide blanket authority for a much longer (mutually agreed, if not publicly disclosed) target list. In return, Pakistani leaders would acknowledge publicly the terms of the new arrangement. Accompanying this preauthorization regime, Washington and Islamabad could establish a mechanism for reviewing claims of civilian losses and providing appropriate compensation, as the United States has done in Afghanistan and Iraq. In bringing the program out of the shadows, U.S. operational authority for the drones would almost certainly have to shift from the CIA to the Pentagon, as the Obama administration has already said it plans to do in other countries.¶ Admittedly, this final compromise option would be painful for both Islamabad and Washington. Pakistani leaders would finally have to come clean to their people about authorizing drone strikes. That would eliminate even the thin veneer of deniability that past leaders have maintained to protect themselves from political fallout. It would also place Sharif’s party firmly on the blacklists of the Pakistani Taliban and other targeted groups, which to date have enjoyed slightly more ambiguous relationships.¶ For their part, U.S. counterterror officials would chafe at any preauthorization program. This would be especially true if the target list excluded individuals, such as senior Afghan Taliban commanders, with whom the Pakistanis would prefer to maintain ties. A preauthorization regime would also mean foregoing the controversial U.S. practice of signature strikes, in which drones have been used to attack individuals who fit the profile of terrorists -- for example, people who move about in armed convoys or visit known terrorist camps -- but whose identities are not yet known to U.S. officials.¶ The new drone deal would be premised on the assumption that the United States is prepared to accept less frequent drone strikes than it has become accustomed to. So one potentially insurmountable stumbling block to this compromise would be if Washington planned to use the drone campaign as a primary tool for shaping the battlefield in Afghanistan, for instance by intensifying strikes against the Haqqani Network in the FATA’s North Waziristan agency. **Pakistani leaders would almost certainly reject this strategy.** Under such conditions, however, it is hard to imagine anything other than **a tense and conflict-prone relationship** between Washington and Islamabad, whether or not any new drone deal has been negotiated.¶ But officials in Washington would be wise not to let relations with Pakistan deteriorate to that point. The United States faces potential challenges in Pakistan that are even more daunting than the war in Afghanistan or the fight against al Qaeda. Nuclear-armed and battling a hardened Islamist insurgency, Pakistan is on track to be the fourth most populous country in the world by midcentury. **Pakistan**, in short, **is here to stay -- as is Nawaz Sharif**, at least for the immediate future. Sharif may not be the man that the United States would choose to lead Pakistan, but he is one that Washington would be wise to learn how to bargain with.

## 2nc pakistan resilient

No Pakistan collapse - the military and political institutions are resilient and marginalize militant forces - thats Dasgupta - more ev

Shah 11

Aqil Shah is a post-doctoral fellow at the Society of Fellows, Harvard University. He is expert on Military Politics and Democratization in South Asia, especially Pakistan, PhD from Columbia, Rhodes scholar, Foreign Affairs, May/June 2011, "Getting the Military Out of Pakistani Politics", http://www.foreignaffairs.com/articles/67742/aqil-shah/getting-the-military-out-of-pakistani-politics

Pakistan is, of course, a weak state with serious political, economic, and security challenges. But it is not on the fast track to failure, ready to be overturned by warlords, militants, or militias. It has an incredibly resilient civil society, which has proved itself capable of resisting both state and nonstate repression. Its numerous universities, assertive professional associations, vocal human rights groups, and free (if often irresponsible and hypernationalist) media sharply distinguish Pakistan from the likes of Afghanistan or Somalia. And its bureaucratic, judicial, and coercive branches still have plenty of fight left in them. The country's political parties are popular, and parliamentary democracy is the default system of government. The Pakistani military, moreover, is a highly disciplined and cohesive force and is unlikely to let the country slide into chaos or let its prized nuclear weapons fall into the hands of Islamists.

## 2nc terror

No nuke terror: takes too long, too high-risk, terrorist preferences, and empirics – Al Qaeda’s best efforts never moved past planning – that’s Mueller.

Statistic proves – aggregating the chances of success for each step puts the chance at one in a million, and that’s worst-case.

[This proves “no motivation” – difficulties will cause terrorists to use other weapons.]

Weak leadership and positioning

**Zenko and Cohen 12**, \*Fellow in the Center for Preventive Action at the Council on Foreign Relations, \*Fellow at the Century Foundation, (Micah and Michael, "Clear and Present Safety," March/April, Foreign Affairs, www.foreignaffairs.com/articles/137279/micah-zenko-and-michael-a-cohen/clear-and-present-safety

NONE OF this is meant to suggest that the United States faces no major challenges today. Rather, the point is that the problems confronting the country are manageable and pose minimal risks to the lives of the overwhelming majority of Americans. None of them -- separately or in combination -- justifies the alarmist rhetoric of policymakers and politicians or should lead to the conclusion that Americans live in a dangerous world.

Take terrorism. Since 9/11, no security threat has been hyped more. Considering the horrors of that day, that is not surprising. But the result has been a level of fear that is completely out of proportion to both the capabilities of terrorist organizations and the United States' vulnerability. On 9/11, al Qaeda got tragically lucky. Since then, the United States has been preparing for the one percent chance (and likely even less) that it might get lucky again. But al Qaeda lost its safe haven after the U.S.-led invasion of Afghanistan in 2001, and further military, diplomatic, intelligence, and law enforcement efforts have decimated the organization, which has essentially lost whatever ability it once had to seriously threaten the United States.

According to U.S. officials, al Qaeda's leadership has been reduced to two top lieutenants: Ayman al-Zawahiri and his second-in-command, Abu Yahya al-Libi. Panetta has even said that the defeat of al Qaeda is "within reach." The near collapse of the original al Qaeda organization is one reason why, in the decade since 9/11, the U.S. homeland has not suffered any large-scale terrorist assaults. All subsequent attempts have failed or been thwarted, owing in part to the incompetence of their perpetrators. Although there are undoubtedly still some terrorists who wish to kill Americans, their dreams will likely continue to be frustrated by their own limitations and by the intelligence and law enforcement agencies of the United States and its allies.

Empirics prove

**Zenko and Cohen 12**, \*Fellow in the Center for Preventive Action at the Council on Foreign Relations, \*Fellow at the Century Foundation, (Micah and Michael, "Clear and Present Safety," March/April, Foreign Affairs, www.foreignaffairs.com/articles/137279/micah-zenko-and-michael-a-cohen/clear-and-present-safety

In the past decade, Cheney and other one-percenters have frequently warned of the danger posed by loose nukes or uncontrolled fissile material. In fact, the threat of a nuclear device ending up in the hands of a terrorist group has diminished markedly since the early 1990s, when the Soviet Union's nuclear arsenal was dispersed across all of Russia's 11 time zones, all 15 former Soviet republics, and much of eastern Europe. Since then, cooperative U.S.-Russian efforts have resulted in the substantial consolidation of those weapons at far fewer sites and in comprehensive security upgrades at almost all the facilities that still possess nuclear material or warheads, making the possibility of theft or diversion unlikely. Moreover, the lessons learned from securing Russia's nuclear arsenal are now being applied in other countries, under the framework of Obama's April 2010 Nuclear Security Summit, which produced a global plan to secure all nuclear materials within four years. Since then, participants in the plan, including Chile, Mexico, Ukraine, and Vietnam, have fulfilled more than 70 percent of the commitments they made at the summit.

Pakistan represents another potential source of loose nukes. The United States' military strategy in Afghanistan, with its reliance on drone strikes and cross-border raids, has actually contributed to instability in Pakistan, worsened U.S. relations with Islamabad, and potentially increased the possibility of a weapon falling into the wrong hands. Indeed, Pakistani fears of a U.S. raid on its nuclear arsenal have reportedly led Islamabad to disperse its weapons to multiple sites, transporting them in unsecured civilian vehicles. But even in Pakistan, the chances of a terrorist organization procuring a nuclear weapon are infinitesimally small. The U.S. Department of Energy has provided assistance to improve the security of Pakistan's nuclear arsenal, and successive senior U.S. government officials have repeated what former Secretary of Defense Robert Gates said in January 2010: that the United States is "very comfortable with the security of Pakistan's nuclear weapons."

Multiple barriers to feasibility will cause terrorists to not use nukes

Forest 12 (James, PhD and Director of Terrorism Studies and an associate professor at the United States Military Academy, “Framework for Analyzing the Future Threat of WMD Terrorism,” Journal of Strategic Security, Volume 5, Number 4, Article 9, Winter 2012, <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1193&context=jss>) \*\*NOTE---CBRN weapon = chemical, biological, radiological or nuclear weapon

Technical Constraints Theories of technical constraints are drawn from the complex nature of the weapons; essentially, CBRN weapons are complicated and difficult to build, transport, and successfully deploy against a specified target. These complications, in turn, diminish the terrorist group's likelihood of successfully carrying out their attack. In other words, as Figure 1 illustrates, more complicated terrorist plots have lower chances of success, and this influences a terrorist group's choices about the type of weapons they would use in their attacks. Furthermore, increased technological complexity of a weapon usually increases its financial costs, another key consideration for terrorist groups. When a terrorist group devotes its time, money and resources toward an attack, they will naturally want to maximize the likelihood of their operation's success. However, terrorist groups are limited by what their members are capable of accomplishing. For instance, most terrorist groups have encountered significant difficulty attracting competent bio-chemists, physicists, radiological technicians or nuclear engineers capable of developing these types of weapons. Properly handling and storing hazardous chemicals, biological pathogens, or radioactive materials is also dangerous and requires sophisticated knowledge and skill. At the most extreme end of the CBRN spectrum, there are no current terrorist groups with the kind of advanced technical expertise needed to build and deploy a nuclear weapon. As noted below, it is instructive that the historical record contains only one group (Aum Shinrikyo) that had the means, capabilities, intentions and finances to develop and deploy a sophisticated weapon of mass destruction. And even for them, a nuclear weapon was far beyond their reach. If an extremist group does manage to overcome the significant technical challenges attributed to building a viable CBRN weapon, the group may still be unable to test the weapon in order to determine its effectiveness. Again, this raises a level of uncertainty into operational planners concerned with minimizing the possibility that their attack will fail. In a sense, terrorist groups are somewhat risk-averse; their fear of failure can be a constraining factor in their decision-making. Another factor constraining these groups involves the various challenges of delivering a CBRN weapon to its target safely and effectively. For example, many of these types of weapons are relatively fragile and can expose the group's members to enormous risks when transporting the device. Overall, there are many kinds of technical challenges associated with CBRN weapons. These challenges, in turn, influence a terrorist group's decision-making about whether to invest resources in trying to develop or acquire them for use.

Too many barriers---have to answer each to win an impact

Friedman 12 (George, January 2012, PhD in Government from Cornell University and founder of Stratfor, *The Next Decade: Empire and Republic in a Changing World,* pgs. 81-82)

The simple answer is that while constructing and deploying a WMD is easy to imagine, it is very difficult to execute. Existing weapons are relatively few, heavily guarded, difficult to move, and likely to kill the terrorist well before the terrorist gets a chance to kill anyone else. There have been many reports of Soviet-era nuclear weapons, and biological and chemical weapons, being available on the black market, but most of the offers were made by intelligence agencies trying to lure terrorists into a trap. If you were a terrorist offered a suitcase nuke by a former Soviet Colonel, how could you possibly tell whether what you were looking at was the real thing or just a box stuffed with wires and blinking lights? The same uncertainty would have to hold for chemical and biological weapons as well. Intelligence services don’t have to know who is selling real WMDs in order to scare away the customers, and the allure of acquiring these weapons contracted considerably when the number of intelligence officers offer them for sales as entrapment outnumbered legitimate offers by one hundred to one. There is, of course, the option of making such a weapon yourself, and every year some undergraduate posts a diagram of how to build a nuclear device. Between that sketch and success are the following steps: acquiring the fissile material, along with all of the necessary circuitry and casings; acquiring the machine needed to machine the fissile material to the precise tolerances needed in order to detonate it; engaging the experts who could actually do these things once you had the material and the equipment; finding a very secure facility where the experts could work and live, and so on. The chances of being detected are compounded at each stage of this tortuous process. Even if you could acquire the highly guarded fissile material, the machines needed for producing a nuclear weapon are highly specialized, and their manufacturers are few and far between. When a private individual shows up with his American Express card to order one of these machines, the chances that he will be detected are very good indeed. With biological and chemical weapons, you add to these the same risks the likelihood that the only person you’ll kill will be yourself and your immediate accomplices. Chemical and biological weapons carry an extra layer of complexity in that they have to be dispersed. When a Japanese group released sarin, an extremely deadly nerve gas, in a Tokyo subway, the contamination remained localized and only a few people were killed, not the substantial numbers the terrorists had hoped for. People always speak of how a speck of this or that could wipe out an entire city. Certainly – but first you have to figure out how to spread it around. Only one country ever produced a nuclear weapon from scratch, and that was the United States. The British got their nukes in compensation for their contribution to the American research effort. The French also acquired the technology from the Americans, which they then regifted to Israel. The Russians stole the knowledge from the Americans, then transferred it to both the Chinese and the Indians. The Chinese gave the technology to the Pakistanis. The point is, the development of these weapons through an independent research program is enormously difficult, which is why Iran is still struggling and North Korea has never gotten it quite right.

# prolif

## 2nc no prolif – overview

Drone Prolif is slow

— Their evidence falsely assumes fluid tech transfer

— The UAE proves Israel and the US keep a tight lock on the goods

— Costs to build a successful program from the ground up are too great

## 2nc no prolif—china

China’s drone development is slow—ensures U.S. lead

Moss, writer – The Diplomat, former editor for the Asia-Pacific – Jane’s Defence Weekly, 3/2/’13

(Trefor, “Here Come…China’s Drones,” http://thediplomat.com/2013/03/02/here-comes-chinas-drones/?all=true)

Dozens of Chinese UAV concepts have appeared over the years, most of which will never leave the laboratory, let alone the runway. However, the Chinese aerospace sector has clearly devoted a great deal of energy to producing a range of designs from which the PLA has been able to cherry-pick. Chinese engineers have also been able to draw on Israeli technology, having acquired Harpy UAVs from Israel Aerospace Industries in the 1990s. “They've gone in the last few years from having none in development to at least 25 different models displayed at arms shows,” says Singer. “So, it’s a very ambitious program. But again, it parallels their growth in capabilities and ambitions in many others beyond UAS, from jet fighters to missiles.” He warns against overhyping China’s UAV effort, noting that for now “we’re talking very small numbers [of Chinese UAVs] … and not yet near U.S. capabilities.”

If the example of the U.S military is anything to go by, the PLA should only have operational requirements for around **six to ten** UAVs. It appears closer to filling some of these operational niches than others.

## —at: china impact

China won’t use drones offensively

Erickson, associate professor – Naval War College, associate in research – Fairbank Centre @ Harvard, 5/23/’13

(Andrew, China Has Drones. Now What?", www.foreignaffairs.com/articles/136600/andrew-erickson-and-austin-strange/china-has-drones-now-what)

Beijing, however, is unlikely to use its drones lightly. It already faces tremendous criticism from much of the international community for its perceived brazenness in continental and maritime sovereignty disputes. With its leaders attempting to allay notions that China's rise poses a threat to the region, injecting drones conspicuously into these disputes would prove counterproductive. China also fears setting a precedent for the use of drones in East Asian hotspots that the United States could eventually exploit. For now, Beijing is showing that it understands these risks, and to date it has limited its use of drones in these areas to surveillance, according to recent public statements from China's Defence Ministry.

What about using drones outside of Chinese-claimed areas? That China did not, in fact, launch a drone strike on the Myanmar drug criminal underscores its caution. According to Liu Yuejin, the director of the anti-drug bureau in China's Ministry of Public Security, Beijing considered using a drone carrying a 20-kilogram TNT payload to bomb Kham's mountain redoubt in northeast Myanmar. Kham had already evaded capture three times, so a drone strike may have seemed to be the best option. The authorities apparently had at least two plans for capturing Kham. The method they ultimately chose was to send Chinese police forces to lead a transnational investigation that ended in April 2012 with Kham's capture near the Myanmar-Laos border. The ultimate decision to refrain from the strike may reflect both a fear of political reproach and a lack of confidence in untested drones, systems, and operators.

The restrictive position that Beijing takes on sovereignty in international forums will further constrain its use of drones. China is not likely to publicly deploy drones for precision strikes or in other military assignments without first having been granted a credible mandate to do so. The gold standard of such an authorisation is a resolution passed by the UN Security Council, the stamp of approval that has permitted Chinese humanitarian interventions in Africa and anti-piracy operations in the Gulf of Aden. China might consider using drones abroad with some sort of regional authorisation, such as a country giving Beijing explicit permission to launch a drone strike within its territory. But even with the endorsement of the international community or specific states, China would have to weigh any benefits of a drone strike abroad against the potential for mishaps and perceptions that it was infringing on other countries' sovereignty - something Beijing regularly decries when others do it.

The limitations on China's drone use are reflected in the country's academic literature on the topic. The bulk of Chinese drone research is dedicated to scientific and technological topics related to design and performance. The articles that do discuss potential applications primarily point to major combat scenarios -such as a conflagration with Taiwan or the need to attack a US aircraft carrier - which would presumably involve far more than just drones. Chinese researchers have thought a great deal about the utility of drones for domestic surveillance and law enforcement, as well as for non-combat-related tasks near China's contentious borders. Few scholars, however, have publicly considered the use of drone strikes overseas.

Yet there is a reason why the United States has employed drones extensively despite domestic and international criticism: it is much easier and cheaper to kill terrorists from above than to try to root them out through long and expensive counterinsurgency campaigns. Some similar challenges loom on China's horizon. Within China, Beijing often considers protests and violence in the restive border regions, such as Xinjiang and Tibet, to constitute terrorism. It would presumably consider ordering precision strikes to suppress any future violence there. Even if such strikes are operationally prudent, China's leaders understand that they would damage the country's image abroad, but they prioritise internal stability above all else. Domestic surveillance by drones is a different issue; there should be few barriers to its application in what is already one of the world's most heavily policed societies. China might also be willing to use stealth drones in foreign airspace without authorisation if the risk of detection were low enough; it already deploys intelligence-gathering ships in the exclusive economic zones of Japan and the United States, as well as in the Indian Ocean.

Still, although China enjoys a rapidly expanding and cutting-edge drone fleet, it is bound by the same rules of the game as the rest of the military's tools. Beyond surveillance, the other non-lethal military actions that China can take with its drones are to facilitate communications within the Chinese military, support electronic warfare by intercepting electronic communications and jamming enemy systems, and help identify targets for Chinese precision strike weapons, such as missiles. Beijing's overarching approach remains one of caution - something Washington must bear in mind with its own drone programme.

Their impact is alarmism—US lead is locked in

Moss, writer – The Diplomat, former editor for the Asia-Pacific – Jane’s Defence Weekly, 3/2/’13

(Trefor, “Here Come…China’s Drones,” http://thediplomat.com/2013/03/02/here-comes-chinas-drones/?all=true)

Unmanned systems have become the legal and ethical problem child of the global defense industry and the governments they supply, rewriting the rules of military engagement in ways that many find disturbing. And this sense of unease about where we’re headed is hardly unfamiliar. Much like the emergence of drone technology, the rise of China and its reshaping of the geopolitical landscape has stirred up a sometimes understandable, sometimes irrational, fear of the unknown.

It’s safe to say, then, that Chinese drones conjure up a particularly intense sense of alarm that the media has begun to embrace as a license to panic. China is indeed developing a range of unmanned aerial vehicles/systems (UAVs/UASs) at a time when relations with Japan are tense, and when those with the U.S. are delicate. But that **hardly justifies claims** that “drones have taken center stage in an escalating arms race between China and Japan,” or that the “China drone threat highlights [a] new global arms race,” as some observers would have it. This hyperbole was perhaps fed by a 2012 U.S. Department of Defense report which described China’s development of UAVs as "alarming."

That’s quite unreasonable. All of the world’s advanced militaries are adopting drones, not just the PLA. That isn’t an arms race, or a reason to fear China, it’s just the direction in which defense technology is naturally progressing. Secondly, while China may be demonstrating impressive advances, Israel and the U.S. retain a substantial lead in the UAV field, with China—alongside Europe, India and Russia— still in the second tier. And thirdly, China is modernizing in all areas of military technology – unmanned systems being no exception.

Even if China used drones for its security concerns, there’s no impact

Zhouin 12 (Dillon, graduate of the International Relations Program at the University of Massachusetts Boston, PolicyMic, “China Drones Prompt Fears of a Drone Race With the US”, <http://www.policymic.com/articles/19753/china-drones-prompt-fears-of-a-drone-race-with-the-us>, ZBurdette)

During China’s twice-a-year show, visitors got to see an impressive and, to some, alarming fleet of drones developed by Chinese companies, including many models resembling U.S. drones with their body shape, flight specs, and their missile and surveillance capabilities.

It’s evident that China intends to take full advantage of using unmanned aerial vehicles (UAVs) to achieve its national interests – including their territorial disputes over the Senkaku Islands and South China Sea. The U.S. and the World should, therefore, be concerned with this development given that this may lead to a drone race between the top two producers of drones – the U.S. and China.

In a world whose militaries and governments are buzzing about the potential of the drones, it is no surprise that China is working to bring their drone program up to speed to compete with America just as President Obama is executing his "Asia Pivot" through strengthening U.S. military, political and economic presence in Asia.

China is rising – as evident in its growing economic and military power – but the U.S. should not treat the Chinese drone program as a cause for panic. If the U.S. works towards countermeasures against drones from rival states – like China – the risk posed by the development of competing drone programs can be minimized allowing the U.S. to implement its "Asia Pivot" with one less impediment.

The Rise of the Drones

Drones are the strategic tools of the future, especially when it comes to the political contests between the major players in global affairs. The Department of Defense’s Defense Science Board (DSB) released a report on the future of drones as a potent tool of great powers like the U.S. and China.

The report notes that drones are fast becoming a “tipping point” in global affairs because:

“Armed forces in the United States and around the world have actively embraced unmanned systems. The advantages of these systems in terms of persistence, endurance and generally lower costs and deployment footprint have been highlighted in recent conflicts ... Unmanned systems have become an established part of military operations and will play an increasing role in the modern military machine.”

The value of the drone lies in its capacity to radically expand a military’s ability to gather intelligence and expand its ability to project its power beyond limits faced by frontline personnel. It can also carry out the unpleasant business of neutralizing enemies, including Anwar al-Awlaki and Abu Yahya al-Libi, Al Qaeda’s last number two leaders, with some civilian casualties.

However, the drone is not as precise or accurate as described by the defense industry – as shown by a joint study published by Stanford Law School and NYU School of Law, which detailed the considerable toll taken on civilians in Pakistan – and causes unintended consequences in its search and kill operations in multiple areas of U.S. intelligence operations.

The U.S. remains the leading market for drones, but other powers like China, Russia, Europe and the Middle East are also working to develop their own drone capabilities.

Unlike the other powers, China is the most prolific developer of a rival drone program to America's program. The DSB report said “[i]n a worrisome trend, China has ramped up research in recent years faster than any other country.”

China’s New “Dragons” in the Sky

Like the U.S., China has given its new fleet of UAVs unique code names – which often include the character for “dragon” or "long" – and designed them with comparable capabilities as their U.S. counterparts. Many of its newer models – including the CH-4, the Wing Loong and Xianglong – appears to be copies of the U.S. Reaper, Predator and Global Hawk designs.

The drone program has had a profound effect on China’s defense industry. The DSB report notes that “[China] displayed its first unmanned system model at the Zhuhai air show five years ago, and now every major manufacturer for the Chinese military has a research center devoted to unmanned systems.”

One unique aspect of the Chinese drone program is that the cost of the drones are significantly cheaper than those made by the U.S. and Israel. For example, according to Wired, "[t]he Wing Loong [the Chinese equivalent of the U.S. Reaper] reportedly comes at a rather incredible bargain price of $1 million (£625,000), compared to the Reaper's varying price tags in the $30 million (£18.7 million) range."

For China, their nascent drone program provides a valuable tool for projecting its power in Asia, especially in a time when it’s engaged in territorial disputes with its neighbors. More importantly, China feels a need to meet the threat in perceives in President Obama’s so-called “Asia Pivot.” The drones could act as the ideal surveillance tool in tracking U.S. and its Asian allies' military movements in the event of a crisis or international spat and act as a proxy weapon to deter assertive behavior over the South China Sea and Senkaku Islands.

At the same time, the cheaper Chinese drones are a hot export product line for the Chinese defense industry. Many African and Asian states have placed orders for the economic Chinese drones. "We've been contacting many countries, especially from Africa and Asia," Guo Qian, a director at a division of the state-owned China Aerospace Science and Technology Corporation.

The geostrategic impact of the advent of these new "dragons" is to stoke fears of a drone race between the U.S. and China, which have already manifested at the Pentagon.

Worried About the Dragons’ Reach

The U.S. is deeply concerned with the speed of the Chinese drone program and the growing resources being devoted to the program. The main concern, according to the DSB report, is as follows:

“The military significance of China’s move into unmanned systems is alarming. [China] has a great deal of technology, seemingly unlimited resources and clearly is leveraging all available information on Western unmanned systems development. China might easily match or outpace U.S. spending on unmanned systems, rapidly close the technology gaps and become a formidable global competitor in unmanned systems.”

Basically, the U.S. is afraid that it won't be able to keep up with a China that has invested itself in a intensive government-sponsored effort to compete with the U.S. drone program in terms of technical quality, quantity, and as a export product to clients in the developing world. On a strategic level, the Chinese drones could be the "tipping point" for giving the Chinese the edge in possible future disputes in Asia with the U.S. as it attempts to create regional security as part of its "Asia Pivot."

There are several facts that provide some solace to the U.S. as China's drones are far from being a real challenge to the American drone program.

First, the Chinese drones are nowhere as sophisticated as U.S. drones in their range and proper hardware for optic systems and motors to power the "dragons." The DSB report notes that the U.S. technical systems are almost unrivaled at present.

Second, China lacks the manpower to properly support their new fleet of drones. Whereas the U.S. has been training and honing a large force of UAV pilots, technicians and operation managers for 15 years.

Finally, the U.S. drone program is about 20 years ahead of the Chinese program. The current models on show are considered to be prototypes and not finished products. The Chinese also have not had a chance to gain real experience with their drones during real operation.

The U.S. shouldn't be alarmed given these facts. Nor should it be overly critical of the Chinese drone program. Scott Shane of The New York Times observes that the U.S. has set the "international norms" for using drones:

"If China, for instance, sends killer drones into Kazakhstan to hunt minority Uighur Muslims it accuses of plotting terrorism, what will the United States say? What if India uses remotely controlled craft to hit terrorism suspects in Kashmir, or Russia sends drones after militants in the Caucasus? American officials who protest will likely find their own example thrown back at them."

The U.S. needs to take countermeasures against future risks from Chinese drones, but it needs not be overly alarmed or antsy. Clearly, President Obama and the U.S. has a need to work hard to keep the U.S. ahead of the competition from the "dragons" in order to implement the "Asia Pivot" and pursue U.S. interest in a balance of power in the region.

## no scs

No Senkaku war

Reuters 9/24/12

“Japan, China Military Conflict Seen Unlikely Despite Row,” http://www.cnbc.com/id/49142182

Hawkish Chinese commentators have urged Beijing to prepare for military conflict with Japan as tensions mount over disputed islands in the East China Sea, but most experts say chances the Asian rivals will decide to go to war are slim. A bigger risk is the possibility that an unintended maritime clash results in deaths and boosts pressure for retaliation, but even then Tokyo and Beijing are expected to seek to manage the row before it becomes a full-blown military confrontation. "That's the real risk — a maritime incident leading to a loss of life. If a Japanese or Chinese were killed, there would be a huge outpouring of nationalist sentiment," said Linda Jakobson, director of the East Asia Program at the Lowy Institute for International Policy in Sydney. "But I still cannot seriously imagine it would lead to an attack on the other country. I do think rational minds would prevail," she said, adding economic retaliation was more likely. A feud over the lonely islets in the East China Sea flared this month after Japan's government bought three of the islands from a private owner, triggering violent protests in China and threatening business between Asia's two biggest economies. Adding to the tensions, China sent more than 10 government patrol vessels to waters near the islands, known as the Diaoyu in China and the Senkaku in Japan, while Japan beefed up its Coast Guard patrols. Chinese media said 1,000 fishing boats have set sail for the area, although none has been sighted close by. Despite the diplomatic standoff and rising nationalist sentiment in China especially, experts agree neither Beijing nor Tokyo would intentionally escalate to a military confrontation what is already the worst crisis in bilateral ties in decades. US Pressure "The chances of a military conflict are very, very slim because neither side wants to go down that path," said former People's Liberation Army officer, Xu Guangyu, now a senior consultant at a government-run think tank in Beijing. Pressure from the United States, which repeated last week that the disputed isles were covered by a 1960 treaty obliging Washington to come to Japan's aid if it were attacked, is also working to restrain both sides, security experts said. "I very seriously do not think any of the involved parties — Japan, China and including the United States because of its defence treaty (with Japan) — want to see a military conflict over this dispute," said the Lowy Institute's Jakobson. "They don't want to risk it, they don't seek it and they do not intend to let it happen." Still, the possibility of a clash at sea remains. While the presence of the Chinese surveillance ships — none of which is a naval vessel — and Japan Coast Guard ships in the area might appear to set the stage for trouble, military experts said each side would try to steer clear of the other. "The bad news is that China sent ships to the area. The good news is that they are official ships controlled by the government," said Narushige Michishita at the National Graduate Institute for Policy Studies in Tokyo. "This is good news because they are not likely to engage in aggressive action because that would really exacerbate the situation and turn it into a major crisis," said Michishita. The Chinese ships, he said, had another mission besides asserting China's claims to the islands and nearby waters. "My guess is that some (Chinese) official patrol boats are there to watch out for fishing boats ... to stop them from making problems," Michishita said. Fishing Boats Wild Card Military specialists say the Chinese patrol vessels are well disciplined as are the Japan Coast Guard ships, while the two sides have grown accustomed to communicating. "Both sides are ready, but both sides are very well under control," said a former senior Japanese military official. What worries observers most is the risk that a boat carrying Chinese fishermen slips through or activists try to land, sparking clashes with Japan's Coast Guard that result in deaths - news of which would spread like wildfire on the Internet. In 1996, a Hong Kong activist drowned in the nearby waters. Diplomatic and economic relations chilled sharply in 2010 after Japan arrested a Chinese trawler captain whose boat collided with a Japan Coast Guard vessel. This time, tensions are already high and China is contending with a tricky once-in-a-decade leadership change while Japan's ruling party faces a probable drubbing in an election expected in months. "Two rational governments of major countries would not intentionally decide to enter into a major war with each other over a few uninhabited rocks," said Denny Roy, an Asia security expert at the East-West Center in Hawaii. "But unfortunately, you can arrive at war in ways other than that — through unintended escalation, in which both countries start out at a much lower level, but each of them think that they must respond to perceived provocation by the other side, both very strongly pushed into it by domestic pressure. That seems to be where we are now and it is difficult to see how countries can get out of that negative spiral." Others, however, were more confident that an unplanned clash could be kept from escalating into military conflict. "That's not really a major possibility, because there are still broad channels of communication between the two sides, and they would help prevent that happening. Both sides could still talk to each other," said former senior PLA officer Xu. "Even before anything happened, you would also have the U.N Secretary General and others stepping in to ensure that the situation does not get out of control."

No escalation – interdependence

Kania 13 [Elsa Kania, Harvard Political Review, 1/11/13, “The South China Sea: Flashpoints and the U.S. Pivot,” <http://www.iop.harvard.edu/south-china-sea-flashpoints-and-us-pivot>, accessed 9/14/13, JTF]

One paradox at the heart of the South China Sea is the uneasy equilibrium that has largely been maintained. Despite the occasional confrontation and frequent diplomatic squabbling, **the situation has never escalated into full-blown physical conflict.** The main stabilizing factor has been that the countries involved have too much to lose form turmoil, and so much to gain from tranquility. Andrew Ring—former Weatherhead Center for International Affairs Fellow—emphasized that “With respect to the South China Sea, we all have the same goals” in terms of regional stability and development. With regional trade flows and interdependence critical to the region’s growing economies, conflict could be devastating. Even for China—the actor with by far the most to gain from such a dispute—taking unilateral action would irreparably tarnish its image in the eyes of the international community. With the predominant narrative of a “rising” and “assertive China”—referred to as a potential adversary by President Obama in the third presidential debate—China’s behavior in the South China Sea may be sometimes exaggerated or sensationalized. Dr. Auer, former Naval officer and currently Director of the Center for U.S.-Japan Studies and Cooperation at the Vanderbilt Institute for Public Policy Studies, told the HPR that “China has not indicated any willingness to negotiate multilaterally” and remains “very uncooperative.” Across its maritime territorial disputes—particularly through recent tensions with Japan in the East China Sea—Auer sees China as having taken a very aggressive stance, and he claims that “Chinese behavior is not understandable or clear.”

Code of conduct solves tension and hotlines prevent miscalc

Romero 9/12/13 [Alexis Romero, Phil Star, 9/12/13, “Southeast Asian navies back Code of Conduct in South China Sea,” <http://www.philstar.com/headlines/2013/09/12/1202431/southeast-asian-navies-back-code-conduct-south-china-sea>, accessed 9/14/13, JTF]

Southeast Asian Navy chiefs have expressed support for efforts to formulate a code of conduct that would govern claimants in the West Philippine Sea (South China Sea).

The matter was discussed during the 7th ASEAN Navy Chiefs’ Meeting held from Sept. 9 to 11 in Makati.

“The exchange of views highlighted the role of the ASEAN navies in promoting peace in Southeast Asia through dialogue, consultation, and conduct of practical activities that builds confidence, trust, and transparency among them,” a joint statement forwarded to the media by the Philippine Navy read.

“The discussions also expressed optimism and support in the current efforts of the ASEAN to adopt a Code of Conduct for the South China Sea,” it added.

In 2002, ASEAN and China signed the Declaration on the Conduct of Parties in the South China Sea to address territorial disputes peacefully. However, specific and binding guidelines have yet to be approved.

In 2011, former US defense undersecretary Frank Wisner warned that the absence of a code of conduct could lead to greater tensions.

He said such code should be consistent to freedom of navigation, peaceful resolution of differences and the avoidance of the use of force.

China claims virtually the entire West Philippine Sea and has been shoring up its presence in disputed areas.

Taiwan and four ASEAN countries namely the Philippines, Malaysia, Brunei and Vietnam also have overlapping claims in the area.

The Navy chiefs also reaffirmed their commitment in ensuring maritime security. They also agreed to adopt measures to strengthen confidence-building and enhance mutual understanding.

“The ASEAN navies established hotlines for direct communications between the operations center, and the contacts were updated in the ASEAN Information-Sharing Portal,” the joint statement read.

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## OV

Economic decline causes global instability that goes nuclear—that’s Kemp - collapses pakistan which triggers their terror impacts. Barnett doesn't assume the scale of collapse - they conceded the internal link - ornstein says default would devastate the global economy

Best studies validate the impact

Jedidiah **Royal 10**, Director of Cooperative Threat Reduction at the U.S. Department of Defense, “Economic Integration, Economic Signalling And The Problem Of Economic Crises”, in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215

Second, on a dyadic level. Copeland's (1996. 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession lends to amplify the extent to which international and external conflicts self-rein force each other. (Blombcrj! & Hess. 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg. Hess. & Weerapana, 2004). which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995), and Blombcrg. Mess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999). and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics arr greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force.

Turns modelling - crisis kills US credibility - means others don't follow

growth Solves their war impacts

Griswold, Trade Policy Studies @ Cato, 4/20/’7

(Daniel, Trade, Democracy and Peace, <http://www.freetrade.org/node/681>)

A second and even more potent way that trade has promoted peace is by promoting more economic integration. As national economies become more intertwined with each other, those nations have more to lose should war break out. War in a globalized world not only means human casualties and bigger government, but also ruptured trade and investment ties that impose lasting damage on the economy. In short, globalization has dramatically raised the economic cost of war.

Turns terrorism

Becker, Senior Lecturer-Law @ Chicago and Posner, Prof. Business @ Chicago, ‘5

(Gary and Richard, http://www.becker-posner-blog.com/archives/2005/05/terrorism\_and\_p\_1.html)

A second possible qualification would arise if the process of rapid economic development reduces terrorism by orienting more educated and abler individuals toward advancing economically rather than toward terrorist activities. I have not done a systematic study of the link between say economic growth and terrorism, but nations or regions that are experiencing rapid growth appear to have lower incidences of terrorism. Continuing economic growth also eventually leads to greater democracy, so a positive link between economic growth and democracy and a negative link between growth and terrorism could help explain the observed negative relation between terrorism and democracy. To be sure, terrorism may be less common when nations are growing rapidly because the causation goes from terrorism to little growth; that is, terrorism discourages investments and other engines of growth. Whether the causation is from growth to little terrorism or from terrorism to little growth would have to be discovered from systematic and careful studies. But I believe that some of the causation runs from growth to reduced terrorism because it becomes harder to interest many individuals in risky terrorist activities (and other political activism) when economies are expanding rapidly and opportunities are booming.

## Link

They messed up the link debate - it's not a question of popularity - plan causes interbranch fights because it tramples on Obama's war authority - that's Kriner

Obama would fight to retain authority, even if he supported the plan’s practice

Gordon Silverstein, UC Berkeley Assistant Professor, December 2009, Bush, Cheney, and the Separation of Powers: A Lasting Legal Legacy?, http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1161&context=schmooze\_papers

Less than six months into the new administration, many of Obama’s staunch supporters have been surprised—even appalled—that the new president not only had failed to fully repudiate many of the Bush-Cheney legal policies, but in some instances, actually seems to be embracing and extending those policy choices (Gerstein 2009; Goldsmith 2009a, 2009b; Greenwald 2009a, 2009b; Herbert 2009; Savage 2009a). In areas ranging from the assertion of the state secrets privilege in efforts to shut down lawsuits over warrantless wiretapping (Al-Haramain v. Obama; Jewel v. NSA) and extraordinary rendition (Mohamed v. Jeppesen Dataplan) to those concerning lawsuits over detention and treatment at Guantánamo (Bostan v. Obama) and the reach of habeas corpus to Bagram Air Force Base in Afghanistan (Al Maqaleh v. Gates), as well as the continuing use of signing statements, the new Obama administration’s policies in a number of areas that were of intense interest during the campaign certainly do appear less dramatically different than one might have expected. Does this suggest that Obama actually will salvage and enhance the Bush-Cheney legal legacy?

Early evidence suggests the answer is no. There is a critical difference between policy and the legal foundation on which that policy is constructed. The policies may be quite similar, at least in the first few months of the new administration, but the legal legacy will turn on the underlying legal arguments, the legal foundation on which these policies are built. Here we find a dramatic difference between Obama and Bush. Both are clearly interested in maintaining strong executive power, but whereas Bush built his claims on broad constitutional arguments, insisting that the executive could act largely unhampered by the other branches of government, the Obama administration has made clear that its claims to power are built on statutes passed by Congress, along with interpretations and applications of existing judicial doctrines. It may be the case, as one of the Bush administration’s leading Office of Legal Counsel attorneys argued, that far from reversing Bush-era policies, the new administration “has copied most of the Bush program, has expanded some of it, and has narrowed only a bit” (Goldsmith 2009a). But what is profoundly different are the constitutional and legal default foundations on which these policies, and the assertions of executive power to enforce them, are built.

Obama, like virtually every chief executive in American History, seems committed to building and holding executive power. But unlike Bush, Obama is developing a far more traditional approach to this task, building his claims not on constitutional assertions of inherent power, but rather interpreting and applying existing statutes and judicial doctrines or, where needed, seeking fresh and expansive legislative support for his claims.

Case-specific card

Berger 8/12/13 (Judson, Fox, “Yemen drone strikes may revive war-powers battle between administration, Congress”, <http://www.foxnews.com/politics/2013/08/12/yemen-drone-strikes-could-revive-war-powers-battle-between-administration/>, ZBurdette)

The escalation of drone strikes in Yemen, presumably in response to the ongoing Al Qaeda threat, and other technology-based military options could fuel calls to re-write laws that govern such actions to give Congress greater oversight over the administration's remote-controlled warfare.

"Some of these campaigns by the administration clearly constitute an act of war," said Jonathan Turley, an attorney and professor at George Washington University Law School.

To date, the administration has claimed broad latitude in its authority to launch limited military operations -- including drone strikes -- without congressional authorization. There's no indication this time will be any different.

A total of nine suspected drone strikes reportedly have been recorded in Yemen since late July, taking out dozens of alleged Al Qaeda operatives and other militants. The most recent strike was on Saturday. The Washington Post reported last week that the strikes were authorized by the Obama administration in connection with the ongoing terror threat.

If challenged on the strikes, the president is likely to argue that the operation is contained and does not require congressional authorization. He has in the past.

This debate flared during the 2011 operation in Libya, when the administration launched a series of air and drone strikes in support of the campaign against Muammar Qaddafi.

## Pounders

Obama singularly focused on the budget—its top of the docket and his capital is sufficient to get it done—that’s Allen—that means issue specific uniqueness first because it prices in their link uniqueness presses, and it disproves that Obama is focusing or impacted by their pounder

Obama has capital, especially relative to the House GOP

Todd Purdum, Politico, 9/18/13, And what’s right with President Obama?, dyn.politico.com/printstory.cfm?uuid=91B846ED-7F4F-45E7-9982-E926DCD7CC77

Though the trend lines are not as steady this year as they have typically been in the past, **Obama’s favorability rating has** largely **stayed above water** in major public opinion surveys, with a recent Fox News telephone poll clocking his favorability at 50 percent, to 46 percent unfavorable. • His normality The presidency has long attracted neurotic personality types, but Obama is not among them. He has a healthy ego, but his longstanding ability to coolly assess his circumstances and then adapt to them means that he is still better positioned than most of his peers to work his way out of problems. He has always been best with his back against the wall. He may not be Harry Truman or Jerry Ford, taking brisk walks about town or toasting his own English muffins, but it’s hard to imagine that he would ever slide into LBJ-style meltdown or Nixonian paranoia. His wife and daughters — and their nightly family dinners above the store — may put a crimp in his Washington social life and his willingness to wine and dine allies or enemies, but they doubtless keep him an honest dad. In his first campaign and throughout the troubles of his tenure, he has kept perspective, often telling David Axelrod, “If things don’t work out, I’ve already got a pretty good gig being Barack Obama.” Like Truman, who called his wife, Bess, “The Boss,” Obama makes it clear that divided opinion on topics like Syria starts in his own backyard. “I’m taking this vote in Congress and what the American people are saying very seriously,” he said last week. “Because if you ask somebody, you know, I read polls like everybody else. And if you ask somebody, if you ask Michelle, ‘Do we want to be involved in another war?’ the answer is no.” • His enemies Simply put, Obama’s positions on the issues are vastly more popular than the extreme views of his die-hard opponents in Congress and the right-wing echo chamber. Ronald Reagan showed what an asset this could be, withstanding the withering condescension of the left because he had the folks in the middle. Newt Gingrich (sort of) learned the same lesson in reverse in his dealings with Bill Clinton. Has Ted Cruz? Not so much. Americans’ views of Congress, driven down in the summer of 2011 over the last debt-ceiling standoff, “have never recovered,” a Pew Research Center survey reported this summer. Just 21 percent of Americans said they regarded the institution favorably (a level that Sen. John McCain said to “paid staff and blood relatives”). Pew found that the Republican brand is also faring miserably, with a 33 percent national favorability rating “among the most negative ratings for the party in 20 years of polling.” Those numbers may not change the cold electoral math for Democratic congressional candidates in next year’s midterm election, but they give Obama a respectable argument to make on the hustings. • His party The arc of American politics is long, but at the moment, it bends toward the Democrats. For all his troubles, Obama has the good fortune to govern at a time when long-term demographic and ideological trends are breaking in the direction of his party. Sharp divisions on social issues like gay marriage — divisions that in Clinton’s day bedeviled the Democrats and as recently as eight years ago gave the GOP a sharp electoral edge, have largely been put to rest in the top tier of the Democratic Party and among its younger ranks, and to a lesser degree, among some Republicans as well. A growing Latino voting-age population is bolstering the Democrats’ hopes in the West. And for the time being, the Democrats still enjoy a strong edge in digital campaigning and data harnessing that is likely to become one of the Obama campaign’s legacies in down-ballot elections to come. The president and his party look more like the emerging post-millennial America than their opponents do. **However weak Obama’s hand looks on some days, no one would rather be holding John Boehner’s cards** — much less those of the fractious potential 2016 GOP field.

Syria validates the link thesis, but the deal and lack of a vote mean it won’t impact the short-term agenda—that’s all that matters!

Matthew Baum, AlJazeera America, 9/16/13, Obama's good fortune on Syria, america.aljazeera.com/articles/2013/9/16/obama-opinion-pollingsyria.html

Secretary of State John Kerry's announcement Saturday morning of a framework agreement with Russia on dismantling Syrian President Bashar al-Assad's chemical weapons arsenal capped (for now, at least) what undoubtedly has been one of the most bizarre episodes in memory for U.S. foreign policy. In the span of two weeks, U.S. plans caromed from the seemingly imminent use of force to a surprise time-out for consultation with Congress to a full-throttled presidential media blitz on the need for military strikes to slamming on the brakes and calling off the congressional vote in favor of renewed diplomacy with Russia, the U.S.'s erstwhile nemesis on Syria. The Obama administration undoubtedly dodged a very large domestic political bullet, at least in the short term. The president took a calculated but substantial risk when he decided to slow the seemingly inexorable march toward military action against Syria and invite Congress to weigh in on the matter. All available evidence suggests that even if he somehow managed to persuade a reluctant Senate to go along, House approval was improbable at best. **Had he lost a congressional vote** on a military strike, **the** costs in political capital **at home** and credibility abroad, as well as to the executive branch itself, **could have been** severe**.** The administration did not help its case or its public image by issuing cringe-worthy pronouncements, such as Kerry's promise that any military strike would be "unbelievably small." This forced Obama to reassure the American people that the U.S. military "does not do pinpricks." Satirists from "The Daily Show" to "Saturday Night Live" were doubtless exchanging high fives. On the other hand, Kerry's seemingly off-the-cuff offer to call off military action if Assad agreed to surrender his chemical weapons **turned out to be extraordinarily good political fortune**. Surely Kerry did not anticipate that Russia and Syria would call his bluff. Yet they did, thereby **taking the impending congressional vote** -- **and with it a potentially epic domestic political** and international diplomatic **fiasco** -- **off the table and the front pages**. For the president, **this change of subject came not a moment too soon**. In a CNN/ORC International poll taken on the eve of his Sept. 10 prime-time television address on Syria, public approval for his handling of foreign affairs reached a new low of 40 percent, while only 31 percent approved of his handling of the situation in Syria. At the same time, numerous surveys found fewer than 30 percent of Americans supported U.S. military action in Syria, and Obama's overall approval rating dipped to 43.5 percent in Gallup's tracking poll. One should not make too much of opinion polls taken prior to a military intervention, yet these numbers make Syria among the least popular proposed U.S. military interventions in recent memory. By comparison, in several surveys leading up to the 2011 U.S.-led intervention in Libya, half or more of the public supported the plan to establish a no-fly zone, and 43 percent approved of the administration's handling of that crisis. Despite the surreal nature of the past two weeks' events, it is worth considering that had the administration announced such a diplomatic breakthrough before the decision to consult Congress, the media likely would have been abuzz with stories of Obama's diplomatic prowess. As it is, a more positive media narrative may yet replace or at least challenge the current dominant media representation of a feckless president stumbling and improvising his way through a crisis. Revisionist accounts have already arisen, asserting that Kerry's comments actually represented a policy option that the U.S. and Russia had been discussing for over a year. Granted, whatever the origins of the deal, it is far from done. The U.S. and Russia are already bickering over the number of Syrian-government-controlled chemical weapons sites to be disarmed. Assad may engage in a Saddam Hussein–like cat-and-mouse game with U.N. inspectors, attempting to thwart or at least delay their efforts. And the consequences if Assad fails to fully cooperate are uncertain at best. Referral to the U.N. Security Council faces veto by Russia and China of any resolution to authorize military force. Even if every dispute can be resolved, safely dismantling all of Assad's chemical weapons would be a daunting task even absent an ongoing civil war. Regardless, unless the deal with Russia collapses, **the chances are very good** that a month from now the media and public will have moved on from Syria to focus on an array of pressing domestic issues, including looming showdowns **between the White House and congressional Republicans over the budget and the debt ceiling** and the launch of critical elements of the Affordable Care Act. According to a Sept. 11 Gallup poll, despite all the attention heaped on Syria, Americans rate it as only the fifth most important problem facing the nation, well behind a host of domestic concerns. Whether or not Syria is ultimately disarmed and if the process drags on for many months or years, the ultimate success or failure of Obama's second term may rest far less on Syria than on those imminent domestic political battles and, of course, the state of the economy, where his approval rating stood at a precarious 43 percent in the CNN/ORC International poll -- just one percentage point higher than his approval rating on health care policy.

Syria out of the agenda now—Obama’s strong—there wont’ be any hiccups in the Russia deal

Fred Kaplan, Slate, 9/14/13, A Win-Win-Win for Everyone (Except the Syrians), www.slate.com/articles/news\_and\_politics/war\_stories/2013/09/the\_u\_s\_russian\_chemical\_weapons\_deal\_is\_a\_win\_win\_win\_for\_everyone\_except.single.html

It should be no surprise that U.S. and Russian diplomats struck a deal to get rid of Syria’s chemical weapons so quickly. Both nations had strong converging interests to do just that. Diplomacy becomes almost easy under those circumstances. Russian leaders have always been keen to block the spread of weapons of mass destruction. During Soviet days, the Kremlin was far fiercer—and more effective—at keeping nukes out of the hands of the Warsaw Pact nations than the White House was at keeping them away from its NATO allies. It’s not that Soviet premiers had a deeper dread of nuclear war than American presidents. It’s that they had a greater need to impose control over their client states. In this sense, it’s likely that Russian President Vladimir Putin was horrified when Syrian President Bashar al-Assad (or his henchmen) started firing rockets loaded with nerve gas. The horror stemmed not so much from the casualties as from the chaos it would set in motion. Assad’s move made him a client out of control; it suddenly aroused the ire of Westerners who had been kept at bay through two years of bloody mayhem and who were now seriously thinking of—or being pressured into—intervening militarily. When Secretary of State John Kerry fatefully (who knows how casually?) remarked that the United States would halt its preparations for airstrikes if Assad destroyed his chemical arsenal, Putin said, “It’s a deal,” then muscled Assad to agree. Several U.S. neocons scoffed that Putin’s gambit was merely a ploy to buy time, elevate his stature in the Middle East, and make President Barack Obama look weak. There was something to this, but the critics left out another motive, and I think the prime one: Putin really wanted to get rid of Assad’s chemical weapons and the instability they were bound to set off. It is certainly true that Putin went about this very cleverly. Obama had said that airstrikes would be “limited,” designed strictly to “deter” Assad from firing more chemical weapons and to “degrade” his ability to do so. In his public statements, Obama had also said that his long-term goal was to reach a political settlement to the Syrian civil war, a settlement that would involve Assad’s departure. But the airstrikes, he said, were a separate matter; an outsider’s military power could not help one side or another win a civil war. Putin must have seen this distinction as confusing at best, duplicitous at worst. War, after all, is by nature political; military strikes always have political objectives. This is why he had so firmly opposed any talk of punishing Assad for using chemical weapons: He figured that U.S. airstrikes in Syria would be a pretense or prelude to deeper intervention and “regime change.” However, when Kerry said that dismantling the weapons might halt the juggernaut of U.S. military action, Putin saw an opening. He took the narrowest slice of Obama’s rhetoric literally: that the coming airstrikes were strictly about Assad’s chemical weapons. OK, then, Putin replied: I’ll help to remove those chemical weapons, and you call off the airstrikes. End of story. And so, assuming all goes according to plan, Assad loses his stash of deadly chemicals—but he stays in power, at least for the time being, and the Russian Federation re-emerges as a serious player in Middle Eastern politics. A win-win-win for Putin. At the same time, Obama can cite his threat to use force as the reason Putin suddenly swung into action (this might even be true, to some extent). He can thus take at least joint credit for ridding Syria of chemical weapons and upholding international law. And **he is saved from having to make good on letting Congress vote on whether to authorize the use of force**—a vote that he seemed all but certain to lose. A win-win-win for Obama. The only losers in this diplomatic venture are the Syrians. They’re stuck with Assad, and the civil war rages on. But this is how things were before the sarin strike of Aug. 21, which pushed Obama across a red line he didn’t want to cross all by himself—and then pushed him into a compounding crisis of his own making when it became clear that no other institution (not the United Nations, NATO, the Arab League, or the U.S. Congress) wanted to cross with him. This, by the way, is another reason why it should have been obvious from the beginning that Putin wanted his proposed deal to work. If his goal was simply to humiliate Obama, he could have waited for the House of Representatives to vote down the authorization to use force. The fact is, no Russian leader, particularly an authoritarian ex-KGB man like Putin, could have believed for a moment that a foreign leader—especially a U.S. president—would back away from the threat of military action simply because the legislature opposed it. In this sense, Obama’s wavering rhetoric might have thrown Putin into a deeper panic, for Russian leaders have found unpredictable opponents to be at least as fearsome as strong ones. And yet, Assad cannot help but come out of this deal weaker than before. First, he has had to admit that he has chemical weapons—and in fact to lead foreign inspectors to their sites—after earlier denying that he had any. (The sign of weakness here isn’t the admission of a lie but the necessity to come clean.) Second, he has had to submit to a deal struck by two outside powers; he can no longer present himself—to his people, his enemies, or perhaps most fatefully, to his military officers—as a strong, independent ruler. He appears to be, instead, Putin’s lackey and perhaps even Obama’s manservant. It is also worth noting that the “Framework for Elimination of Syrian Chemical Weapons,” which Kerry and Russian Foreign Minister Sergey Lavrov signed in Geneva, is a tough document, as far as these things go. The Syrians must submit a record of their stockpile within a week. The weapons and assorted equipment (launchers, precursors, etc.) are to be removed and destroyed, under international inspection and control, in the first half of 2014. And if Syria doesn’t comply with any part of it, the matter gets referred to the U.N. Security Council in a Chapter VII resolution—that is, a resolution that includes enforcement through the use of force. True, the Russians may veto this resolution, but it is a rare thing for them to permit even the hypothetical drafting of such a thing—and if Russia does veto it, the hypocrisy would be clear, and **Obama might have a stronger hand** in Congress for carrying out the airstrikes after all. It’s also true, as Obama’s critics say, that verification will be difficult. It’s much easier to hide chemical agents than, say, nuclear missiles. But, again, Russia has a very strong interest in getting rid of these weapons, and Russia is also the only entity separating Assad from a firing squad. Assad knows that Russia needs an ally in Damascus and that he has been a faithful ally; however, he probably also knows that others could step to the throne in his place. He needs Russia more than Russia needs him personally; the Russians have a lot of leverage in this deal, and he has very little.

Syria is over—focus

Washington Post, Editorial Board, 9/15/13, Congress can turn back to the budget now, www.washingtonpost.com/opinions/congress-can-turn-back-to-the-budget-now/2013/09/15/e05c975c-1ca5-11e3-82ef-a059e54c49d0\_story.html

WITH PRESIDENT Obama’s bid for congressional support for a military strike against Syria on hold for the time being, members of the House and Senate can devote their attention to what was previously supposed to have been their priority for September: avoiding a potential political and economic train wreck over the federal government’s finances. Specifically, Congress needs to fund the government after the current spending law expires on Sept. 30, and it needs to raise the $16.7 trillion debt limit, which will be reached sometime in the second half of October, and which must be increased to avoid the possibility of a U.S. default.

Obama's speech was old and isn't specific to authority fights - Obama just did it unilaterally - CP as a net benefit proves that doesn't matter

## UQ/PC Key

Their ev is media hype—GOP opposition isn’t immovable—House GOP strategy makes a deal likely

Chris Weignant, 9/18/13, The Boehner and the Restless, www.chrisweigant.com/2013/09/18/the-boehner-and-the-restless/

The politico-media empire which writes the rules of the Washington "What Serious People Are Saying" game have apparently decided that the government shutdown is now melodramatically going to happen. Cue ominous organ music blast (dum Dum DUM!). The key word in that opening sentence is "melodramatically," because our government can now be seen as nothing more than a continuing soap opera. Call it "As The Boehner Turns," or perhaps more appropriately "The Boehner And The Restless." Personally, I don't buy it. I'm taking the contrarian position on this one. John Boehner just announced that the House will vote on a continuing resolution (to continue funding the government past the first of October) which attempts to "defund" Obamacare, and that the vote will happen this Friday. Across Washington, in newsrooms everywhere, pearls were clutched and editors swooned (and had to be revived with smelling salts). The sky is falling! The shutdown will happen! Oh, my goodness! What a calamity! The melodrama was turned up to eleven, and the knob was then snapped off. The car was about to careen off the cliff (right before the commercial break), so stay tuned, folks.... But, as I said, I don't buy it. In fact, I will go so far as to say that **the timing of the vote increases the chances that the** government shutdown will not in fact happen. The vote, I suspect, is nothing more than John Boehner showboating within his own caucus -- nothing more than a sop to the rabid Tea Party members who are demanding this showdown. The reason I reach this conclusion is that if Boehner were truly serious about using this bill as his only negotiating position, he would have waited until the last minute to introduce it. Instead, he's going to hold a vote this Friday. There are three basic endgames which are possible in the showdown. The first is that Senate Democrats and President Obama wake up one morning and, in astonishment, blurt out, "What were we thinking? Obamacare sucks! Let's repeal the signature legislation of Barack Obama's term in office!" They then leap out of bed, pass the House's bill and sign it into law. Obamacare is dead! Well, this isn't really true, since the House "defunding" Obamacare doesn't actually defund something like 80 percent of Obamacare, but whatever. The chances of this scenario happening are precisely zero, so it's a moot point. The second endgame is that the House Republicans refuse to budge, the Senate and the House can't agree on a continuing resolution, and the government shuts down at the start of next month. This is what the media is salivating over, with full soundtrack and all the melodrama they can heap upon it. What a great start to the fall season for the soap opera that is Washington! The chances of this happening are unknown, but I predict that they are one whale of a lot smaller than the media would have you currently believe. And, as I said, holding the vote this Friday means the chances of a shutdown actually happening have just grown even smaller. If Boehner really wanted this scenario to happen (he's publicly said he does not, for the record), then he would use the clock to his advantage and delay the vote on the Tea Party bill until, perhaps, next Friday -- giving the Senate almost no time to react. But he's not taking this route, which is the main point everyone seems to be missing (or willfully ignoring, to boost ratings for the soap opera). The third scenario is the most likely. John Boehner, following a script he has used in the past, allows the Tea Party to pillage and riot for a very precise amount of time. He allows their "take no prisoners" bill to be voted on. There is no guarantee that it'll even pass -- another fact many media types are ignoring today. Boehner has had to ignobly yank quite a few bills from the floor before the vote because he simply cannot round up enough votes within his own party to pass them. This could happen with Friday's bill, although it is more likely that Boehner will allow the vote even if he knows it will fail (because doing so will strengthen his position). But say for the sake of conversation that it does pass. The Tea Party will triumphantly proclaim victory, and the Senate will quickly dispose of the bill in one fashion or another -- leaving us right back at square one. The Senate leaders will then meet with the White House and come up with a budget bill which is acceptable to sane Republicans in the Senate, but which does not touch Obamacare's funding. The Senate will pass this bill, and send it over to the House (technically the House has to originate spending bills, but this can be dealt with by a gimmick, as it always is). The ball will be back in Boehner's court. Boehner has already cancelled vacation days scheduled for next week. The House will be in session. And it'll **have enough time to act before the deadline is reached**. Boehner will (again, he's done this before, folks) reluctantly tell his Tea Party members "well, we tried our hardest, but it didn't work." And then -- at the last minute, no doubt -- he'll put the Senate bill on the House floor for a vote, breaking the Republican "Hastert Rule" once again. Virtually all the Democrats will vote for it, and at least a few dozen Republicans will join them (those in such safe districts that they don't worry about Tea Party primary challenges, for the most part). The bill will pass. A few minor concessions may be wrung from the budget itself, as a sort of consolation prize for House Republicans ("See? We did get some sort of victory!"), and this tweaked bill will go back to the Senate for a vote. The Senate will pass it, and it will thus be placed upon Obama's desk for his signature. Obama, of course, will sign it. The only real question in this scenario is how close we come to hitting the deadline. Maybe the government will temporarily "shut down" for a day or two as the last Senate vote happens, at worst. But some sort of budget will be in place, until the next time this budgetary plot device arises (which seems to be planned for December, just so we can all have a holiday special for the Washington soap opera). Call me an optimist if you will, but this still seems the most-likely scenario. Boehner, by holding the big vote early, is signaling that there will be plenty of time to fix things at the last minute after he tosses the Tea Party their bone. The Tea Partiers will experience a few days of euphoria and then be consumed with white-hot rage when they don't ultimately get their way. Primary challenges will be threatened all around. Talk radio and the conservative echo chamber in the media will explode with angst and denunciation. But we will have a budget, and the government will not shut down.

Trends go neg—GOP crazies are uniting under Boehner

Ryan Grim, HuffPo, 9/19/13, Ted Cruz, Liberal Hero, May Have Just Bailed Washington Out Of The Shutdown Crisis , www.huffingtonpost.com/2013/09/19/ted-cruz-shutdown-house-republicans\_n\_3954461.html?utm\_hp\_ref=politics

In one moment, with one statement, Sen. Ted Cruz (R-Texas) managed Wednesday to accomplish what House GOP leaders, Republican senators and the Wall Street Journal editorial page had failed to do for months: Persuade rank-and-file House Republicans that shutting down the government in an attempt to defund Obamacare was simply impossible.

On Wednesday, after House leaders said they'd go forward with the defund strategy Cruz had been pitching with ads on Fox News, his response boiled down to 'Thanks, you're on your own.'

"Harry Reid will no doubt try to strip the defund language from the continuing resolution, and right now he likely has the votes to do so," Cruz said in a statement. "At that point, House Republicans must stand firm, hold their ground, and continue to listen to the American people."

On the surface, House Republicans were seething. Members openly accused Cruz and his allies, Sens. Mike Lee (R-Utah) and Marco Rubio (R-Fla.), of waving the white flag before the fight had even begun. One House GOP aide even called Cruz a "joke, plain and simple."

But by admitting that he had no ability in the Senate to back up the House effort to defund Obamacare, and saying so on the same day that House Republicans had announced they would support the Cruz-inspired strategy, Cruz has inadvertently done more than any other lawmaker to avert a government shutdown.

"Cruz officially jumped the shark this week," said one GOP operative allied with House leadership, who, like others, requested anonymity to speak critically about fellow Republicans. "He's doing for the House Leaders what they couldn't do for themselves. House rank-and-file members are uniting with Boehner, Cantor over Ted Cruz's idiotic position."

There’s sufficient negotiating room now

Matthew Yglesias, Slate, 9/18/13, The Odds of a Government Shutdown Are Falling, Not Rising, www.slate.com/blogs/moneybox/2013/09/18/government\_shutdown\_odds\_falling\_not\_rising.html

A Jonathan Weisman Ashley Parker piece headlined "House Bill Cuts Health Funds, Raising Odds of U.S. Shutdown" is going to alarm a lot of New York Times readers tomorrow morning.

But read on to the second graf of the piece and you'll see that the odds are not rising at all. What's happening is that John Boehner is preparing to pass an appropriations bill that also defunds Obamacare that he knows perfectly well stands no chance of passing, and he's hoping that doing this will placate the right wing of the his caucus for when he surrenders.

Here they explain:

House leaders are hoping the vote on the defunding measure will placate conservatives once the Democratically controlled Senate rejects it. The House, they are betting, would then pass a stopgap spending measure unencumbered by such policy baggage and shift the argument to the debt ceiling, which must be raised by mid-October if the government is to avoid an economically debilitating default.

The key thing to remember here is that the House, as a discretionary decision, operates by the "Hastert Rule" in which only bills that are supported by a majority of GOP members can be brought to the floor for a vote. There is no Hastert-compliant appropriations bill that can pass the Senate. But there very likely is majority support in the House for the kind of "clean" funding bill that can also pass the Senate. All that has to happen is for John Boehner to violate the Hastert Rule. And the Hastert Rule isn't actually a rule, it's something Boehner has put aside many times. But it's also a rule he can't flagrantly ignore, lest his caucus get too grumpy and depose him. The operating theory here is that if Boehner has the whole House GOP indulge the maximalist faction by all passing a defuding bill, **that** creates enough room **to move to later violate the Hastert Rule and pass a continuing resolution.**

If anything is happening to the odds of a shutdown, in other words, they're falling, not rising.

Produces a budget compromise even if it looks impossible now

Joe Klein, TIME, 9/11/13, Obama and Syria: Stumbling Toward Damascus, swampland.time.com/2013/09/11/obama-and-syria-stumbling-toward-damascus/

There are domestic consequences as well. This was supposed to be the month when the nation’s serious fiscal and budgetary problems were hashed out, or not, with the Republicans. There was a chance that a coalition could be built to back a compromise to solve the debt-ceiling problem and the quiet horrors caused by sequestration and to finally achieve a long-term budget compromise. But any deal would have required intense, single-minded negotiation, including political protection, or sweeteners, for those Republicans who crossed the line. Precious time has been wasted. And, after Syria, it will be difficult for any member of Congress to believe that this President will stick to his guns or provide protection.

Obama’s capital will be effective on the budget

John Harris, Politico, 9/18/13, What’s wrong with President Obama?, dyn.politico.com/printstory.cfm?uuid=B56971FB-BD77-47B8-8EF0-DC47E9CD7FC6

With big tests now looming on the budget and immigration, there could hardly be a better time for Obama to show at last that **he has the** ability to provide cover **to the people who support him on difficult issues, and the** ability to punish **the people who choose a different path**.

Obama has a small window for the budget debate—his capital is key to resolution

AP, 9/12/13, Syria debate on hold, Obama refocuses on agenda, www.timesleader.com/news/apbusiness/569385542543256648058/Syria-debate-on-hold-Obama-refocuses-on-agenda

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.

The plan causes Obama to use necessary political capital for budget debates to unsuccessfully preserve his war power authority

Carrie Budoff Brown, Jake Sherman, Politico, 9/4/13, President Obama’s political capital spreads thin, dyn.politico.com/printstory.cfm?uuid=59456290-12C8-4DCA-970E-0856C9FA6E6C

President Barack Obama faced a heavy lift in Congress this fall when his agenda included only budget issues and immigration reform.

Now with Syria in the mix, **the president appears ready to spend a lot of the political capital that he would have kept in reserve for his domestic priorities.**

A resolution authorizing the use of force in Syria won’t make it through the House or the Senate without significant cajoling from the White House. That means Obama, who struggles to get Congress to follow his lead on almost everything, could burn his limited leverage convincing Democrats and Republicans to vote for an unpopular military operation **that even the president says he could carry out** with or **without their approval**.

“The only effect is — and I don’t mean this to be dismissive in any way — it will be taking up some time and there be some degree of political capital expended by all,” said Sen. Bob Corker (R-Tenn.), the Foreign Relations Committee ranking member who helped draft the Senate resolution. “At the end of the day, it’s a tough vote for anybody because the issue is trying to draft an authorization knowing that they’re going to implement it.”

The West Wing says it’s too early to know how Obama’s surprise decision to seek congressional authorization will affect the rest of his agenda, but his advisers are betting that a win could usher in other domestic successes. A failed vote, however, would undoubtedly weaken him.

A senior administration official said the effort could build some trust between the White House and Republicans that might ease tensions in negotiations over the budget and other issues.

White House aides have long argued that success begets success. Their latest test of that theory was the broad bipartisan Senate vote for comprehensive immigration reform bill, which was supposed to compel the House to act. So far, it has not — and House Republicans don’t think the Syria vote will be any different.

“The idea that passing the authorization for use of military force in Syria would give the administration more leverage in future political debates is absurd**,”** one senior GOP leadership aide said. “They are currently spending political capital they don’t have.”

No matter how it plays out, the sudden emergence of a fight over Syria presents both political and logistical challenges for Congress and the White House.

House Republicans were already grumbling about the prospect of several perilous votes this fall — first on raising the debt limit and extending government funding, then on a package of reforms to the immigration system. White House aides began hearing skepticism from Republican leaders that they could force a debt limit hike through the chamber and then press for passage of even a pared-back immigration bill.

Adding a vote on military intervention in Syria could create even more friction between the Obama administration and House Republicans, as lawmakers are being put in a position of potentially voting against their party leaders. House Speaker John Boehner (R-Ohio) and Majority Leader Eric Cantor (R-Va.) are backing Obama, but the vast majority of the conference appears to oppose the resolution, at least at this point.

## More

Negotiations will succeed now

Ben Terris, National Journal, 9/15/13, Government Shutdown? Not This Time, www.nationaljournal.com/congress/government-shutdown-not-this-time-20130915

The drumbeat has already started.

"GOP split over health care law boosts threat of a government shutdown," says the Los Angeles Times.

"A Government Shutdown Just Got More Likely," BusinessWeek said on Sept. 11.

"No Clear Path in Congress Avoiding a Shutdown," NBC said on their website the next day.

It makes for an exciting story—albeit one that we've heard many times recently—but the general consensus, both from outside experts and Republican leaders, is that it's just not going to happen. Yet.

"**I'm very confident** in my belief that a **shutdown will not happen**," said a Republican leadership aide. "I'm not going to rule out the chance that it ever does. But the leadership team and overwhelming number of our members do not want to shut down the government."

Politically, Republican leaders know it's in their best interest not to have the government shut down. A new poll from CNN found that the majority of the country would blame them, not Democrats, if such a thing were to happen. That is certainly part of the pitch from top Republicans to their members. They also want their colleagues to think of passing a budget bill—one that keeps sequester-levels of spending intact—as a victory in and of itself.

And as for fighting for such trophies as delaying or defunding Obamacare, Republican leadership aides say that all they really need is **just a bit more time to convince the holdouts** that there's a better moment to have that fight.

No syria thumper

Peter Baker, NYT, 9/15/13, Brief Respite for President, but No Plan B on Syria, www.nytimes.com/2013/09/16/world/middleeast/brief-respite-for-president-but-no-plan-b-on-syria.html?ref=todayspaper&\_r=1&&pagewanted=all

The Russian-American deal to destroy Syria’s chemical weapons arsenal **gives** **President Obama some** breathing space **after a politically damaging few weeks**. But the list of things that could still go wrong is extensive and daunting.