### 1nc ESR

#### The counterplan restrains the executive through DOJ adjudication—solves case through pre-commitment

**Pillard 2005** – JD from Harvard, Faculty Director of Supreme Court Institute at Georgetown University Law Center, former Deputy Assistant Attorney General in the DOJ (February, Cornelia T., Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758, http://scholarship.law.georgetown.edu/facpub/189/)

V. ENABLING EXECUTIVE CONSTITUTIONALISM

The courts indisputably do not and cannot fully assure our enjoyment of our constitutional rights, and it is equally clear that the federal executive has an independent constitutional duty to fulfill the Constitution's promise. Executive constitutionalism seems ripe with promise. Yet, it is striking how limited and court-centered the executive's normative and institutional approaches to constitutional questions remain.

One conceivable way to avoid the pitfalls of court-centric executive lawyering on one hand and constitutional decisions warped by political expedience on the other would be to make the Solicitor General and Office of Legal Counsel - or perhaps the entire Department of Justice - as structurally independent as an independent counsel or independent agency.207 Making the SG and OLC independent in order to insulate them from politics presumably would alleviate the "majoritarian difficulty" resulting from their service to elected clients. Promoting fuller independence in that sense does not, however, appear to be clearly normatively attractive, constitutionally permissible, nor particularly feasible. In all the criticism of our current constitutionalism, there is little call for an SG or OLC that would act, in effect, as a fully insulated and jurisprudentially autonomous constitutional court within the executive branch, operating with even less transparency and accountability than the Supreme Court. Moreover, as a practical matter it would be complex and problematic to increase the independence of the SG and OLC. The federal government faces Article II obstacles to formally insulating executive lawyers from politics and institutional pressures, and the president and his administration likely would be less amenable to guidance from such unaccountable lawyers.208

The challenge, rather, is to draw forth from the executive a constitutional consciousness and practice that helps the government actively to seek to fulfill the commitments of the Constitution and its Bill of Rights, interpreted by the executive as guiding principles for government. Adjustments to executive branch constitutional process and culture should be favored if they encourage the executive to use its experience and capacities to fulfill its distinctive role in effectuating constitutional guarantees. There is transformative potential in measures that break ingrained executive branch habits of looking to the Constitution only as it is mediated through the courts, and of reflexively seeking, where there is no clear doctrinal answer, to minimize constitutional constraint. It is difficult fully to imagine what kinds of changes would best prompt executive lawyers and officials to pick up constitutional analysis where the courts leave off, and to rely on the Constitution as an affirmative, guiding mandate for government action; what follows are not worked-out proposals, but are meant to be merely suggestive.

A. Correcting the Bias Against Constitutional Constraint

As we have seen, the SG's and OLC's default interpretive approach to individual rights and other forms of constitutional constraints on government is to follow what clear judicial precedents there are and, where precedents are not squarely to the contrary, to favor interpretations that minimize constitutional rights or other constitutional obligations on federal actors. Those court-centered and narrowly self-serving executive traditions produce a systematic skew against individual rights.

1. Encourage Express Presidential Articulation of Commitment to Constitutional Rights

To the extent that a president articulates his own rights-protective constitutional vision with any specificity, he ameliorates the tension his constitutional lawyers otherwise face between advancing individual rights and serving their boss's presumed interest in maximum governing flexibility. Case or controversy requirements and restrictions against courts issuing advisory opinions do not, of course, apply to the executive's internal constitutional decisionmaking, and presidents can better serve individual rights to the extent that they expressly stake out their constitutional commitments in general and in advance of any concrete controversy."° When the president takes a stand for advancing abortion rights, property rights, disability rights, "charitable choice," a right to bear arms, or full remediation of race and sex discrimination, he signals to his lawyers that they should, in those areas, set aside their default bias in favor of preserving executive prerogative, even if it requires extra executive effort or restraint to do so.

If presented in a concrete setting with a choice between interpreting and applying the Constitution in fully rights-protective ways or sparing themselves the effort where Supreme Court precedent can be read not to require it, government officials typically default to the latter course without considering whether they might thereby be giving short shrift to a constitutional duty. A president's stated commitment to protection of particular rights, however, flips the default position with respect to those rights, acting as a spur to executive-branch lawyers and other personnel to work to give effect to constitutional rights even where, for a range of institutional reasons, the courts would not. A president is thus uniquely situated to facilitate full executive-branch constitutional compliance by precommitting himself to a rights-protective constitutional vision, and thereby making clear that respect for constitutional rights is part of the executive's interest, not counter to it.

#### Disclosure makes the counterplan credible and checks impulsive decisions

**Marguiles 2012** – Professor of Law, Roger Williams University (5/15, Peter, Pepperdine Law Review, Volume 39, Issue 4, Article 1, “Reforming Lawyers into Irrelevance?: Reconciling Crisis and Constraint at the Office of Legal Counsel”, http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1370&context=plr)

\*NOTE: Marguiles not to be confused with Margolis, who worked in the DOJ after John Yoo

1. Disclosure

Disclosure is an important deliberative safeguard. From an ex ante perspective, disclosure protects against fringe views, since the author of an opinion knows that outside audiences will “kick the tires” and quickly discover and critique views that distort the relevant law.242 Disclosure also helps ex post, by allowing Congress, professional peers, and the public to see distortions as they emerge and campaign to correct them.243 Disclosure also works hand in hand with efforts by the President to secure ratification of an unorthodox view that responds to exigent circumstances; disclosure, at least to Congress, is a necessary incident of ratification.244 Certain opinions may contain sensitive information that makes immediate disclosure inappropriate.245 However, Congress could well require as part of its oversight that OLC engage in a deliberative process, including making express findings that become part of an opinion, when such circumstances prevail.

#### Presumptively binding opinions maintain OLC credibility without hurting flexibility

**Morrison 2011** – Professor of Law, Columbia University (Trevor W., Harvard Law Review, ““Hostilities,” the Office of Legal Counsel, and the Process of Executive Branch Legal Interpretation”, 124 HARV. L. REV.F. 62, http://web.law.columbia.edu/sites/default/files/microsites/constitutional-governance/files/Libya-Hostilities-Office-of-Legal-Counsel.pdf)

Once OLC arrived at its conclusion, it should have been clearly conveyed to the relevant parties, ideally in writing. Reducing an opinion to writing is not always possible when time is short, but where it is feasible it helps clarify the precise terms and bounds of OLC’s position. The recipients of OLC’s opinion (whether written or oral) should have regarded it as the presumptively final word on the “hostilities” question. The President certainly retains the authority to overrule OLC, but the traditions of executive branch legal interpretation do not contemplate routine relitigation before the President. Still, on matters of grave consequence where affected agencies strongly disagree with OLC’s analysis, there is nothing categorically inappropriate in their seeking presidential review. Importantly, any such presidential review should proceed on the understanding that OLC’s analysis should be adhered to in all but the most extreme circumstances. Presidential overruling should be rare because it can carry serious costs. To start, it can undermine OLC’s ability to produce legal opinions consistent with its best view of the law. Agency general counsels and the White House Counsel’s Office may approach legal questions not with the goal of seeking the best view of the law, but with the aim of finding the best, professionally responsible legal defense of their client’s preferred policy position. There is nothing wrong with that. But if the President routinely favors legal views of that sort over OLC’s conclusions, the traditional rationale for having an OLC at all will be undermined. OLC’s work product is significant today in large part because of the time-honored understanding that its conclusions are presumptively binding within the executive branch. Routine presidential overruling would weaken the presumption, which in turn would diminish the significance of OLC’s work and reduce its clients’ incentive to seek its views. To remain relevant, OLC would likely start intentionally tilting its analysis in favor of its clients’ (here, the President’s) preferred policies. Put another way, the strong presumption in favor of the authoritativeness of OLC’s analysis provides OLC with the institutional space and cover to provide answers based on its best view of the law. If the former is weakened, the latter is jeopardized.

### 1nc Iran

#### Obama is investing capital to delay a new Senate sanctions on Iran until after November 20th – he’ll hold off the vote now

**Gerstein, 11/12/13** (Josh, Politico, “Iran talks delay puts White House on defense”

http://www.politico.com//story/2013/11/iran-talks-delay-white-house-99707.html)

A ten-day delay in talks aimed at negotiating an interim halt to Iran’s nuclear program could allow opponents of such a deal to build momentum on Capitol Hill, analysts said Monday.

For a time last week, it seemed like the Obama administration was eager to complete such a pact in little more than 48 hours from the time officials disclosed that a serious short-term agreement was on the table. That would have allowed the administration to bring such a package to Congress as a done deal, with lawmakers in the position of having to upend an agreement that had the blessing of at least six major world powers.

However, a late snag in the talks — there was still some dispute Monday about who was responsible for the hitch — led the parties to recess, with plans to reconvene Nov. 20. And that delay is essentially forcing the administration into a more public and high-profile defense of more diplomacy with Iran, and the Senate to hold off on a vote on new sanctions against Tehran.

Vice President Joe Biden spoke to Sen. Chuck Schumer (D-N.Y.) Monday to encourage the Senate to avoid any moves that might scuttle the next round of talks, said a source familiar with the conversation, first reported by BuzzFeed.

And Secretary of State John Kerry is expected to brief members of the Senate Banking Committee at a closed-door session later this week, a congressional source said. Kerry spokeswoman Jen Psaki told reporters returning from the Mideast with the secretary that the briefing will take place Wednesday, Reuters reported.

As top Obama administration officials urged the Senate to hold off any new sanctions action, some supporters of a deal with Iran fretted that the administration had waited until now to make a strong push in Congress and with the public for a pact aimed at halting Tehran’s nuclear program.

“I understand the attractiveness of that strategy, but am still doubtful about the wisdom and effectiveness of it, because it essentially means the president wanted to present Congress with a fait accompli, and this Congress doesn’t react very well to that,” said Trita Parsi of the National Iranian American Council.

Parsi said it was clear that the U.S. administration and others wanted to get an interim deal signed before the debate heated up in Congress again on sanctions.

#### Political capital is key – new sanctions in advance of negotiations will wreck Rouhani’s ability to negotiate and collapse the deal

**Cockburn, 11/11**/13 **-** PATRICK COCKBURN is the author of Muqtada: Muqtada Al-Sadr, the Shia Revival, and the Struggle for Iraq (“The Deal-Wreckers Why Iran’s Concessions Won’t Lead to a Nuclear Agreement”, Counterpunch, <http://www.counterpunch.org/2013/11/11/why-irans-concessions-wont-lead-to-a-nuclear-agreement/>

In Tehran President Hassan Rouhani has so far had a fairly easy ride because of his recent election and the support of the Supreme leader, Ali Khamenei. But if he is seen as offering too many concessions on the nuclear programme and not getting enough back in terms of a relaxation of economic sanctions then he and his supporters become politically vulnerable. There are some signs that this is already happening.

The Reformists in Iran will also be vulnerable to allegations that they have given the impression that they are negotiating from weakness because economic sanctions are putting unsustainable pressure on Iran. If this argument was true then Israel, France and Saudi Arabia can argue that more time and more sanctions will make the Iranians willing to concede even more.

There is no doubt that sanctions do have a serious impact on the Iranian economy, but it does not necessarily follow that it will sacrifice its nuclear programme. The confrontational policy advocated much of the US Congress may, on the contrary decide Iran to build a nuclear weapon on the grounds that the international campaign against Iranian nuclear development is only one front in an overall plan to overthrow the system of government installed in Iran since the fall of the Shah in 1979. In other words, Iranian concessions on nuclear issues are not going to lead to an agreement, because the real objective is regime change.

On the other hand, the decision by President Obama not to launch airstrikes against Syria, Iran’s crucial Arab ally, after the use of chemical weapons on 21 August, has to a degree demilitarised the political atmosphere. This could go into reverse if Congress adds even tougher sanctions and threats of military action by Israel resume. Much will depend on how much political capital President Obama is willing spend to prevent prospects for a deal being extinguished by those who believe that confrontation with Iran works better than diplomacy.

#### Presidential war power battles expend capital – it’s immediate and forces a trade-off in prioritization

O’Neil 7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### **Plan’s a perceived loss – that causes Obama’s allies to defect**

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

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### A limited deal prevents Iranian weaponization – risks proliferation and an Israeli nuclear strike

**Stephens, 11/14/13** – columnist for the Financial Times (Phillip, Financial Times, “The four big truths that are shaping the Iran talks” <http://www.ft.com/intl/cms/s/0/af170df6-4d1c-11e3-bf32-00144feabdc0.html#axzz2kkvx15JT>

The first of these is that Tehran’s acquisition of a bomb would be more than dangerous for the Middle East and for wider international security. It would most likely set off a nuclear arms race that would see Saudi Arabia, Turkey and Egypt signing up to the nuclear club. The nuclear non-proliferation treaty would be shattered. A future regional conflict could draw Israel into launching a pre-emptive nuclear strike. This is not a region obviously susceptible to cold war disciplines of deterrence.

The second ineluctable reality is that Iran has mastered the nuclear cycle. How far it is from building a bomb remains a subject of debate. Different intelligence agencies give different answers. These depend in part on what the spooks actually know and in part on what their political masters want others to hear. The progress of an Iranian warhead programme is one of the known unknowns that have often wreaked havoc in this part of the world.

Israel points to an imminent threat. European agencies are more relaxed, suggesting Tehran is still two years or so away from a weapon. Western diplomats broadly agree that Ayatollah Ali Khamenei has not taken a definitive decision to step over the line. What Iran has been seeking is what diplomats call a breakout capability – the capacity to dash to a bomb before the international community could effectively mobilise against it.

The third fact – and this one is hard for many to swallow – is that neither a negotiated settlement nor the air strikes long favoured by Benjamin Netanyahu, Israel’s prime minister, can offer the rest of the world a watertight insurance policy.

It should be possible to construct a deal that acts as a plausible restraint – and extends the timeframe for any breakout – but no amount of restrictions or intrusive monitoring can offer a certain guarantee against Tehran’s future intentions.

By the same token, bombing Iran’s nuclear sites could certainly delay the programme, perhaps for a couple of years. But, assuming that even the hawkish Mr Netanyahu is not proposing permanent war against Iran, air strikes would not end it.

You cannot bomb knowledge and technical expertise. To try would be to empower those in Tehran who say the regime will be safe only when, like North Korea, it has a weapon. So when Barack Obama says the US will never allow Iran to get the bomb he is indulging in, albeit understandable, wishful thinking.

The best the international community can hope for is that, in return for a relaxation of sanctions, Iran will make a judgment that it is better off sticking with a threshold capability. To put this another way, if Tehran does step back from the nuclear brink it will be because of its own calculation of the balance of advantage.

The fourth element in this dynamic is that Iran now has a leadership that, faced with the severe and growing pain inflicted by sanctions, is prepared to talk. There is nothing to say that Hassan Rouhani, the president, is any less hard-headed than previous Iranian leaders, but he does seem ready to weigh the options.

Seen from this vantage point – and in spite of the inconclusive outcome – Geneva can be counted a modest success. Iran and the US broke the habit of more than 30 years and sat down to talk to each other. Know your enemy is a first rule of diplomacy – and of intelligence. John Kerry has his detractors but, unlike his predecessor Hillary Clinton, the US secretary of state understands that serious diplomacy demands a willingness to take risks.

The Geneva talks illuminated the shape of an interim agreement. Iran will not surrender the right it asserts to uranium enrichment, but will lower the level of enrichment from 20 per cent to 3 or 4 per cent. It will suspend work on its heavy water reactor in Arak – a potential source of plutonium – negotiate about the disposal of some of its existing stocks of enriched uranium, and accept intrusive international inspections. A debate between the six powers about the strength and credibility of such pledges is inevitable, as is an argument with Tehran about the speed and scope of a run down of sanctions.

#### An Israeli strike fails, but triggers World War 3, collapses heg and the global economy

**Reuveny, 10** – professor in the School of Public and Environmental Affairs at Indiana University (Rafael, “Unilateral strike could trigger World War III, global depression” Gazette Xtra, 8/7, - See more at: <http://gazettextra.com/news/2010/aug/07/con-unilateral-strike-could-trigger-world-war-iii-/#sthash.ec4zqu8o.dpuf>)

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash.

For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force.

Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground.

All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians but also the Chinese and, likely, the Russians as well.

By now, Iran has also built redundant command and control systems and nuclear facilities, developed early warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces.

Because Iran is well-prepared, a single, conventional Israeli strike—or even numerous strikes—could not destroy all of its capabilities, giving Iran time to respond.

Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt and the Palestinian Authority to join the assault, turning a bad situation into a regional war.

During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. After years of futilely fighting Palestinian irregular armies, Israel has lost some of its perceived superiority—bolstering its enemies’ resolve.

Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.

In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.

An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.

Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.

From there, things could deteriorate as they did in the 1930s. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops.

Russia, China, Venezuela, and maybe Brazil and Turkey—all of which essentially support Iran—could be tempted to form an alliance and openly challenge the U.S. hegemony.

Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario.

Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted.

If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons but would probably not risk using force.

While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

### 1nc Terror

#### The US is winning the war on terror but needs to stay in the fight

Wiser, 8/20/13 (Daniel, “Al Qaeda: Not Defeated Yet,” The Washington Free Beacon, <http://freebeacon.com/al-qaeda-not-defeated-yet/> //Red)

\*\*Lake is a senior national security correspondent for the Daily Beast, Joscelyn is a senior fellow at the Foundation for Defense of Democracies

A remote conference between more than 20 senior al Qaeda leaders that prompted temporary closures of several U.S. embassies in the Middle East earlier this month indicates that the terrorist organization **remains committed to expansion and threatening the West**, national security experts said Tuesday.

Daily Beast senior national security correspondent Eli Lake and Foundation for Defense of Democracies (FDD) senior fellow Thomas Joscelyn said at an FDD panel discussion that al Qaeda has retained central management as its affiliates spring up across the Middle East and Africa.

Lake and fellow Daily Beast correspondent Josh Rogin reported Tuesday that the electronic conference between leaders of al Qaeda’s regional branches featured advanced encryption methods with video, voice, and chat capabilities.

In a web recording of the seven-hour meeting, which was seized from an al Qaeda courier captured by U.S. and Yemeni intelligence officials, al Qaeda network leader Ayman Al-Zawahri compared the United States’ regional position in the Middle East to the Soviet Union on the eve of its collapse in 1989.

Additionally, **he exhorted participants in the conference to capitalize on America’s declining influence** in the region before announcing that Nasser al-Wuhayshi, leader of al Qaeda in the Arabian Peninsula (AQAP), will be general manager of the group as it implements a new phase in al Qaeda’s war strategy.

President Barack Obama has repeatedly asserted that al Qaeda is “on the way to defeat” after drone strikes killed some of the group’s senior leaders.

“While there have been victories, **the threat of al Qaeda is far from over** at this point,” Lake said.

Joscelyn said the proliferation of al Qaeda affiliates in Syria, Yemen, Mali, Somalia, and other countries is not something the group “stumbled upon” but “has long been part of their strategy.”

However, the group’s various regional branches have shifted their strategy in recent years to increase their effectiveness, Joscelyn noted. Affiliates like AQAP have adopted the “Hamas model” of providing governance and services to disaffected residents of Yemen.

Meanwhile, AQAP has continued to attempt terrorist attacks on the United States by planting underwear bombers on U.S.-bound airliners.

“They’re able to walk and chew gum at the same time,” he said.

The Washington Free Beacon reported Tuesday that thousands of foreign jihadists—including Americans and Europeans—have flooded into civil war-torn Syria to join the al Qaeda-affiliated al Nusra Front, raising concerns among U.S. officials that these fighters will receive training for executing terrorist attacks upon return to their home countries.

Additionally, a report from the Long War Journal, a project of FDD, found that at least 15 Salafi jihadist groups—some affiliated with al Qaeda—have begun to occupy the Sinai Peninsula in Egypt. The groups have reportedly attacked Israeli Defense Forces along Israel’s border and fired rockets into the country.

“It’s indisputable that [al Qaeda has] made more gains now than at any point in their history,” Joscelyn said.

Lake said he fears that the military’s crackdown in Egypt and removal of Muslim Brotherhood leader and former President Mohamed Morsi, in addition to the radicalization of the Sinai Peninsula, will convince other members of the Muslim Brotherhood to disengage from politics and return to underground terrorist activities.

Lake said he remained hopeful that peaceful Muslims like the protesters in Egypt would reject the Islamist ideology, pointing to the necessity for groups such as AQAP to employ violent thugs to enforce sharia law.

Joscelyn countered that al Qaeda continues to achieve victories despite the rejection of jihad by younger generations of Muslims.

“They’re not just terrorists—they’re political revolutionaries—and they want power for themselves,” he said.

As al Qaeda extends its reach, Lake said **Obama risks reversing some of his successes such as the drone strikes and other covert operations by pulling out from the region too soon.**

“President Obama talks like a comparative religion professor and acts like a Blackwater executive,” Lake said, referring to one of the private security contractors used in Iraq.

“He’s done quite a bit in a lot of places, but he’s made it appear that the war is winding down. Will that translate into winding down these secret operations that he’s continued?”

Al Qaeda might have other ideas about whether the war against terrorists has concluded, Joscelyn said.

“**The enemy gets a vote**,” he said.

#### New statutory restrictions on executive authority invite Congressional micromanagement that encourages new global crises that prevents flexible response

**Nichols, 11** - professor of National Security Affairs at the U.S. Naval War College and a fellow of the International Security Program and the Project on Managing the Atom at the John F. Kennedy School of Government at Harvard University (Thomas, “Repeal the War Powers Resolution” World Politics Review, 5/25, <http://www.worldpoliticsreview.com/articles/8959/repeal-the-war-powers-resolution>

The debate over whether President Barack Obama violated the 1973 War Powers Resolution by committing U.S. forces to Operation Odyssey Dawn, including the drama of outraged legislators condemning yet another president for disregarding this curious law, was predictable. This most recent effort, like others before it, will probably come to nothing. But the legislation itself is dangerous, and the attempts to invoke it should stop. Republicans and Democrats now have an opportunity to remove the War Powers Resolution from our national life, and they should seize it.

There is an unavoidable tension in the Constitution between the president's role as commander in chief (Article II, section two) and the power of Congress to declare war (Article I, section eight). Although Congress controls defense funding and the Senate must approve treaties, the legislature has little power over the actual execution of military operations. In the wake of Vietnam, an angry Congress tried to settle the matter by legislative fiat with the War Powers Resolution, passed over then-President Richard Nixon's veto in 1973. The important clauses of the resolution allow Congress to direct the withdrawal of U.S. forces from action no later than 60 days after the outbreak of hostilities, unless Congress declares war, extends the 60-day period or is unable to meet due to enemy action, such as a nuclear attack.

This constitutes a "legislative veto" over executive authority, a concept ruled unconstitutional by the Supreme Court nearly 30 years ago. The War Powers Resolution itself has never been adjudicated by the Supreme Court, and from the 1983 invasion of Grenada to the 2011 NATO attack on Libya, presidents have traditionally ignored its requirements while eventually submitting reports that are "consistent with," but not in response to, the resolution. In the meantime, a familiar dance takes place, in which the president continues military action while any legislative opposition, otherwise powerless, briefly roils Washington for a week or two by threatening to invoke the resolution. It is a bipartisan game that is always ill-advised, even with the best of intentions.

More than 20 years ago, for example, President George H.W. Bush was convinced that Saddam Hussein's invasion of Kuwait had to be reversed or else his entire project of building a stable post-Cold War order would collapse. Republican Sen. John Heinz conferred at the time with a group of his GOP colleagues, who considered invoking the resolution. It was the law of the land, Heinz reasoned, even if his intention was to use it as a show of support for presidential action rather than as a legal roadblock. However, after considering the many constitutional and military risks involved, Heinz discarded the idea. Bush and the country would be spared the spectacle of a national debate over the president's powers, and Operation Desert Storm took place without further political complications.

As the aide who wrote the memo that Heinz studied, outlining the dangers posed to U.S. national security by the War Powers Resolution, I am intimately familiar with this particular historical "what if" moment.

The War Powers Resolution was a bad idea then, and it is a bad idea now. As satisfying as it might be in the short term to hobble the president, both parties would come to regret the consequences of such political combat, not least because it would shift greater responsibility for military action onto a Congress that in the long run may not want it -- a point raised by then-Rep. Lee Hamilton and others during a failed 1995 effort to repeal the resolution.

Worse, the War Powers Act is dangerous to our troops and to our national security. Imagine if it were ever taken seriously as an ongoing restriction on military action: A crisis arises, and the president responds by deploying U.S. forces, perhaps to support an ally or to enforce a United Nations resolution. The clock begins ticking, and after 60 days -- or sooner, if Congress so directs -- the president must recall U.S. troops. Thus, the resolution in effect tells any enemy that the best strategy against U.S. military force is to hunker down and wait out the 60-day period, in hopes that the resulting political fight in Washington will be messy enough to tear apart the nation and undermine Americans' will to fight.

It is folly to tell any potential enemy that he has 60 days to play one branch of the United States government off against another. Presidents answer to the American people and, in the most extreme instance, to the Senate during impeachment. These mechanisms do not need to be superseded by a contested law that invites the micromanagement of U.S. military operations by 535 additional commanders-in-chief.

Legislators from both parties now have a rare opportunity to exercise statesmanship. They can declare that their differences might be deep and principled, but that our political system cannot be shaken during a military conflict. A bipartisan move to repeal the War Powers Resolution -- and to protect the necessary ability of presidents to engage in military action now and in the future -- would send a powerful message to dictators and terrorists who have always placed their hopes, however vainly, in a mistaken belief that democracies are too divided and too weak to stop them. The War Powers Resolution should be shelved, once and for all, as a danger not to any one president or party, but to the security of the United States.

#### Strong presidential power is vital to global stability, the economy and preventing totalitarianism—our evidence is comparative and accounts for their turns

**Rose 97** (Gary, Professor of political science at Sacred Heart, The American Presidency Under Siege, 1997, p. 169-170)

President Kennedy's decision to send military advisors to Vietnam and President Johnson's tremendous escalation of the war effort will forever remain the most blatant example of the dangers inherent in broad and unconstrained presidential authority. Indeed, the names of 58,000 servicemen etched into a black granite wall in Washington, D.C. are a haunting and somber reminder that broad grants of presidential power can have disastrous and extremely tragic consequences. Yet this is a risk that the American people must take if the presidency is once again to serve as a creative and energizing force for the American people. On balance, the evidence suggests that the nation is best served by powerful American presidents. Territorial expansion and international diplomacy; the political power for the common people; preservation of the Union; environmental protection; regulation of monopolies; the spread of democracy around the globe; a world forum committed to resolving international conflicts; the defeat of Hitler and fascist aggression; containment of communism; crisis management; repeat strides towards economic and social justice; and even men walking on the moon are among the many positive developments in American histroy that can be directly attributed to the actions of powerful presidents. The historical record supports Hamilton’s contention that “energy in the executive” is a prerequisite to good government. Those who express opposition or skepticism to calls for a restored presidency note the current absence of a cataclysmic crisis that demands impressive executive action. Why is it necessary, these critics ask, to restore the power of the American presidency when the specters of civil war, fascism, communist aggression, or economic depression are now behind us. This point of view, which at first glance seems valid, ignores the fact that current domestic and foreign policy crises are as threatening to the welfare and security of the United States as those that confronted the country in previous decades. What follows is a brief discussion of policy dilemmas that pose threats equal to those of war or economic depression—and which require, for the purpose of resolution, an empowered presidency.

### 1nc Congressional Resolutions

#### It competes – it’s non-statutory.

Swaine, 10 **-** Associate Professor, George Washington University Law School (Edward, “THE POLITICAL ECONOMY OF YOUNGSTOWN” <http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1017&context=faculty_publications>)

Furthermore, Justice Jackson’s framework also suggested that congressional will

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

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

Gersen and Posner, 8 **-** Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

Soft statutes can also play an important role in the allocation of authority between Congress and the President. Consider the question of how the courts should evaluate executive action at the boundaries of Article II authority. In Youngstown Sheet & Tube Co. v. Sawyer, n113 Justice Jackson famously established a typology for understanding the borders of Article II power. "When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum ... ." n114 When Congress has said nothing or there is concurrent authority, there is a "zone of twilight" n115:

When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. n116

The President is on weakest ground when Congress has disapproved of the action: "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." n117

Justice Jackson's language is instructive. He does not say "when a formal statute grants or denies presidential authority." Instead, he refers to the express or implied will of Congress, suggesting that implicit acquiescence will be enough to justify executive action in the zone of ambiguous executive authority.

The soft statute should be the preferred mechanism for articulating congressional views in this setting n118 because it is a better indicator of legislative views than legislative inaction. There are dozens of reasons Congress fails to act, and negative inferences in the context of Article II powers are especially hazardous. In fact, the soft law analytic frame makes clear that Justice Jackson's typology is actually incomplete. Speaking of congressional agreement, disapproval, or silence is unnecessarily crude. The House might authorize the presidential action and the Senate might expressly disavow it (or vice versa), creating a twilight of the twilight category.

In fact, Congress does sometimes use resolutions for these purposes. For example, during 2007, a concurrent resolution was introduced, "expressing the sense of Congress that the President should not initiate military action against Iran without first obtaining authorization from Congress." n119 During the same Congress, Senate Resolutions were offered to censure the President, Vice-President, and Attorney General for conduct related to the war in Iraq, detainment of enemy combatants, and wiretapping practices undertaken without warrants. n120 Another proposed resolution expressed the sense of the Senate that the President has constitutional authority to veto individual items of appropriation without additional statutory authorization. n121 These potential soft [\*604] statutes were not passed by majorities, but they are precisely the sort of information on the scope of permissible executive authority that would inform Justice Jackson's analysis. n122

In this scenario, legislative sentiments, expressed in nonbinding mechanisms, are taken as inputs in the decision-making processes of other institutions - the courts - that themselves generate binding rules, that is, hard law. Even without judicial involvement, however, resolutions that assert congressional authority or limitations on presidential authority may influence the way that the two political branches share power with each other - either as moves in a game where each side must both cooperate and compete, or as appeals to public opinion. n123

#### It avoids politics

**Harvard Law Review, 11** (“A CHEVRON FOR THE HOUSE AND SENATE: DEFERRING TO POST-ENACTMENT CONGRESSIONAL RESOLUTIONS THAT INTERPRET AMBIGUOUS STATUTES” 124 Harv. L. Rev. 1507, April, lexis)

If Congress wishes to resolve a statutory ambiguity, it always has the option of passing a law via bicameralism and presentment. In reality, however, passing laws is extremely difficult, and often the legislative enactment costs are simply greater than the benefits of resolving the ambiguity correctly. n1 Indeed, these high legislative enactment costs are among the reasons that so many of our statutes set forth broad principles rather than specify concrete requirements: gaining consensus on concrete textual mandates imposes even more costs on the already difficult process of legislation. A future Congress may want to clarify these vague statutory mandates as societal, legal, or technological circumstances change, as the consequences of certain policy choices become more apparent, or as legislators simply resolve their differences of opinion. But the costs of legislating a fix are usually too high. n2

Some leading commentators argue that this problem of statutory ossification due to high legislative enactment costs requires judges to interpret statutes as living documents. Professor William Eskridge claims that a statute’s meaning changes over time, and thus judges should “dynamically” interpret statutes.3 Judge Calabresi argues that judges should “update” obsolete statutes by striking down or ignoring any statute that is “sufficiently out of phase with the whole [contemporary] legal framework so that, whatever its age, it can only stand if a current majoritarian or representative body reaffirms it.”4 However, most commentators have criticized such approaches as putting too much power in the hands of unelected and unaccountable judges.5

Instead, Congress has largely relied on administrative agencies to continually update the policies that implement various statutes. When charged with administering statutes, such agencies often have the authority to interpret the legislation's vague commands by translating them into more precise and concrete rules. n6 Moreover, courts have given great deference to agency interpretations of ambiguous statutes under Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc. n7 These agency interpretations, although the products of a more politically accountable process than judicial interpretations, nonetheless are not as publicly deliberative or as nationally representative as a congressional decision. Worse, many other statutes that are similarly indefinite are not administered by any particular agency, thus leaving courts with the primary responsibility to develop the law - and thus the policy - under these statutes, despite judges' lack of expertise and accountability. n8 But by prohibiting one house of Congress from vetoing agency actions, the Supreme Court, in INS v. Chadha, n9 limited Congress's role in administering statutes, despite its institutional advantages over courts - and, in some respects, over agencies - in developing policy.

In a recent article, Professors Jacob Gersen and Eric Posner suggest that courts should pay greater attention to post-enactment congressional resolutions when interpreting statutes. n10 This Note develops their idea by proposing more modest congressional involvement than the legislative veto invalidated in Chadha: courts should defer to a [\*1509] House or Senate resolution that adopts a reasonable interpretation of an ambiguous statute. n11 For statutes not administered by any agency with interpretive authority, such deference to a congressional resolution would improve lawmaking by bringing to bear the legislature's policy expertise and democratic accountability. But even for statutes administered by agencies, this proposal would increase accountability. Further, this proposal would help to restore checks and balances and the Constitution's original allocation of power by making the House and Senate coequal with executive agencies in interpreting ambiguous statutory provisions. Whenever these institutions disagree, courts should simply adopt their own best reading of the statute, de novo.

I. Statutes Without Agencies

Courts should give Chevron-like deference to any resolution passed by either the House or the Senate that reasonably interprets a statutory ambiguity. When deciding whether to defer to such a congressional resolution, courts should engage in both steps of the Chevron analysis, just as they do for agency interpretations of statutes: First, the statute must be "silent or ambiguous with respect to the specific issue" addressed by the congressional resolution. n12 Second, the resolution's interpretation must be "based on a permissible construction of the statute." n13

### 1nc circumvention

#### The quantum of information/sliding scale standard solves nothing---it explicitly fails to comply with IHL obligations---nobody thinks it’s a serious constraint---doesn’t establish a clear rule or norm which their ev says is key

Adil Ahmad Haque 12, Associate Professor of Law, Rutgers School of Law, November 2012, “ARTICLE: KILLING IN THE FOG OF WAR,” Southern California Law Review, 86 S. Cal. L. Rev. 63

In his 2012 article, Lieutenant Colonel Geoffrey Corn proposes that a soldier may intentionally kill an individual if the soldier (1) reasonably suspects that the individual is a member of an opposing regular armed force; (2) believes, based on a preponderance of the evidence, that the individual is a civilian directly participating in hostilities; or, (3) believes, beyond reasonable doubt, that the individual is located outside an area of active hostilities but performs a continuous combat function in an organized armed group.110 At first glance, Corn’s proposal seems to resemble my own. In fact, our views are dramatically different.

First, Corn is wrong to think that the required level of certainty that an individual is liable to attack varies with the different legal bases of liability to attack (membership in an armed force, direct participation in hostilities, and continuous combat function). Of course, generally it will prove easier to satisfy the required level of certainty while fighting a uniformed enemy than while fighting a nonuniformed enemy or while targeting individuals based on their present conduct rather than their organizational role. But the required level of certainty remains the same for each category of liability.

Second, the reasonable suspicion and preponderance of the evidence standards that Corn endorses are inadequate. For example, if you are fighting a uniformed enemy but cannot tell whether a particular individual is wearing a uniform (because it is too dark, or the individual is too far, or your view is obstructed) it would be wrong to kill that individual merely because you reasonably suspect that the individual is a uniformed soldier. If you reasonably suspect that individual is liable to attack then you should investigate further. But, if you cannot reasonably conclude or believe the individual is liable to attack, then you must hold your fire.

Similarly, if your unit takes small-arms fire and you see an individual running away, it would be wrong to kill that individual even if it is slightly more probable that the individual fired at you and is retreating from the engagement (activities which would constitute participation in hostilities) than it is that the individual did nothing and is simply fleeing to relative safety. As we saw in Part IV.C, above the minimum threshold of reasonable belief, the required level of certainty must vary with the magnitude of the threat and reflect the moral asymmetry between killing and letting die.

Finally, Corn writes that international law does not clearly permit the use of armed force outside an area of active hostilities or against members of organized armed groups who perform a continuous combat function but are not currently directly participating in hostilities.111 Strangely, Corn does not conclude that states should refrain from such attacks until their legality is clearly established, but instead concludes that such attacks may be carried out if it is beyond reasonable doubt that the targeted individuals perform a continuous combat function.112 Conceptually, Corn is wrong to think that factual certainty can compensate for legal uncertainty. Substantively, Corn offers the wrong argument for the right conclusion. Individuals outside an area of active hostilities generally pose no immediate threat. Based on the arguments of the previous section, we can conclude that such individuals generally may be attacked only if there is conclusive reason to believe that they are liable to be killed. Contrary to Corn’s view, the same high standard applies both inside and outside areas of active hostilities. In particular, this high standard applies to targeted killing operations directed at all low-level and most mid-level insurgents.

### 1nc zones

#### The plan codifies loose rules on doctrines of military force for pre-emptive and preventative strikes

Obayemi, 6 -- East Bay Law School professor

[Olumide, admitted to the Bars of Federal Republic of Nigeria and the State of California, Golden Gate University School of Law, "Article: Legal Standards Governing Pre-Emptive Strikes and Forcible Measures of Anticipatory Self-Defense Under the U.N. Charter and General International Law," 12 Ann. Surv. Int'l & Comp. L. 19, l/n, accessed 9-19-13, mss]

The United States must abide by the rigorous standards set out above that are meant to govern the use of preemptive strikes, because today's international system is characterized by a relative infrequency of interstate war. It has been noted that developing doctrines that lower the threshold for preemptive action could put that accomplishment at risk, and exacerbate regional crises already on the brink of open conflict. n100 This is important as O'Hanlon, Rice, and Steinberg have rightly noted: ...countries already on the brink of war, and leaning strongly towards war, might use the doctrine to justify an action they already wished to take, and the effect of the U.S. posture may make it harder for the international community in general, and the U.S. in particular, to counsel delay and diplomacy. Potential examples abound, ranging from Ethiopia and Eritrea, to China and Taiwan, to the Middle East. But perhaps the clearest case is the India-Pakistan crisis. n101 The world must be a safe place to live in. We cannot be ruled by bandits and rogue states. There must be law and order not only in the books but in enforcement as well. No nation is better suited to enforce international law than the United States. The Bush Doctrine will stand the test [\*42] of time and survive. Again, we submit that nothing more would protect the world and its citizens from nuclear weapons, terrorists and rogue states than an able and willing nation like the United States, acting as a policeman of the world within all legal boundaries. This is the essence of the preamble to the United Nations Charter.

#### Codifying a blurred line between pre-emptive and preventative strikes causes global aggression

DWORKIN 2013 – this is actually their 1ac author too, senior policy fellow at the European Council on Foreign Relations, Anthony, “Drones And Targeted Killing: Defining A European Position”, July, <http://ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf>

Two further points are worth noting. First, the administration has acknowledged that in the case of American citizens, even when they are involved in the armed conflict, the US Constitution imposes additional requirements of due process that bring the threshold for targeted killing close to that involved in a self-defence analysis. These requirements were listed in a Department of Justice white paper that became public earlier this year.26 Second, the administration has at times suggested that even in the case of non-Americans its policy is to concentrate its efforts against individuals who pose a significant and imminent threat to the US. For example, John Brennan said in his Harvard speech in September 2011 that the administration’s counterterrorism efforts outside Afghanistan and Iraq were “focused on those individuals who are a threat to the United States, whose removal would cause a significant – even if only temporary – disruption of the plans and capabilities of al-Qaeda and its associated forces”.27

However, the details that have emerged about US targeting practices in the past few years raise questions about how closely this approach has been followed in practice. An analysis published by McClatchy Newspapers in April, based on classified intelligence reports, claimed that 265 out of 482 individuals killed in Pakistan in a 12-month period up to September 2011 were not senior al-Qaeda operatives but instead were assessed as Afghan, Pakistani, and unknown extremists.28 It has been widely reported that in both Pakistan and Yemen the US has at times carried out “signature strikes” or “Terrorist Attack Disruption Strikes” in which groups are targeted based not on knowledge of their identity but on a pattern of behaviour that complies with a set of indicators for militant activity. It is widely thought that these attacks have accounted for many of the civilian casualties caused by drone strikes. In both Pakistan and Yemen, there may have been times when some drone strikes – including signature strikes – could perhaps best be understood as counterinsurgency actions in support of government forces in an internal armed conflict or civil war, and in this way lawful under the laws of armed conflict. Some attacks in Pakistan may also have been directly aimed at preventing attacks across the border on US forces in Afghanistan. However, by presenting its drone programme overall as part of a global armed conflict. the Obama administration continues to set an expansive precedent that is damaging to the international rule of law.

Obama’s new policy on drones

It is against this background that Obama’s recent counterterrorism speech and the policy directive he announced at the same time should be understood. On the subject of remotely piloted aircraft and targeted killing, there were two key aspects to his intervention. First, he suggested that the military element in US counterterrorism may be scaled back further in the coming months, and that he envisages a time in the not-too-distant future when the fight against the al-Qaeda network will no longer qualify as an armed conflict. He said that “the core of al Qaeda in Afghanistan and Pakistan is on the path to defeat” and that while al-Qaeda franchises and other terrorists continued to plot against the US, “the scale of this threat closely resembles the types of attacks we faced before 9/11”.29 Obama promised that he would not sign legislation that expanded the mandate of the AUMF, and proclaimed that the United States’ “systematic effort to dismantle terrorist organizations must continue […] but this war, like all wars, must end”. The tone of Obama’s speech contrasted strongly with that of US military officials who testified before the Senate Committee on Armed Services the week before; Michael Sheehan, the Assistant Secretary of Defence for Special Operations and Low-Intensity Conflict, said then that the end of the armed conflict was “a long way off” and appeared to say that it might continue for 10 to 20 years.30

Second, the day before his speech, Obama set out regulations for drone strikes that appeared to restrict them beyond previous commitments (the guidance remains classified but a summary has been released). The guidance set out standards and procedures for drone strikes “that are either already in place or will be transitioned into place over time”.31 Outside areas of active hostilities, lethal force will only be used “when capture is not feasible and no other reasonable alternatives exist to address the threat effectively”. It will only be used against a target “that poses a continuing, imminent threat to US persons”. And there must be “near certainty that non-combatants will not be injured or killed”.

In some respects, these standards remain unclear: the president did not specify how quickly they would be implemented, or how “areas of active hostilities” should be understood. Nevertheless, taken at face value, they seem to represent a meaningful change, at least on a conceptual level. Effectively, they bring the criteria for all targeted strikes into line with the standards that the administration had previously determined to apply to US citizens. Where the administration had previously said on occasions that it focused in practice on those people who pose the greatest threat, this is now formalised as official policy. In this way, the standards are significantly more restrictive than the limits that the laws of armed conflict set for killing in wartime, and represent a shift towards a threat-based rather than status-based approach. In effect, the new policy endorses a self-defence standard as the de facto basis for US drone strikes, even if the continuing level of attacks would strike most Europeans as far above what a genuine self-defence analysis would permit.32 The new standards would seem to prohibit signature strikes in countries such as Yemen and Somalia and confine them to Pakistan, where militant activity could be seen as posing a cross-border threat to US troops in Afghanistan. According to news reports, signature strikes will continue in the Pakistani tribal areas for the time being.33

However, the impact of the new policy will depend very much on how the concept of a continuing, imminent threat is interpreted. The administration has not given any definition of this phrase, and the leaked Department of Justice white paper contained a strikingly broad interpretation of imminence; among other points, the white paper said that it “does not require the United States to have clear evidence that a specific attack on US persons or interests will take place in the immediate future” and that it “must incorporate considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on Americans”.34 The presidential policy guidance captures the apparent concerns behind the administration’s policy more honestly by including the criterion of continuing threat, but this begs the question of how the notions of a “continuing” and “imminent” threat relate to each other. Even since Obama’s speech, the US is reported to have carried out four drone strikes (two in Pakistan and two in Yemen) killing between 18 and 21 people – suggesting that the level of attacks is hardly diminishing under the new guidelines.35

It is also notable that the new standards announced by Obama represent a policy decision by the US rather than a revised interpretation of its legal obligations. In his speech, Obama drew a distinction between legality and morality, pointing out that “to say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance”. The suggestion was that the US was scaling back its use of drones out of practical or normative considerations, not because of any new conviction that the its previous legal claims went too far. The background assertion that the US is engaged in an armed conflict with al-Qaeda and associated forces, and might therefore lawfully kill any member of the opposing forces wherever they were found, remains in place to serve as a precedent for other states that wish to claim it.

#### Preventative war doctrines guarantees infinite interventions and backlash through arms race- undermining credibility- alternatives solve

Crawford ‘3 (Neta C. Crawford, Professor of Political Science at Brown where her teaching focuses on international relations theory, international ethics and normative change at Brown, Ph.D. & MA, MIT; BA, Brown University, “The Slippery Slope to Preventive War [Full Text]”, Ethics & International Affairs, Volume 17.1, March 3, 2003)

The Bush administration's arguments in favor of a preemptive doctrine rest on the view that warfare has been transformed. As Colin Powell argues, "It's a different world . . . it's a new kind of threat."1 And in several important respects, war has changed along the lines the administration suggests, although that transformation has been under way for at least the last ten to fifteen years. Unconventional adversaries prepared to wage unconventional war can conceal their movements, weapons, and immediate intentions and conduct devastating surprise attacks2. Nuclear, chemical, and biological weapons, though not widely dispersed, are more readily available than they were in the recent past. And the everyday infrastructure of the United States can be turned against it as were the planes the terrorists hijacked on September 11, 2001. Further, the administration argues that we face enemies who "reject basic human values and hate the United States and everything for which it stands."3 Although vulnerability could certainly be reduced in many ways, it is impossible to achieve complete invulnerability. Such vulnerability and fear, the argument goes, means the United States must take the offensive. Indeed, soon after the September 11, 2001, attacks, members of the Bush administration began equating self-defense with preemption: There is no question but that the United States of America has every right, as every country does, of self-defense, and the problem with terrorism is that there is no way to defend against the terrorists at every place and every time against every conceivable technique. Therefore, the only way to deal with the terrorist network is to take the battle to them. That is in fact what we’re doing. That is in effect self-defense of a preemptive nature.4 The character of potential threats becomes extremely important in evaluating the legitimacy of the new preemption doctrine, and thus the assertion that the United States faces rogue enemies who oppose everything about the United States must be carefully evaluated. There is certainly robust evidence to believe that al-Qaeda members desire to harm the United States and American citizens. The National Security Strategy makes a questionable leap, however, when it assumes that "rogue states" also desire to harm the United States and pose an imminent military threat. Further, the administration blurs the distinction between "rogue states" and terrorists, essentially erasing the difference between terrorists and those states in which they reside: "We make no distinction between terrorists and those who knowingly harbor or provide aid to them."5 But these distinctions do indeed make a difference. Legitimate preemption could occur if four necessary conditions were met. First, the party contemplating preemption would have a narrow conception of the "self" to be defended in circumstances of self-defense. Preemption is not justified to protect imperial interests or assets taken in a war of aggression. Second, there would have to be strong evidence that war was inevitable and likely in the immediate future. Immediate threats are those which can be made manifest within days or weeks unless action is taken to thwart them. This requires clear intelligence showing that a potential aggressor has both the capability and the intention to do harm in the near future. Capability alone is not a justification. Third, preemption should be likely to succeed in reducing the threat. Specifically, there should be a high likelihood that the source of the military threat can be found and the damage that it was about to do can be greatly reduced or eliminated by a preemptive attack. If preemption is likely to fail, it should not be undertaken. Fourth, military force must be necessary; no other measures can have time to work or be likely to work. A DEFENSIBLE SELF On the face of it, the self-defense criteria seem clear. When our lives are threatened, we must be able to defend ourselves using force if necessary. But self-defense may have another meaning, that in which our "self" is expressed not only by mere existence, but also by a free and prosperous life. For example, even if a tyrant would allow us to live, but not under institutions of our own choosing, we may justly fight to free ourselves from political oppression. But how far do the rights of the self extend? If someone threatens our access to food, or fuel, or shelter, can we legitimately use force? Or if they allow us access to the material goods necessary for our existence, but charge such a high price that we must make a terrible choice between food and health care, or between mere existence and growth, are we justified in using force to secure access to a good that would enhance the self? When economic interests and vulnerabilities are understood to be global, and when the moral and political community of democracy and human rights are defined more broadly than ever before, the self-conception of great powers tends to enlarge. But a broad conception of self is not necessarily legitimate and neither are the values to be defended completely obvious. For example, the U.S. definition of the self to be defended has become very broad. The administration, in its most recent Quadrennial Defense Review, defines "enduring national interests" as including "contributing to economic well-being," which entails maintaining "vitality and productivity of the global economy" and "access to key markets and strategic resources." Further, the goal of U.S. strategy, according to this document, is to maintain "preeminence."6 The National Security Strategy also fuses ambitious political and economic goals with security: "The U.S. national security strategy will be based on a distinctly American internationalism that reflects the fusion of our values and our national interests. The aim of this strategy is to help make the world not just safer but better." And "today the distinction between domestic and foreign affairs is diminishing."7 If the self is defined so broadly and threats to this greater "self" are met with military force, at what point does self-defense begin to look like aggression? As Richard Betts has argued, "When security is defined in terms broader than protecting the near-term integrity of national sovereignty and borders, the distinction between offense and defense blurs hopelessly. . . . Security can be as insatiable an appetite as acquisitiveness—there may never be enough buffers."8 The large self-conception of the United States could lead to a tendency to intervene everywhere that this greater self might conceivably be at risk of, for example, losing access to markets. Thus, a conception of the self that justifies legitimate preemption in self-defense must be narrowly confined to immediate risks to life and health within borders or to the life and health of citizens abroad. THRESHOLD AND CONDUCT OF JUSTIFIED PREEMPTION The Bush administration is correct to emphasize the United States's vulnerability to terrorist attack. The administration also argues that the United States cannot wait for a smoking gun if it comes in the form of a mushroom cloud. There may be little or no evidence in advance of a terrorist attack using nuclear, chemical, or biological weapons. Yet, under this view, the requirement for evidence is reduced to a fear that the other has, or might someday acquire, the means for an assault. But the bar for preemption seems to be set too low in the Bush administration's National Security Strategy. How much and what kind of evidence is necessary to justify preemption? What is a credible fear that justifies preemption? As Michael Walzer has argued persuasively in Just and Unjust Wars, simple fear cannot be the only criterion. Fear is omnipresent in the context of a terrorist campaign. And if fear was once clearly justified, when and how will we know that a threat has been significantly reduced or eliminated? The nature of fear may be that once a group has suffered a terrible surprise attack, a government and people will, justifiably, be vigilant. Indeed they may, out of fear, be aware of threats to the point of hypervigilance—seeing small threats as large, and squashing all potential threats with enormous brutality. The threshold for credible fear is necessarily lower in the context of contemporary counterterrorism war, but the consequences of lowering the threshold may be increased instability and the premature use of force. If this is the case, if fear justifies assault, then the occasions for attack will potentially be limitless since, according to the Bush administration’s own arguments, we cannot always know with certainty what the other side has, where it might be located, or when it might be used. If one attacks on the basis of fear, or suspicion that a potential adversary may someday have the intention and capacity to harm you, then the line between preemptive and preventive war has been crossed. Again, the problem is knowing the capabilities and intentions of potential adversaries. There is thus a fine balance to be struck. The threshold of evidence and warning cannot be too low, where simple apprehension that a potential adversary might be out there somewhere and may be acquiring the means to do the United States harm triggers the offensive use of force. This is not preemption, but paranoid aggression. We must, as stressful as this is psychologically, accept some vulnerability and uncertainty. We must also avoid the tendency to exaggerate the threat and inadvertently to heighten our own fear. For example, although nuclear weapons are more widely available than in the past, as are delivery vehicles of medium and long range, these forces are not yet in the hands of dozens of terrorists. A policy that assumes such a dangerous world is, at this historical juncture, paranoid. We must, rather than assume this is the present case or will be in the future, work to make this outcome less likely. On the other hand, the threshold of evidence and warning for justified fear cannot be so high that those who might be about to do harm get so advanced in their preparations that they cannot be stopped or the damage limited. What is required, assuming a substantial investment in intelligence gathering, assessment, and understanding of potential advisories, is a policy that both maximizes our understanding of the capabilities and intentions of potential adversaries and minimizes our physical vulnerability. While uncertainty about intentions, capabilities, and risk can never be eliminated, it can be reduced. Fear of possible future attack is not enough to justify preemption. Rather, aggressive intent, coupled with a capacity and plans to do immediate harm, is the threshold that may trigger justified preemptive attacks. We may judge aggressive intent if the answer to these two questions is yes: First, have potential aggressors said they want to harm us in the near future or have they harmed us in the recent past? Second, are potential adversaries moving their forces into a position to do significant harm? While it might be tempting to assume that secrecy on the part of a potential adversary is a sure sign of aggressive intentions, secrecy may simply be a desire to prepare a deterrent force. After all, potential adversaries may feel the need to look after their own defense against their neighbors or even the United States. We cannot assume that all forces in the world are aimed offensively at the United States and that all want to broadcast their defensive preparations—especially if that means they might become the target of a preventive offensive strike by the United States. The conduct of preemptive actions must be limited in purpose to reducing or eliminating the immediate threat. Preemptive strikes that go beyond this purpose will, reasonably, be considered aggression by the targets of such strikes. Those conducting preemptive strikes should also obey the jus in bello limits of just war theory, specifically avoiding injury to noncombatants and avoiding disproportionate damage. For example, in the case of the plans for the September 11, 2001, attacks, on these criteria—and assuming intelligence warning of preparations and clear evidence of aggressive intent—a justifiable preemptive action would have been the arrest of the hijackers of the four aircraft that were to be used as weapons. But, prior to the attacks, taking the war to Afghanistan to attack al-Qaeda camps or the Taliban could not have been justified preemption. THE RISKS OF PREVENTIVE WAR Foreign policies must not only be judged on grounds of legality and morality, but also on grounds of prudence. Preemption is only prudent if it is limited to clear and immediate dangers and if there are limits to its conduct—proportionality, discrimination, and limited aims. If preemption becomes a regular practice or if it becomes the cover for a preventive offensive war doctrine, the strategy then may become self-defeating as it increases instability and insecurity. Specifically, a legitimate preemptive war requires that states identify that potential aggressors have both the capability and the intention of doing great harm to you in the immediate future. However, while capability may not be in dispute, the motives and intentions of a potential adversary may be misinterpreted. Specifically, states may mobilize in what appear to be aggressive ways because they are fearful or because they are aggressive. A preemptive doctrine which has, because of great fear and a desire to control the international environment, become a preventive war doctrine of eliminating potential threats that may materialize at some point in the future is likely to create more of both fearful and aggressive states. Some states may defensively arm because they are afraid of the preemptive-preventive state; others may arm offensively because they resent the preventive war aggressor who may have killed many innocents in its quest for total security. In either case, whether states and groups armed because they were afraid or because they have aggressive intentions, instability is likely to grow as a preventive war doctrine creates the mutual fear of surprise attack. In the case of the U.S. preemptive-preventive war doctrine, instability is likely to increase because the doctrine is coupled with the U.S. goal of maintaining global preeminence and a military force "beyond challenge."9 Further, a preventive offensive war doctrine undermines international law and diplomacy, both of which can be useful, even to hegemonic powers. Preventive war short-circuits nonmilitary means of solving problems. If all states reacted to potential adversaries as if they faced a clear and present danger of imminent attack, security would be destabilized as tensions escalated along already tense borders and regions. Article 51 of the UN Charter would lose much of its force. In sum, a preemptive-preventive doctrine moves us closer to a state of nature than a state of international law. Moreover, while preventive war doctrines assume that today's potential rival will become tomorrow’s adversary, diplomacy or some other factor could work to change the relationship from antagonism to accommodation. As Otto von Bismarck said to Wilhelm I in 1875, "I would . . . never advise Your Majesty to declare war forthwith, simply because it appeared that our opponent would begin hostilities in the near future. One can never anticipate the ways of divine providence securely enough for that."10 One can understand why any administration would favor preemption and why some would be attracted to preventive wars if they think a preventive war could guarantee security from future attack. But the psychological reassurance promised by a preventive offensive war doctrine is at best illusory, and at worst, preventive war is a recipe for conflict.

Preventive wars are imprudent because they bring wars that might not happen and increase resentment. They are also unjust because they assume perfect knowledge of an adversary’s ill intentions when such a presumption of guilt may be premature or unwarranted. Preemption can be justified, on the other hand, if it is undertaken due to an immediate threat, where there is no time for diplomacy to be attempted, and where the action is limited to reducing that threat. There is a great temptation, however, to step over the line from preemptive to preventive war, because that line is vague and because the stress of living under the threat of war is great. But that temptation should be avoided, and the stress of living in fear should be assuaged by true prevention—arms control, disarmament, negotiations, confidence-building measures, and the development of international law.

### 1nc public backlash

#### Drones are sustainable—US government won’t react to backlash

Benjamin Wittes, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. He is the author of several books and a member of the Hoover Institution's Task Force on National Security and Law, 2/27/13, In Defense of the Administration on Targeted Killing of Americans, www.lawfareblog.com/2013/02/in-defense-of-the-administration-on-targeted-killing-of-americans/

This view has currency among European allies, among advocacy groups, and in the legal academy. Unfortunately for its proponents, it has no currency among the three branches of government of the United States. The courts and the executive branch have both taken the opposite view, and the Congress passed a broad authorization for the use of force and despite many opportunities, has never revisited that document to impose limitations by geography or to preclude force on the basis of co-belligerency—much less to clarify that the AUMF does not, any longer, authorize the use of military force at all. Congress has been repeatedly briefed on U.S. targeting decisions, including those involving U.S. persons.[5] It was therefore surely empowered to either use the power of the purse to prohibit such action or to modify the AUMF in a way that undermined the President’s legal reasoning. Not only has it taken neither of these steps, but Congress has also funded the relevant programs. Moreover, as I noted above, Congress’s recent reaffirmation of the AUMF in the 2012 NDAA with respect to detention, once again contains no geographical limitation. There is, in other words, a consensus among the branches of government on the point that the United States is engaged in an armed conflict that involves co-belligerent forces and follows the enemy to the new territorial ground it stakes out. It is a consensus that rejects the particular view of the law advanced by numerous critics. And it is a consensus on which the executive branch is entitled to rely in formulating its legal views.

#### Backlash is inevitable

Groves, senior research fellow – Institute for International Studies @ Heritage, 1/25/’13

(Steven, “The U.S. Should Ignore U.N. Inquiry Into Drone Strikes,” http://blog.heritage.org/2013/01/25/the-u-s-should-ignore-u-n-inquiry-into-drone-strikes/)

Various international legal academics and human rights activists have regularly made these and other similar allegations ever since the Obama Administration stepped up the drone program in 2009. While drone strikes cannot be viewed alone as an effective counterterrorism strategy, the Administration has repeatedly defended the legality of the program. Emmerson and his fellow U.N. special rapporteurs Philip Alston and Christof Heyns have repeatedly demanded that the U.S. provide more information on drone strikes—and the U.S. has repeatedly complied, issuing public statement after public statement defending every aspect of the drone program. Public statements detailing the legality and propriety of the drone program have been made by top Administration officials, including State Department Legal Adviser Harold Koh, Attorney General Eric Holder, Deputy National Security Advisor John Brennan, General Counsel for the Department of Defense Jeh Johnson, and CIA General Counsel Stephen Preston. Increased transparency will, of course, be deemed by human rights activists as insufficient where their true goal is to stop the U.S. drone program in its entirety. Unless and until the U.S. can somehow promise that no civilian casualties will result from drone strikes, such strikes will be considered violations of international law. Ignoring the U.N. probe will not make it go away, but the Obama Administration should not be so naive as to expect that its cooperation will substantively alter the investigation’s findings and conclusions.

#### Empirics are overwhelming

Chesney ’12

(Robert Chesney, professor at the University of Texas School of Law, nonresident senior fellow of the Brookings Institution, distinguished scholar at the Robert S. Strauss Center for International Security and Law, and Cofounder of the Lawfare Blog, “Beyond the Battlefield, Beyond Al Qaeda: The Destabilizing Legal Architecture of Counterterrorism,” August 29, 2012, U Texas School of Law, Public Law and Legal Theory Research Paper No. 227)

This multi-year pattern of cross-branch and cross-party consensus gives the impression that the legal architecture of detention has stabilized at last. But the settlement phenomenon is not limited to detention policy. The same thing has happened, albeit to a lesser extent, in other areas. The military commission prosecution system provides a good example. When the Obama administration came into office, it seemed quite possible, indeed likely, that it would shut down the commissions system. Indeed, the new president promptly ordered all commission proceedings suspended pending a policy review.48 In the end, however, the administration worked with the then Democratic-controlled Congress to pursue a **mend-it-don’t-end-it approach** culminating in passage of the Military Commissions Act of 2009, **which addressed a number of key objections** to the statutory framework Congress and the Bush administration had crafted in 2006. In his National Archives address in spring 2009, moreover, President Obama also made clear that he would make use of this system in appropriate cases.49 He has duly done so, notwithstanding his administration’s doomed attempt to prosecute the so-called “9/11 defendants” (especially Khalid Sheikh Mohamed) in civilian courts. Difficult questions continue to surround the commissions system as to particular issues—such as the propriety of charging “material support” offenses for pre-2006 conduct50—but the system as a whole is **far more stable today** than at any point in the past decade.51 There have been strong elements of cross-party continuity between the Bush and Obama administration on an array of other counterterrorism policy questions, including the propriety of using rendition in at least some circumstances and, perhaps most notably, the legality of **using lethal force** not just in contexts of overt combat deployments but also in **areas physically remote from the “hot battlefield.**” Indeed, the Obama administration **quickly outstripped the Bush administration in terms of the quantity and location** of its airstrikes outside of Afghanistan,52 and it also greatly surpassed the Bush administration in its efforts to marshal public defenses of the legality of these actions.53 What’s more, the Obama administration also **succeeded in fending off a lawsuit challenging the legality of the drone strike program** (in the specific context of Anwar al-Awlaki, an American citizen and member of AQAP known to be on a list of approved targets for the use of deadly force in Yemen who was in fact killed in a drone strike some months later).54 The point of all this is not to claim that legal disputes surrounding these counterterrorism policies have effectively ended. Far from it; a steady drumbeat of criticism persists, especially in relation to the use of lethal force via drones. But by the end of the first post-9/11 decade, this criticism no longer seemed likely to spill over **in the form of disruptive judicial rulings, newly restrictive legislation,** or significant spikes in diplomatic or domestic political pressure, as had repeatedly occurred in earlier years. Years of law-conscious policy refinement—and quite possibly some degree of public fatigue or inurement when it comes to legal criticisms—had made possible an extended period of **cross-branch and cross-party consensus**, and this in turn left the impression that the underlying legal architecture had reached a stage of stability that was good enough for the time being.

#### Most qualified evidence

Masters, deputy editor – CFR, 10/3/’11

(Jonathan, “US acquires targeted killing as an essential tactic,” The Nation)

Since assuming office in 2009, Barack Obama's administration has escalated targeted killings, primarily through an increase in unmanned drone strikes on Al-Qaeda and Taliban leadership, but also through an expansion of US Special Operations kill/capture missions. The successful killing of Osama bin Laden in a US Navy SEAL raid in May 2011 and the drone strike on Al-Qaeda's number two, Atiyah Abd Rahman, in August 2011 are prime examples of this trend. The White House points to these outcomes as victories, but critics continue to condemn the lethal tactic on moral, legal, and political grounds. Despite the opposition, most experts expect the United States to boost targeted killings in the coming years as military technology improves and the public appetite for large-scale, conventional armed intervention erodes.

#### Won’t collapse the drone program

Masters, deputy editor – CFR, 10/3/’11

(Jonathan, “US acquires targeted killing as an essential tactic,” The Nation)

Blowback from civil liberties and human rights groups is likely to grow in direct proportion to any increase in targeted killings. Organisations such as the ACLU and Human Rights Watch have raised pointed questions regarding the perceived lack of accountability and transparency. Others question if the United States is setting a negative precedent that will be invoked by other nations (WashPost) acquiring similar technology, such as China and Russia. CFR's Bellinger expects targeted killings to become much more politically provocative given the Obama administration's current posture, and asks if drones will "become Obama's Guantanamo?" Nevertheless, analysts point to several factors indicating that an expansion of US targeted killings in the near term is likely. Drone strikes and special operations raids put fewer Americans in harm's way and provide a low-cost alternative to expensive and cumbersome conventional forces. This alternative is further enhanced given the probability of future cuts in the defence budget and a waning public appetite for long, expensive wars. The rise of the so-called "non-state actor," operating in loose transnational networks, as the principal threat to US national security also lends itself to an expansion of US targeted killings. Other experts say technological advances, including precision-guided munitions and enhanced surveillance, have given the United States a greater ability to target these particular individuals while reducing collateral damage. In July 2011, Obama's chief counterterrorism advisor, John Brennan, provided a portent of things to come: "Going forward, we will be mindful that if our nation is threatened, our best offence won't always be deploying large armies abroad but delivering targeted, surgical pressure to the groups that threaten us."

### 1nc china drones

#### No impact to Chinese drones --- not advanced enough, no manpower, and no experience

**Zhou 12** (Dillon Zhou, graduate of the International Relations Program at the University of Massachusetts Boston, “China Drones Prompts Fears of a Drone Race With the US,” Policymic, December 2012, http://www.policymic.com/articles/19753/china-drones-prompt-fears-of-a-drone-race-with-the-us)

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.

### 1nc south china sea

#### **Chinese leaders won’t let it escalate**

**Carlson 13** – Associate Professor in the Government Department of Cornell University [(Allan, “China Keeps the Peace at Sea” http://www.foreignaffairs.com/articles/139024/allen-carlson/china-keeps-the-peace-at-sea](file:///C:\Users\Marc\AppData\Roaming\Microsoft\Word\(Allan,)) Jacome

The nuclear test, though, is a red herring in terms of the conflict over the disputed islands. In truth, the roots of the conflict -- and the reasons it has not yet exploded -- are much deeper. Put simply, China cannot afford military conflict with any of its Asian neighbors.

It is not that China believes it would lose such a spat; the country increasingly enjoys strategic superiority over the entire region, and it is difficult to imagine that its forces would be beaten in a direct engagement over the islands, in the South China Sea or in the disputed regions along the Sino-Indian border. However, Chinese officials see that even the most pronounced victory would be outweighed by the collateral damage that such a use of force would cause to Beijing's two most fundamental national interests -- economic growth and preventing the escalation of radical nationalist sentiment at home. These constraints, rather than any external deterrent, will keep Xi Jinping, China's new leader, from authorizing the use of deadly force in the Diaoyu Islands theater.

For over three decades, Beijing has promoted peace and stability in Asia to facilitate conditions amenable to China's economic development. The origins of the policy can be traced back to the late 1970s, when Deng Xiaoping repeatedly contended that to move beyond the economically debilitating Maoist period, China would have to seek a common ground with its neighbors. Promoting cooperation in the region would allow China to spend less on military preparedness, focus on making the country a more welcoming destination for foreign investment, and foster better trade relations. All of this would strengthen the Chinese economy. Deng was right. Today, China's economy is second only to that of the United States.

#### Nationalism is the root cause—no solvency

**Park** Min-hee, Beijing correspondent for Hankyoreh, **9/28/2012**

<http://english.hani.co.kr/arti/english_edition/e_editorial/553832.html>

Maoism may indeed be the single most powerful religion in China today. As rage against widespread corruption, income inequality, and injustice combines with anxieties over an economy that is losing steam by the day, people in China have been turning to their old leader. In his book "China in Ten Words," Yu Hua writes that the many problems that emerged after development may be "precisely why Mao keeps being brought back to life." A dangerous combination, fed by discontent with reality, is taking shape between China's left wing and patriots, who are presenting nostalgia for the Mao days as some kind of alternative.

In Japan, we can also find shadows reminiscent of this growing Sinocentrism. **The latest round of friction was touched off by Japan's far right**, **which irresponsibly exploited a territorial issue in the hopes of winning political points**. Having lost their way amid a Fukushima nuclear crisis, an economy mired in quicksand, an aging society, and the disgruntlement of young people robbed of opportunity, these right-wingers have derided the Peace Constitution and any kind of reflection on history, and are working to promote a sense of nostalgia for the glories of the militarist [imperial] era.

Japan's right-winger par excellence may be Tokyo Gov. Shintaro Ishihara, whose declaration of the Senkaku Islands' nationalization back in April hinted at the conflict to come. History shows that Japan's acquisition of Okinawa and the Senkaku Islands in 1885 was the result of expansionist incursions. The Cold War order that the US built in Northeast Asia after the Second World War is what left the potential for territorial disputes over Dokdo and the Senkaku Islands. Even after this latest development, it is difficult to find any words of reflection in Japan - anyone willing to say that **the claims of dominion over Senkaku are tied to a history of invasion**, or that the situation worsened because of the breaking of an implicit agreement at the time Tokyo and Beijing established relations.

Meanwhile, far right-leaning former Prime Minister Shinzo Abe, a man who denies that comfort women were forcibly mobilized, is considered likely to win reelection. East Asia is now under threat from the Chinese left and the Japanese right, both of whom are turning to nostalgia rather than tackling their real issues. **The Senkaku conflict is just a symptom of a deeply rooted problem of multiple contradictions and political confusion in both countries**.

### 1nc sekaku

#### No Sekaku conflict

**Feng 10 –** professor at the Peking University International Studies [Zhu, “An Emerging Trend in East Asia: Military Budget Increases and Their Impact”, http://www.fpif.org/articles/an\_emerging\_trend\_in\_east\_asia?utm\_source=feed]

As such, the surge of defense expenditures in East Asia does not add up to an armsrace. No country in East Asia wants to see a new geopolitical divide and spiraling tensions in the region. The growing defense expenditures powerfully illuminate the deepening of a regional “security dilemma,” whereby the “defensive” actions taken by one country are perceived as “offensive” by another country, which in turn takes its own “defensive” actions that the first country deems “offensive.” As long as the region doesn’t split into rival blocs, however, an arms race will not ensue. What is happening in East Asia is the extension of what Robert Hartfiel and Brian Job call “competitive arms processes.” The history of the cold war is telling in this regard. Arm races occur between great-power rivals only if the rivalry is doomed to intensify. The perceived tensions in the region do not automatically translate into consistent and lasting increases in military spending. Even declared budget increases are reversible. Taiwan’s defense budget for fiscal year 2010, for instance, will fall 9 percent. This is a convincing case of how domestic constraints can reverse a government decision to increase the defense budget. Australia’s twenty-year plan to increase the defense budget could change with a domestic economic contraction or if a new party comes to power. China’s two-digit increase in its military budget might vanish one day if the type of regime changes or the high rate of economic growth slows. Without a geopolitical split or a significant great-power rivalry, military budget increases will not likely evolve into “arms races.” The security dilemma alone is not a leading variable in determining the curve of military expenditures. Nor will trends in weapon development and procurement inevitably induce “risk-taking” behavior. Given the stability of the regional security architecture—the combination of U.S.-centered alliance politics and regional, cooperation-based security networking—any power shift in East Asia will hardly upset the overall status quo. China’s military modernization, its determination to “prepare for the worst and hope for the best,” hasn’t yet led to a regional response in military budget increases. In contrast, countries in the region continue to emphasize political and economic engagement with China, though “balancing China” strategies can be found in almost every corner of the region as part of an overall balance-of-power logic. In the last few years, China has taken big strides toward building up asymmetric war capabilities against Taiwan. Beijing also holds to the formula of a peaceful solution of the Taiwan issue except in the case of the island’s de jure declaration of independence. Despite its nascent capability of power projection, China shows no sign that it would coerce Taiwan or become **militarily** assertive over contentious territorial claims ranging

from the Senkaku Islands to the Spratly Islands to the India-China border dispute.

### 1nc Pakistani loose nukes

#### No loose nukes

**Koring 2009** [PAUL, Globe and Mail, Pakistan's nuclear arsenal safe, security experts say,

http://www.theglobeandmail.com/news/world/pakistans-nuclear-arsenal-safe-security-experts-say/article1325820/]

Pakistan's nuclear-weapons security is modeled on long-standing safeguards developed by the major powers and includes **separately storing** the physical components needed for a nuclear warhead and keeping them **apart and heavily guarded**. "Even if insurgents managed to get a fully assembled weapon, they would lack the 'secret decoder ring' [the special security codes] needed to arm it," Mr. Pike said. Thought to possess a relatively modest nuclear arsenal of between 70 and 100 warheads, Pakistan is even more secretive about its security measures than most nuclear-weapons states. But even if those measures were somehow breached, Mr. Pike said, even a complete nuclear weapon would be a limited threat in the hands of terrorists. "If they did try to hot-wire it to explode in the absence of knowing the approved firing sequences, it would probably only trigger the high-explosives, making a jim-dandy of a dirty bomb," he said, referring to an explosion that spreads radioactive material over a small area, but is **not a nuclear blast.**

### 1nc nuke terror

#### Combined probability approaches zero

**Schneidmiller 9** (Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php, AMiles)

There is an "almost **vanishingly small" likelihood** that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow it up. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, Atomic Obsession. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see GSN, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim, which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.

## 2nc

### 2nc cp

Congressional action sends a clear signal the US abides by laws of armed conflict

Kenneth Anderson, Professor of Law, Washington College of Law, American University, and Research Fellow, The Hoover Institution, Stanford University and Member of its Task Force on National Security and the Law, 3/18/10, Rise of the Drones: Unmanned Systems and the Future of War, digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=pub\_disc\_cong

• First, the United States government urgently needs publicly to declare the legal rationale behind its use of drones, and defend that legal rationale

Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April 2013, ARTICLE

By adopting the proposed framework as a matter of law, the United States can begin to set the standards and build an international consensus

#### The CP solves their aff completely by clarifying authority for targeting killing and threatening legal consequences for exceeding it

**McNeal 2013** – Associate Professor of Law, Pepperdine University School of Law (Gregory, Georgetown Law Journal, “Targeted Killing and Accountability”, to appear in forthcoming issue as of 9/10/2013 access date, available via SSRN)

It’s not just the Executive branch that can benefit from a healthier defense of the process. Congress too can bolster the legitimacy of the program by specifying how they have conducted their oversight activities. The best mechanism by which they can do this is through a white paper. That paper could include:

A statement about why the committees believe the U.S. government's use of force is lawful. If the U.S. government is employing armed force it's likely that it is only doing so pursuant to the AUMF, a covert action finding, or relying on the President's inherent powers under the Constitution. Congress could clear up a substantial amount of ambiguity by specifying that in the conduct of its oversight it has reviewed past and ongoing targeted killing operations and is satisfied that in the conduct of its operations the U.S. government is acting consistent with those sources of law. Moreover, Congress could also specify certain legal red lines that if crossed would cause members to cease believing the program was lawful. For example, if members do not believe the President may engage in targeted killings acting only pursuant to his Article II powers, they could say so in this white paper, and also articulate what the consequences of crossing that red line might be. To bolster their credibility, Congress could specifically articulate their powers and how they would exercise them if they believed the program was being conducted in an unlawful manner. Perhaps stating: "The undersigned members affirm that if the President were to conduct operations not authorized by the AUMF or a covert action finding, we would consider that action to be unlawful and would publicly withdraw our support for the program, and terminate funding for it."

A statement detailing the breadth and depth of Congressional oversight activities. When Senator Feinstein released her statement regarding the nature and degree of Senate Intelligence Committee oversight of targeted killing operations it went a long way toward bolstering the argument that the program was being conducted in a responsible and lawful manner. An oversight white paper could add more details about the oversight being conducted by the intelligence and armed services committees, explaining in as much detail as possible the formal and informal activities that have been conducted by the relevant committees. How many briefings have members attended? Have members reviewed targeting criteria? Have members had an opportunity to question the robustness of the internal kill-list creation process and target vetting and validation processes? Have members been briefed on and had an opportunity to question how civilian casualties are counted and how battle damage assessments are conducted? Have members been informed of the internal disciplinary procedures for the DoD and CIA in the event a strike goes awry, and have they been informed of whether any individuals have been disciplined for improper targeting? Are the members satisfied that internal disciplinary procedures are adequate?

#### The CP induces voluntary executive compliance to forestall the threat of binding restrictions

**Gersen and Posner, 8 -** Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

II. How Does Soft Law Affect Behavior?

We propose two main theories for the use of soft statutes in particular and soft law in general. First, Congress or another lawmaking body uses soft law to convey information about future intentions to enact hard law, allowing people to adjust their behavior in advance of binding statutes and in some cases avoiding constitutional requirements that apply to hard law. As we will show, soft law can be useful in this way even when the anticipated hard-law successor never materializes: if people adjust their behavior in anticipation of hard law, hard-law enactment might not be necessary. n63

[\*587] Second, Congress uses soft law to convey information about its beliefs about the state of the world - both factual and normative. The Armenian Genocide resolution, for example, expressed the factual belief that the Armenian Genocide actually occurred - a historical event that is officially denied in Turkey - and the normative belief that the Armenian Genocide was wrong, rather than (as Turkey sometimes argues in the alternative) a series of massacres that were an excusable incident to war. Congress's beliefs about states of the world may influence the beliefs of other people.

In both settings, soft law is a signal that provides information. Like other signals, soft law can convey information more or less accurately and more or less efficiently. Soft law is preferable to hard law when the signal conveys information more reliably or more cheaply than hard law does. This Part surveys the relevant variables that affect the direction and magnitude of these tradeoffs.

#### Err negative on solvency questions – there’s no practical difference between legal rules and non-binding rules because the executive has the power to ignore legal constraints. Everything that affects the President is political – and the CP has the same political effect as the plan.

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 61)

CONCLUSION

American government in the period 2001 to 2008 bears little resemblance to the constitutional framework erected, or wished for, by liberal legalism. In the liberal-legalist view, legislatures are said or at least hoped to be the primary actors, with executive and judicial power following suit—through law-execution and law-interpretation respectively. Both legislatures and courts are supposed to check and monitor the executive, keeping its power tightly cabined. In these episodes, however, executive officials take center stage, setting the agenda and determining the main lines of the government’s response, with legislatures and courts offering second-decimal modifications. Legislative and judicial monitoring and checking is largely hopeless, in part because of the necessarily ad hoc character of the

government’s initial reaction (“regulation by deal”).88 in part because legislatures and courts come too late to the scene. The overall impression is that the constitutional framework of liberal legalism has collapsed under the pressure of fact, especially the brute fact that the rate of change in the policy environment is too great for traditional modes of lawmaking and policymaking to keep pace. Although crises demonstrate the problem with particular clarity, it is embedded in the structure of the administrative state.

None of this means that the president is all-powerful; that is not our claim. As political science assessments of executive power show,89 the president does face some checks even from a generally supine Congress and even in the domains of war and foreign affairs where presidential power reaches its zenith.90 However, these checks are not primarily legal. Even Congress’s main weapon for affecting presidential behavior is not the cumbersome and costly legal mechanism of legislation. Rather legislators appeal to the court of public opinion, which in turn constrains the president. Oversight and various forms of “soft law”91—congressional statements and resolutions short of legally binding legislation—affect public support for presidential action in the realm of foreign policy, and in many other domains as well. There are real constraints on executive government, but formal constitutional procedures are not their source.

#### It also creates a political climate that causes enactment of the plan down the road

**Harvard Law Review, 11** (“A CHEVRON FOR THE HOUSE AND SENATE: DEFERRING TO POST-ENACTMENT CONGRESSIONAL RESOLUTIONS THAT INTERPRET AMBIGUOUS STATUTES” 124 Harv. L. Rev. 1507, April, lexis)

A. Why a Congressional Resolution Deserves Deference Even for Agency-Administered Statutes

As explained in section I.A, a house of Congress brings its significant expertise and political accountability to bear when interpreting a statute. Therefore, when an agency charged with administering a statute has not issued an interpretation of an ambiguous provision, courts should defer to a congressional resolution that resolves the ambiguity. But the issue becomes complicated when both an agency and the House or Senate offer conflicting interpretations. As a normative matter, courts should defer to whichever political branch has greater accountability and expertise. Generally, the House and Senate might be assumed to be more democratically accountable than agencies, while agencies might possess greater expertise than Congress does. Policy decisions, however, nearly always require a combination of both expertise and value judgments, and the relative importance of these two elements varies depending on the particular decision. Moreover, the extent of each branch's comparative advantage on either of these variables differs from case to case. Courts therefore should refrain from [\*1516] adopting a categorical rule that favors one political branch over another. n43 Rather, judges should engage in a careful de novo or Skidmore analysis of the particular statute and the interpretations that have been offered before resolving the statutory ambiguity.

Allowing the political branches essentially to veto each other's interpretations of ambiguous statutes by adopting their own conflicting interpretations would increase transparency. Disagreements over the best interpretation would be formalized and public, and each political branch would present its argument for why its interpretation was better - not just as litigants trying to convince the courts, which would have the power to decide between conflicting interpretations, but as elected or accountable officials who are responsible to their constituencies. And by lowering the legislative costs necessary to alter the law, this Note's proposal might promote an investment of resources in developing interpretations that would turn out to be more broadly popular (or where a compromise might be more easily reached) than congressmen initially imagined - thus spurring actual legislation, not just interpretations of existing statutes.

### 2nc perm

#### And 4 more warrants—they cost *docket time, energy* and *capital* and *focus* on the rest of the agenda.

**Harvard Law Review, 11** (“A CHEVRON FOR THE HOUSE AND SENATE: DEFERRING TO POST-ENACTMENT CONGRESSIONAL RESOLUTIONS THAT INTERPRET AMBIGUOUS STATUTES” 124 Harv. L. Rev. 1507, April, lexis)

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

### 2nc – solves rule of law

#### Congressional soft law is public and reinforces the rule of law

**Gersen and Posner, 8 -** Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

This concern can be easily overstated, however. If soft law is secret, then it cannot regulate, in which case it cannot serve any useful purpose. Congressional resolutions themselves also comply with publicity formalities that distinguish them from unenacted bills. Nonetheless, one might worry that unsophisticated people, or people who cannot get legal advice, are likely to misunderstand the importance of soft law, putting them at a disadvantage with respect to savvier fellow citizens.

Consider, for example, Susan Rose-Ackerman's critique of the Supreme Court's interpretation of The Developmentally Disabled Assistance and Bill of Rights Act in Pennhurst State School v. Halderman. n95 The Court rejected the plaintiffs' argument that the statute created judicially enforceable rights for the developmentally disabled, arguing instead that the weak language in the Act indicated that Congress intended to announce a policy in the hope of eliciting a favorable response from states. n96 Rose-Ackerman argues that the Court's holding permitted Congress to earn public credit by enacting a statute that expressed popular aspirations but did not have any effect. Perhaps the Court should have "repealed" the statute, which would have embarrassed Congress and forced it to enact clearer legislation. n97

[\*598] Importantly, the Act was not a soft statute but rather was a hortatory hard statute. It was duly enacted but had no formal legal effect. n98 Nonetheless, one concern is that such a statute would deceive the public, leading it to extend credit to a Congress that accomplished nothing at all. The problem with this view is that Congress did, in fact, do something: it announced a policy on the treatment of developmentally disabled people, a policy that was consistent with other hard-statute rules and could well have anticipated further legislative developments. n99 Announcing the policy in advance might well have encouraged states and private actors to adjust their behavior in advance of hard legislation. It is possible therefore to view soft law as facilitating rule-of-law values rather than undermining them.

However, rule-of-law values might require that courts strike down statutes that are ambiguous and confusing, at least in certain conditions. The rule of lenity in criminal law reflects this idea: people should not go to jail because they violate criminal statutes that they cannot understand. If this concern is valid for hard law, it is even stronger for soft law, where people might not understand that a soft statute may affect behavior. If only sophisticated people can anticipate Congress's changing views about the treatment of developmentally disabled people on the basis of hortatory statutes or concurrent resolutions, then unsophisticated people are put at a disadvantage.

By the same token, if the public typically associates hard statutes with binding obligations, then using the hortatory statute with only precatory language creates confusion and ambiguity. If the public associates soft statutes with nonbinding obligations, then the soft statute will be superior to the hard hortatory statute because it will accomplish the same communicative ends, but avoid the confusion produced by using a hard statute. In terms of public knowledge of and reaction to soft law, rule-of-law problems are certainly not inevitable.

### at: Statutes are clearer for intent

#### Passing statutory restrictions requires institutional bargaining between Congress and the President – they have to overcome a Presidential veto. The CP avoids this and sends more credible signals in authority disputes

**Gersen and Posner, 8 -** Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

Information about legislative preferences. Soft statutes can be better indicators of legislative intent than hard statutes or legislative history. n91 As an indicator of underlying views of the Senate, the Senate Resolution is a better instrument than a hard statute. As an indicator of congressional views, the concurrent resolution is a better indicator than a hard statute. In the former case, the views of the President and the House will affect what proposals are [\*596] passed by the Senate. In the latter case, the prospect of a presidential veto will affect the legislation that Congress proposes. n92 To illustrate, suppose there are three potential meanings of a statutory provision: A, B, and C. Congress prefers interpretation A to B and prefers B to C. The President prefers meaning C to B and B to A. If the President would veto a statute with meaning A, Congress will pass a statute with meaning B. The statute is a correct indicator of congressional intent in the sense that a majority of both houses preferred meaning B to C and meaning B to the status quo. It is, however, a poor indicator of what Congress thought best (meaning A) precisely because what Congress "says" in hard statutes is a function of what the President prefers. A hard statute is a not a clear instrument with respect to congressional intent because it reflects the views of multiple institutions. n93

Why should one care about the intent of the Senate or House alone, or even the two houses jointly? After all, a common view is that they can create law only by securing the consent of the President. One reason is that this last statement is not accurate. When Congress acts on its own (for example, overriding a veto), or houses operate separately (the Senate handles appointments, consents to treaties, adjudicates impeachments; the House initiates impeachments, originates revenue bills), observers will want more refined information than that contained in a statute. The hard statute provides crude information because it reveals only that Congress preferred the enacted outcome to the status quo, but it does not convey preference orderings for other available alternatives. And when the President's views are already well known, or the President is on his way out of office, Congress's views might be all that people need to learn. Indeed, in several important cases that we discuss below, Congress's views alone are of crucial importance: in Congress's effort to stake out its constitutional role vis-a-vis that of the President, and in oversight of regulatory agencies. In these cases, the soft statute conveys better information about future political outputs than hard statutes do.

### 2nc bioterror

**Terrorists don’t want bio-weapons**

**Paranchi ’01**

(John, Analyst, RAND Corporation, “Anthrax Attacks, Biological Terrorism, and Preventive

Responses,” RAND TESTIMONY, November, p. 11-12 Available from the World Wide Web at: www.rand.org/publications/CT/CT186/CT186.pdf)

**The use of** disease and **biological material as a weapon is not** a **new** method of warfare. What is surprising is how infrequently it is has been used. Biological agents may appeal to the new terrorist groups because they affect people indiscriminately and unnoticed, thereby sowing panic. A pattern is emerging that terrorists who perpetrate mass and indiscriminate attacks do not claim responsibility.5 In contrast to the turgid manifestos issued by terrorists in the 1960s, 1970s and 1980s, recent mass casualty terrorists have not claimed responsibility until they were imprisoned. Biological agents enable terrorists to preserve their anonymity because of their delayed impact and can be confused with natural disease outbreaks. Instead of the immediate gratification of seeing an explosion or the glory of claiming credit for disrupting society, the biological weapons terrorist may derive satisfaction from seeing society’s panicked response to their actions. If this is the case, this is a new motive for the mass casualty terrorist. **There are a number of** countervailing **disincentives for states and terrorists** to use biological weapons, **which help explain why** their **use is** so **infrequent**. The **technical and operational challenges** biological weapons pose **are considerable. Acquiring the material, skills of production, knowledge of weaponization, and** successfully **delivering** the weapon, to the target **is difficult**. In cases where the populations of the terrorist supporters and adversaries are mixed, **biological weapons risk inadvertently hitting the same people for whom terrorists claim to fight. Terrorists may** also **hesitate** in using biological weapons specifically **because breaking the taboo** on their use **may evoke** considerable **retaliation**. The use of **disease** as a weapon **is widely recognized** in most cultures **as a means** of killing that is **beyond the bounds of** a **civilized society.** From a psychological perspective**, terrorists may be drawn to explosives** as arsonists are drawn to fire. **The** immediate **gratification** of explosives and the thrill of the blast **may meet a psychological need of terrorists that the** delayed effects of **biological weapons do not**. Causing slow death of others may not offer the same psychic thrill achieved by killing with firearms or explosives. Perhaps **the** greatest **alternative** to using biological weapons **is** that terrorists can inflict (and have inflicted) many **more fatalities** and casualties with conventional explosives than with unconventional weapons. Biological weapons present technical and operational challenges that **determined killers may not have the patience** to overcome or they may simply concentrate their efforts on more readily available alternatives.

### 2nc nuke terror

#### Too many obstacles—look at aggregate probability

**Pinker, 11** [Steven, professor of psychology at Harvard University, The Better Angels of our Nature Why Violence Has Declined, ISBN: 067002295, for online access email alexanderdpappas@gmail.com and I will forward you the full book]

Though conventional terrorism, as John Kerry gaffed, is a nuisance to be policed rather than a threat to the fabric of life, terrorism with weapons of mass destruction would be something else entirely. The prospect of an attack that would kill millions of people is not just theoretically possible but consistent with the statistics of terrorism. The computer scientists Aaron Clauset and Maxwell Young and the political scientist Kristian Gleditsch plotted the death tolls of eleven thousand terrorist attacks on log-log paper and saw them fall into a neat straight line.261 Terrorist attacks obey a power-law distribution, which means they are generated by mechanisms that make extreme events unlikely, but not astronomically unlikely. The trio suggested a simple model that is a bit like the one that Jean-Baptiste Michel and I proposed for wars, invoking nothing fancier than a combination of exponentials. As terrorists invest more time into plotting their attack, the death toll can go up exponentially: a plot that takes twice as long to plan can kill, say, four times as many people. To be concrete, an attack by a single suicide bomber, which usually kills in the single digits, can be planned in a few days or weeks. The 2004 Madrid train bombings, which killed around two hundred, took six months to plan, and 9/11, which killed three thousand, took two years.262 But terrorists live on borrowed time: every day that a plot drags on brings the possibility that it will be disrupted, aborted, or executed prematurely. If the probability is constant, the plot durations will be distributed exponentially. (Cronin, recall, showed that terrorist organizations drop like flies over time, falling into an exponential curve.) Combine exponentially growing damage with an exponentially shrinking chance of success, and you get a power law, with its disconcertingly thick tail. Given the presence of weapons of mass destruction in the real world, and religious fanatics willing to wreak untold damage for a higher cause, a lengthy conspiracy producing a horrendous death toll is within the realm of thinkable probabilities. A statistical model, of course, is not a crystal ball. Even if we could extrapolate the line of existing data points, the massive terrorist attacks in the tail are still extremely (albeit not astronomically) unlikely. More to the point, we *can’t* extrapolate it. In practice, as you get to the tail of a power-law distribution, the data points start to misbehave, scattering around the line or warping it downward to very low probabilities. The statistical spectrum of terrorist damage reminds us not to dismiss the worst-case scenarios, but it doesn’t tell us how likely they are. So how likely are they? What do you think the chances are that within the next five years each of the following scenarios will take place? (1) One of the heads of state of a major developed country will be assassinated. (2) A nuclear weapon will be set off in a war or act of terrorism. (3) Venezuela and Cuba will join forces and sponsor Marxist insurrection movements in one or more Latin American countries. (4) Iran will provide nuclear weapons to a terrorist group that will use one of them against Israel or the United States. (5) France will give up its nuclear arsenal. I gave fifteen of these scenarios to 177 Internet users on a single Web page and asked them to estimate the probability of each. The median estimate that a nuclear bomb would be set off (scenario 2) was 0.20; the median estimate that a nuclear bomb would be set off in the United States or Israel by a terrorist group that obtained it from Iran (scenario 4) was 0.25. About half the respondents judged that the second scenario was more likely than the first. And in doing so, they committed an elementary blunder in the mathematics of probability. The probability of a conjunction of events (A and B both occurring) cannot be greater than the probability of either of them occurring alone. The probability that you will draw a red jack has to be lower than the probability that you will draw a jack, because some jacks you might draw are not red. Yet Tversky and Kahneman have shown that most people, including statisticians and medical researchers, commonly make the error.263 Consider the case of Bill, a thirty-four-year-old man who is intelligent but also unimaginative, compulsive, and rather dull. In school he was strong in mathematics but undistinguished in the arts and humanities. What are the chances that Bill plays jazz saxophone? What are the chances that he is an accountant who plays jazz saxophone? Many people give higher odds to the second possibility, but the choice is nonsensical, because there are fewer saxophone-playing accountants than there are saxophone players. In judging probabilities, people rely on the vividness of their imaginations rather than thinking through the laws. Bill fits the stereotype of an accountant but not of a saxophonist, and our intuitions go with the stereotype. The conjunction fallacy, as psychologists call it, infects many kinds of reasoning. Juries are more likely to believe that a man with shady business dealings killed an employee to prevent him from talking to the police than to believe that he killed the employee. (Trial lawyers thrive on this fallacy, adding conjectural details to a scenario to make it more vivid to a jury, even though every additional detail, mathematically speaking, ought to make it *less* probable.) Professional forecasters give higher odds to an unlikely outcome that is presented with a plausible cause (oil prices will rise, causing oil consumption to fall) than to the same outcome presented naked (oil consumption will fall).264 And people are willing to pay more for flight insurance against terrorism than for flight insurance against all causes.265 You can see where I’m going. The mental movie of an Islamist terrorist group buying a bomb on the black market or obtaining it from a rogue state and then detonating it in a populated area is all too easy to play in our mind’s eye. Even if it weren’t, the entertainment industry has played it for us in nuclear terrorist dramas like *True Lies, The Sum of All Fears,* and *24*. The narrative is so riveting that we are apt to give it a higher probability than we would if we thought through all the steps that would have to go right for the disaster to happen and multiplied their probabilities. That’s why so many of my survey respondents judged an Iran-sponsored nuclear terrorist attack to be more probable than a nuclear attack. The point is not that nuclear terrorism is impossible or even astronomically unlikely. It is just that the probability assigned to it by anyone but a methodical risk analyst is likely to be too high. What do I mean by “too high”? “With certainty” and “more probable than not” strike me as too high. The physicist Theodore Taylor declared in 1974 that by 1990 it would be too late to prevent terrorists from carrying out a nuclear attack.266 In 1995 the world’s foremost activist on the risks of nuclear terrorism, Graham Allison, wrote that under prevailing circumstances, a nuclear attack on American targets was likely before the decade was out.267 In 1998 the counterterrorism expert Richard Falkenrath wrote that “it is certain that more and more non-state actors will become capable of nuclear, biological, and chemical weapons acquisition and use.”268 In 2003 UN ambassador John Negroponte judged that there was a “high probability” of an attack with a weapon of mass destruction within two years. And in 2007 the physicist Richard Garwin estimated that the chance of a nuclear terrorist attack was 20 percent per year, or about 50 percent by 2010 and almost 90 percent within a decade.269 Like television weather forecasters, the pundits, politicians, and terrorism specialists have every incentive to emphasize the worst-case scenario. It is undoubtedly wise to scare governments into taking extra measures to lock down weapons and fissile material and to monitor and infiltrate groups that might be tempted to acquire them. Overestimating the risk, then, is safer than underestimating it—though only up to a point, as the costly invasion of Iraq in search of nonexistent weapons of mass destruction proves. The professional reputations of experts have proven to be immune to predictions of disasters that never happen, while almost no one wants to take a chance at giving the all-clear and ending up with radioactive egg on his face.270 A few brave analysts, such as Mueller**,** John Parachini, and Michael Levi, have taken the chance by examining the disaster scenarios component by component.271 For starters, of the four so-called weapons of mass destruction, three are far less massively destructive than good old-fashioned explosives.272 Radiological or “dirty” bombs, which are conventional explosives wrapped in radioactive material (obtained, for example, from medical waste), would yield only minor and short-lived elevations of radiation, comparable to moving to a city at a higher altitude. Chemical weapons, unless they are released in an enclosed space like a subway (where they would still not do as much damage as conventional explosives), dissipate quickly, drift in the wind, and are broken down by sunlight. (Recall that poison gas was responsible for a tiny fraction of the casualties in World War I.) Biological weapons capable of causing epidemics would be prohibitively expensive to develop and deploy, as well as dangerous to the typically bungling amateur labs that would develop them. It’s no wonder that biological and chemical weapons, though far more accessible than nuclear ones, have been used in only three terrorist attacks in thirty years.273 In 1984 the Rajneeshee religious cult contaminated salad in the restaurants of an Oregon town with salmonella, sickening 751 people and killing none. In 1990 the Tamil Tigers were running low on ammunition while attacking a fort and opened up some chlorine cylinders they found in a nearby paper mill, injuring 60 and killing none before the gas wafted back over them and convinced them never to try it again. The Japanese religious cult Aum Shinrikyo failed in ten attempts to use biological weapons before releasing sarin gas in the Tokyo subways, killing 12. A fourth attack, the 2001 anthrax mailings that killed 5 Americans in media and government offices, turned out to be a spree killing rather than an act of terrorism. It’s really only nuclear weapons that deserve the WMD acronym. Mueller and Parachini have fact-checked the various reports that terrorists got “just this close” to obtaining a nuclear bomb and found that all were apocryphal. Reports of “interest” in procuring weapons on a black market grew into accounts of actual negotiations, generic sketches morphed into detailed blueprints, and flimsy clues (like the aluminum tubes purchased in 2001 by Iraq) were overinterpreted as signs of a development program. **Each of the pathways** to nuclear terrorism, when examined carefully, turns out to have gantlets of improbabilities. There may have been a window of vulnerability in the safekeeping of nuclear weapons in Russia, but today most experts agree it has been closed, and that no loose nukes are being peddled in a nuclear bazaar. Stephen Younger, the former director of nuclear weapons research at Los Alamos National Laboratory, has said, “Regardless of what is reported in the news, all nuclear nations take the security of their weapons very seriously.”274 Russia has an intense interest in keeping its weapons out of the hands of Chechen and other ethnic separatist groups, and Pakistan is just as worried about its archenemy Al Qaeda. And contrary to rumor, security experts consider the chance that Pakistan’s government and military command will fall under the control of Islamist extremists to be essentially nil.275 Nuclear weapons have complex interlocks designed to prevent unauthorized deployment, and most of them become “radioactive scrap metal” if they are not maintained.276 For these reasons, the forty-seven-nation Nuclear Security Summit convened by Barack Obama in 2010 to prevent nuclear terrorism concentrated on the security of fissile material, such as plutonium and highly enriched uranium, rather than on finished weapons. The dangers of filched fissile material are real, and the measures recommended at the summit are patently wise, responsible, and overdue. Still, one shouldn’t get so carried away by the image of garage nukes as to think they are inevitable or even extremely probable. The safeguards that are in place or will be soon will make fissile materials hard to steal or smuggle, and if they went missing, it would trigger an international manhunt. Fashioning a workable nuclear weapon requires precision engineering and fabrication techniques well beyond the capabilities of amateurs. The Gilmore commission, which advises the president and Congress on WMD terrorism, called the challenge “Herculean,” and Allison has described the weapons as “large, cumbersome, unsafe, unreliable, unpredictable, and inefficient.”277 Moreover, the path to getting the materials, experts, and facilities in place is mined with hazards of detection, betrayal, stings, blunders, and bad luck. In his book *On Nuclear Terrorism*, Levi laid out all the things that would have to go right for a terrorist nuclear attack to succeed, noting, “Murphy’s Law of Nuclear Terrorism: What can go wrong might go wrong.”278 Mueller counts twenty obstacles on the path and notes that even if a terrorist group had a fifty-fifty chance of clearing every one, the aggregate odds of its success would be one in a million. Levi brackets the range from the other end by estimating that even if the path were strewn with only ten obstacles, and the probability that each would be cleared was 80 percent, the aggregate odds of success facing a nuclear terrorist group would be one in ten. **Those are not our odds of becoming victims**. A terrorist group weighing its options, even with these overly optimistic guesstimates, might well conclude from the long odds that it would better off devoting its resources to projects with a higher chance of success. None of this, to repeat, means that nuclear terrorism is impossible, only that it is not, as so many people insist, imminent, inevitable, or highly probable.

#### It’s threat inflation—cooperation and practical barriers outweigh

**Mearsheimer 10** (John J. Mearsheimer, professor of political science at the University of Chicago, “Imperial by Design,” 12/16/10)

This assessment of America’s terrorism problem was flawed on every count. It was **threat inflation** of the highest order. It made no sense to declare war against groups that were not trying to harm the United States. They were not our enemies; and going after all terrorist organizations would greatly complicate the daunting task of eliminating those groups that did have us in their crosshairs. In addition, there was no alliance between the so-called rogue states and al-Qaeda. In fact, Iran and Syria cooperated with Washington after 9/11 to help quash Osama bin Laden and his cohorts. Although the Bush administration and the neoconservatives repeatedly asserted that there was a genuine connection between Saddam Hussein and al-Qaeda, they never produced evidence to back up their claim for the simple reason that it did not exist.

The fact is that states have strong incentives to distrust terrorist groups, in part because they might turn on them someday, but also because countries cannot control what terrorist organizations do, and they may do something that gets their patrons into serious trouble. This is why there is hardly any chance that a rogue state will give a nuclear weapon to terrorists. That regime’s leaders could never be sure that they would not be blamed and punished for a terrorist group’s actions. Nor could they be certain that the United States or Israel would not incinerate them if either country merely suspected that they had provided terrorists with the ability to carry out a WMD attack. A nuclear handoff, therefore, is not a serious threat.

When you get down to it, there is only a remote possibility that terrorists will get hold of an atomic bomb. The most likely way it would happen is if there were political chaos in a nuclear-armed state, and terrorists or their friends were able to take advantage of the ensuing confusion to snatch a loose nuclear weapon. But even then, there are additional obstacles to overcome: some countries keep their weapons disassembled, detonating one is not easy and it would be difficult to transport the device without being detected. Moreover, other countries would have powerful incentives to work with Washington to find the weapon before it could be used. The obvious implication is that we should work with other states to improve nuclear security, so as to make this slim possibility even more unlikely.

Finally, the ability of terrorists to strike the American homeland has been blown out of all proportion. In the nine years since 9/11, government officials and terrorist experts have issued countless warnings that another major attack on American soil is probable—even imminent. But this is simply not the case.3 The only attempts we have seen are a few failed solo attacks by individuals with links to al-Qaeda like the “shoe bomber,” who attempted to blow up an American Airlines flight from Paris to Miami in December 2001, and the “underwear bomber,” who tried to blow up a Northwest Airlines flight from Amsterdam to Detroit in December 2009. So, we do have a terrorism problem, but it is hardly an existential threat. In fact, it is a minor threat. Perhaps the scope of the challenge is best captured by Ohio State political scientist John Mueller’s telling comment that “the number of Americans killed by international terrorism since the late 1960s . . . is about the same as the number killed over the same period by lightning, or by accident-causing deer, or by severe allergic reactions to peanuts.”

## 1nr

### 1nr impact calc

#### Magnitude – no terminal impact defense - they concede Israel strikes collapse the economy and heg

**Growth prevents extinction—collapse makes all war inevitable**

**Mootry 2008** [10-8, Primus, B.A. Northern Illinois University “Americans likely to face more difficult times” – The Herald Bulletin, http://www.theheraldbulletin.com/columns/local\_story\_282184703.html?keyword=secondarystory]

These are difficult times. The direct and indirect costs associated with the war on Iraq have nearly wrecked our economy. The recent $700 billion bailout, bank failures, and the failure of many small and large businesses across the nation will take years — perhaps decades — to surmount. Along with these rampant business failures, we have seen unemployment rates skyrocket, record numbers of home foreclosures, an explosion of uninsured Americans, and other economic woes that together have politicians now openly willing to mention the "D" word: Depression. These are difficult days. We have seen our international reputation sink to all time lows. We have seen great natural disasters such as hurricanes Ike and Katrina leaving hundreds of thousands of citizens stripped of all they own or permanently dislocated. In all my years, I have never seen a time such as this. To make matters worse, we are witnessing a resurgence of animosities between the United States and Russia, as well as the rapid growth of India and China. As to the growth of these two huge countries, the problem for us is that they are demanding more and more oil — millions of barrels more each week — and there is not much we can say or do about it. In the meantime, if America does not get the oil it needs, our entire economy will grind to a halt. In short, the challenges we face are complex and enormous. Incidentally, one of the factors that makes this time unlike any other in history is the potential for worldwide nuclear conflict. **There has never been a time in** the long **history** of ~~man~~ **when**, through his own technologies — and his arrogance — ~~he~~ can destroy the planet. Given the tensions around the world, **a mere spark could lead to global conflagration.**[This evidence has been gender paraphrased].

#### Heg prevents global transition conflict

**Posen and Ross 97** (Barry Posen, Professor of Political Science in the Defense and Arms Control Studies Program at MIT, Andrew Ross, Professor of National Security Studies at the Naval War College, International Security, Winter 1997)

The United States can, more easily than most, go it alone. Yet we do not find the arguments of the neo-isolationists compelling. Their strategy serves U.S. interests only if they are narrowly construed. First, though the neo-isolationists have a strong case in their argument that the United States is currently quite secure, disengagement is unlikely to make the United States more secure, and would probably make it less secure. The disappearance of the United States from the world stage would likely precipitate a good deal of competition abroad for security. Without a U.S. presence, aspiring regional hegemons would see more opportunities. States formerly defended by the United States would have to look to their own military power; local arms competitions are to be expected. Proliferation of nuclear weapons would intensify if the U.S. nuclear guarantee were withdrawn. Some states would seek weapons of mass destruction because they were simply unable to compete conventionally with their neighbors. This new flurry of competitive behavior would probably energize many hypothesized immediate causes of war, including preemptive motives, preventive motives, economic motives, and the propensity for miscalculation. There would like be more war. Weapons of mass destruction might be used in some of the wars, with unpleasant effects even for those not directly involved.

**Framing issue – we control timeframe which means we can turn their impact but they can’t turn ours**

#### DA turns case -the plan collapses perceptions of deterrence which makes attack on the US more likely --- also prevents new categories of responses

**Zeisberg, Princeton politics PhD, 2004**

(Mariah, “Interbranch Conflict And Constitutional Maintenance: The Case Of War Powers”, June, [www.brown.edu/Research/ppw/files/Zeisberg%20Ch5.doc](http://www.brown.edu/Research/ppw/files/Zeisberg%20Ch5.doc), ldg)

The first significant argument of pro-Presidency insularists is that flexibility is a prime value in the conduct of foreign affairs, and especially war. Implicit in this argument is the recognition that the executive is functionally superior to Congress in achieving flexibility and swiftness in war operations, a recognition I share. The Constitution cannot be meant to curtail the very flexibility that may be necessary to preserve the nation; and yet, according to the insularists, any general norm which would include Congress in decision-making about going to war could only undermine that flexibility. Writing on the War Powers Act, Eugene Rostow predicts that it would, “put the Presidency in a straightjacket of a rigid code, and prevent new categories of action from emerging, in response to the necessities of a tense and unstable world.” In fact, Rostow believes, “[t]he centralization of authority in the president is particularly crucial in matters of national defense, war, and foreign policy, where a unitary executive can evaluate threats, consider policy choices, and mobilize national resources with a speed and energy that is far superior to any other branch.” Pro-presidency insularists are fond of quoting Hamilton, who argued that “[o]f all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand.” This need for flexibility, some insularists argue, is especially acute given modern conditions, where devastating wars can develop quickly. Today, “many foreign states have the power to attack U.S. forces - and some even the U.S. mainland - almost instantly,” and in such a world it is impracticable to require the President to seek advance authorization for hostilities. Such a requirement would simply be too risky to U.S. security. We furthermore face a nuclear age, and the system of deterrence that operates to contain that threat requires that a single person be capable of responding to nuclear attack with nuclear weapons immediately. Rostow writes, “the requirement for advance authorization would collapse the system of deterrence, making preemptive strikes by our enemies more likely.” Hence, “modern conditions” require the President to “act quickly, and often alone.” While this does not mean that Congress has no role to play in moments of crisis, it does mean that Congress should understand its role largely in terms of cooperating with the President to support his negotiations and decisions regarding relationships with foreign powers. Rostow writes, “Congress should be able to act effectively both before and after moments of crisis or potential crisis. It may join the President in seeking to deter crisis by publicly defining national policy in advance, through the sanctioning of treaties or other legislative declarations. Equally, Congress may participate formally in policymaking after the event through legislative authorization of sustained combat, either by means of a declaration of war, or through legislative action having more limited legal and political consequences. Either of these devices, or both in combination, should be available in situations where cooperation between the two branches is indicated at many points along an arc ranging from pure diplomacy at one end to a declaration of war at the other.” In other words, for Congress to understand itself as having any justifiable role in challenging executive security determinations, especially at moments of crisis, would be to undermine the strength that the executive requires in order to protect the nation. Conflict in this domain represents political degradation.

---Circumvention: wartime gives OB leeway to circumvent the plan-- -- means aff won’t be enforced

Eric Posner 11, the Kirkland and Ellis Professor of Law @ U-Chicago, and Adrian Vermeule, the John H. Watson, Jr. Professor of Law @ Harvard, “The Executive Unbound: After the Madisonian Republic,” Oxford U Press, Feb 16, p. 7-10

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

#### And uniqueness CP-- Limited easing of sanctions, conditioning new sanctions on a deal, and assuring allies that force is on the table is vital to securing both Iranian and allied support for a deal

**Ross, 11/14/13 -** Dennis Ross is the Counselor at the Washington Institute for Near East Policy. He served as special assistant to President Obama on Middle East issues from 2009-2011 (“How to Fix the Iran Nuclear Deal” The New Republic, http://www.newrepublic.com/article/115548/iran-nuclear-deal-dennis-ross-its-history

I believe so. First, we must be clear that the easing of sanctions will, in fact, be limited and will not affect our enforcement of existing sanctions and those who try to evade them. We will continue to vigorously pursue all loopholes and efforts to work around sanctions. This also means that we must continue to emphasize the reputational costs to any businesses that seek to resume commerce directly or indirectly with Iran.

Second, while the Administration has asked Congress to hold back on adopting new sanctions for now so as not to undercut Rouhani, I think we must also recognize the importance of signaling the Iranians and everyone else that there will be an intensification of sanctions if the diplomacy fails to produce an end-game agreement. Rouhani is president precisely because of the high cost of sanctions. There should be no illusions about what happens if diplomacy fails to significantly roll back the Iranian nuclear program. We don’t do Rouhani any favors if the appearance takes hold that there will be no more sanctions—even if there are no more agreements. From that standpoint, why not accept an approach in which the Congress adopts the next wave of sanctions but agree that they will not be implemented until the end of the six month period of the first step agreement or a clear break down of diplomacy.

Third, at least with our friends who are concerned about what they perceive as our eagerness for any deal with the Iranians—and this perception is held even more deeply among our Arab friends than the Israelis—we should be clearer about what we mean by rolling-back the Iranian nuclear program. I understand not wanting to negotiate among ourselves and not giving away bottom lines, but one reason the first step deal seems so alarming to the Israelis and others is they don’t know what we mean by a bad deal at the end of the day. They seem to think that we are so eager to avoid the use of force, given public opinion, that we will accept anything. We need to let others know, at least privately, that prevention remains the objective and has always meant that if diplomacy fails, force is the likely result. In addition, we should also make clear that we have a number of absolute requirements for any nuclear end-state agreement: Iran must dramatically reduce the number of centrifuges, ship out essentially all of its enriched uranium and, at a minimum, convert its heavy water plant into a light water reactor. In short, we must convey more clearly that we know where we are going on the nuclear issue with Iran.

The benefit of leveling in this fashion is that it puts not only the Iranians on notice but also reassures our friends in the area. That may be especially important at a time when the Administration needs to send a message other than that it is lessening our interests and stakes in the region and has bigger fish to fry elsewhere in the world.

### 2nc – will pass

#### And he’s making a full-court press – he’s personally involved to neutralize the Israel lobby

**Weisman, 11/12/13** (Jonathan, “Iran Talks Face Resistance in U.S. Congress” New York Times, <http://www.nytimes.com/2013/11/13/world/middleeast/iran-talks-face-resistance-in-us-congress.html?_r=0>)

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

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

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

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

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

#### That effort is successful in convincing Senate Democrats now – Obama’s personal credibility is reducing the influence of the lobby

**Dreyfus, 11/13/13** (Bob, The Nation, “Did the Israel Lobby Agree to Hold Off on New Iran Sanctions?”

<http://www.thenation.com/blog/177144/did-israel-lobby-agree-hold-new-iran-sanctions>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Foxman was specific, too:

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

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

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

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

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

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

#### Obama is winning on Iran – but the momentum is reversible

**Lobe, 11/16/13** - Washington bureau chief for Inter Press Service (Jim, “Obama Gets More Time for Iran Nuclear Deal” Inter Press Service, <http://www.ipsnews.net/2013/11/obama-gets-more-time-for-iran-nuclear-deal/>)

The administration of President Barack Obama appears to have succeeded in preventing Congress from enacting new sanctions against Iran before the next round of nuclear-related talks between the U.S. and other great powers and Tehran scheduled for Geneva Nov. 20.

As a result, optimism that at least an interim deal may soon be achieved between Iran and the so-called P5+1 (U.S., Britain, France, Russia, China plus Germany) appears once again on the rise here, amidst rumours circulating late Friday that Secretary of State John Kerry himself may lead the U.S. delegation.

While some senators may still try to attach sanctions amendments to pending legislation – notably the 2014 defence authorisation bill (NDAA) to be taken up next week – most observers on Capitol Hill believe they will be highly unlikely to be voted on before Congress’s two-week Thanksgiving recess, pushing any possible new legislative action against Iran into December.

The administration had been concerned that new sanctions would strengthen hard-liners in Tehran, who would use it as evidence that Obama was either unable or unwilling to strike a deal that would not cross Iran’s “red line” – a refusal to recognise the Islamic Republic’s “right” to enrich uranium within certain limits under the Nuclear Non-Proliferation Treaty (NPT).

Any strengthening of the hard-liners, it was feared, would force President Hassan Rouhani and his foreign minister, Mohammed Javad Zarif, to toughen their terms for a deal, making an agreement with the P5+1 much more difficult to achieve.

Defying pressure from the powerful Israel lobby, several key senators this week indicated they backed delaying action on new or pending sanctions legislation and giving the administration a chance to conclude at least an interim deal that could pave the way to a comprehensive accord on Iran’s nuclear programme within six months to a year.

### at: Health care thumper

#### The number of Democratic defections was extremely limited and won’t pressure Senate Democrats

**Sargent, 11/15/13** – writes the Plum Line blog for the Washington Post (Greg, “Dems leaders struggle to contain the damage”

<http://www.washingtonpost.com/blogs/plum-line/wp/2013/11/15/dems-leaders-struggle-to-contain-the-damage/>

So the House of Representatives just passed GOP Rep. Fred Upton’s bill to fix Obamacare by gutting it, with 39 Democrats voting for the measure. That will lead to many stories claiming “dozens” of Dems defected, which is true. More Democrats voted for the Upton bill today than I would have liked.

However, the outcome actually appears to be somewhat better than Dem leaders expected. A senior House Democratic leadership aide tells me that leaders had calculated earlier today that as many as 70 House Dems could defect. That is supported by reports from last night claiming leaders feared “over 100″ Dems could support the measure.

The 39 votes is being widely portrayed as a big defection. But aides note that a similar number of House Dems — 35 — voted back in July with Republicans to delay the employer mandate. So today’s high stakes vote — right in the midst of a crush of bad Obamacare press that could not possibly have been worse — only got a few more Dems than a less consequential vote taken well before the serious problems started. Still, as noted above, the total of 39 Dems is significant, more than I would have liked to see.

Today, Dem leaders faced a problem: Because House Dems might think anything that passes the House would be DOA in the Senate, there would be no harm in a vote for the Upton bill. But leaders hoped to keep the vote down well below 50, and hopefully below 40, which would still be too high but might ensure less pressure on Senate Democratic leaders to hold a vote on something else, like the Mary Landrieu fix, the senior aide tells me.

“They know Reid is going to block it, so it’s a free vote for them,” the aide says of House Dems. “But if there were too many it would have put more pressure on Reid to act.”

#### Democrats are still mostly unified around Obama – tensions over health care are shallow

**Beutler, 11/15**/13 - Brian Beutler is Salon's political writer (“The right’s clueless gloating: Democratic civil war is only in their dreams” Salon, <http://www.salon.com/2013/11/15/the_rights_clueless_gloating_democratic_civil_war_is_only_in_their_dreams/>

That’s not to say everything’s fine now. But they’re off the ledge. The clarion calls from politically vulnerable Dems to do something, and do it fast, have subsided for the moment. And the hope is that in this window of relative repose the administration can get the website working, increase enrollment, and calm the public outcry.

At the same time it exposed the unctuousness of the right’s concern for people whose plans have been canceled. Republicans who have been demanding a comparable legislative fix are suddenly skeptical that this plan will work, and conservatives are torn between hoping Obama’s plan fails — that nobody gets their plans reinstated and continue to blame him for it — or that it works too well and damages the law in the longer run.

But the fix hasn’t taken the shine off the right’s schadenfreude party. If you were expecting conservatives to react to the Democrats’ mad scramble with anything less than unrestrained glee you … well, I guess you don’t understand the politics of Obamacare.

Everyone’s entitled to a little gloating, I guess. But I do think conservatives — who just last month spilled gallons of ink explaining why conservatism wasn’t in collapse — are engaging in a bit of premature celebration.

Obamacare has a real problem — an enrollment bottleneck created by Healthcare.gov’s failure — and the truth is the wave of cancellations wouldn’t have been easily brushed off even if the website had been working perfectly. Together they’ve driven some Democrats into conflict with one another.

But the conflict isn’t especially deep. Ask congressional Democrats whether they support Sen. Mary Landrieu’s bill to require insurance carriers to reinstate canceled policies, some will say no, some will say yes, some will have a different plan that they like better. Deep down they know that a ham-fisted solution shouldn’t become law, but they don’t feel like they can be caught supporting nothing either.

Ask them, by contrast, if they support the Affordable Care Act, or think it should be repealed, or regret their votes for it, or believe it can be fixed, or anything like that, and they’re unanimous.

You don’t have to squint very hard to notice that these divisions are about equal to but opposite the divisions within the Republican Party that resulted in a government shutdown last month. Every one of them agrees Obamacare is an excrescence that should be wiped off the books. But they had different ideas about how to respond to its imminent launch.

The difference is they chose the maximally self-destructive option. Maybe they wouldn’t have if they knew how badly the rollout would go. But that’s what they did. Conservative and moderate members openly attacked each other; grass-roots and establishment groups continue to do battle. Democrats, by contrast, haven’t followed their desperation into a burning furnace.

Not yet, anyhow.

We’ll know Democrats are warring with each other, or in full retreat from the law, when Harry Reid and Nancy Pelosi can’t restrain rank-and-file members from forcing legislative sabotage on Obama. That hasn’t happened yet. Obama’s administrative fix staved it off for the time being. But the scenario’s not outside the realm of possibility if the relaunch isn’t smooth, and enrollments fail to reach escape velocity.

#### The health care fix bill won’t be introduced in the Senate

**Bolton, 11/15/13** (Alexander, “Senate won't bring Upton fix to floor” The Hill, <http://thehill.com/homenews/senate/190431-senate-wont-bring-upton-fix-to-floor>)

Senate Democrats do not expect to vote on the ObamaCare fix the House approved on Friday with 39 Democratic votes, according to a senior Democratic aide.

The aide said there is not any pressure on the Senate Democratic leadership to bring the legislation sponsored by Rep. Fred Upton (R-Mich.) to the floor.

“There is a difference between constructive fixes designed to improve the law and bills that would gut it,” said the senior Democratic aide. “The Upton bill is the latter.”

Upton’s bill would allow insurance companies to offer the less expensive, limited plans that do not meet all of the more stringent requirements under ObamaCare.

#### The House is irrelevant to the disad – it passed the same sanctions package in July – the only relevant question is whether the Senate goes along with it

**Gearan, 11/13/13** (Anne, Washington Post, “White House works to delay Iran sanctions that could affect nuclear talks” <http://www.washingtonpost.com/world/national-security/white-house-works-to-delay-iran-sanctions-that-could-affect-nuclear-talks/2013/11/13/40b33804-4ca8-11e3-be6b-d3d28122e6d4_story.html>

The Democratic-led committee is considering new sanctions but had agreed to hold off while Kerry and other foreign ministers bargained with Iran last week. The latest sanctions package was overwhelmingly approved by the Republican-led House in July.

### 2nc PC key

#### **Fighting to defend the war power derails Obama’s international agenda**

Kriner 10 Douglas L. Kriner (assistant professor of political science at Boston University) “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69.

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.