# Aff vs. USC PV

# 1AC

### Same as Rd 7 – UMKC

# 2AC

### AT: Drone Shift

#### Non-unique---drone shift now because detention is already too difficult – plan can still solve legitimacy

David Ignatius 10, Washington Post, "Our default is killing terrorists by drone attack. Do you care?", December 2, www.washingtonpost.com/wp-dyn/content/article/2010/12/01/AR2010120104458.html

Every war brings its own deformations, but consider this disturbing fact about America's war against al-Qaeda: It has become easier, politically and legally, for the United States to kill suspected terrorists than to capture and interrogate them.¶ Predator and Reaper drones, armed with Hellfire missiles, have become the weapons of choice against al-Qaeda operatives in the tribal areas of Pakistan. They have also been used in Yemen, and the demand for these efficient tools of war, which target enemies from 10,000 feet, is likely to grow.¶ The pace of drone attacks on the tribal areas has increased sharply during the Obama presidency, with more assaults in September and October of this year than in all of 2008. At the same time, efforts to capture al-Qaeda suspects have virtually stopped. Indeed, if CIA operatives were to snatch a terrorist tomorrow, the agency wouldn't be sure where it could detain him for interrogation.¶ Michael Hayden, a former director of the CIA, frames the puzzle this way: "Have we made detention and interrogation so legally difficult and politically risky that our default option is to kill our adversaries rather than capture and interrogate them?"¶ It's curious why the American public seems so comfortable with a tactic that arguably is a form of long-range assassination, after the furor about the CIA's use of nonlethal methods known as "enhanced interrogation." When Israel adopted an approach of "targeted killing" against Hamas and other terrorist adversaries, it provoked an extensive debate there and abroad.¶ "For reasons that defy logic, people are more comfortable with drone attacks" than with killings at close range, says Robert Grenier, a former top CIA counterterrorism officer who now is a consultant with ERG Partners. "It's something that seems so clean and antiseptic, but the moral issues are the same."

#### No drone shift link---numbers don’t line up

Robert Chesney 11, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove?¶ Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] ¶ The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.

#### International actors care more about detention than drones for legitimacy

John Bellinger 13, partner in the international and national security law practices at Arnold & Porter LLP in DC, Adjunct Senior Fellow in International and National Security Law at the CFR, "Peter Baker on Mounting Criticisms of Obama Administration CT Policies", February 10, www.lawfareblog.com/2013/02/peter-baker-on-mounting-criticisms-of-obama-administration-ct-policies/

One of Baker’s more interesting observations — and one of the first times I have seen this in print, although it is a subject of some discussion among Bush Administration officials — is that civil liberties groups have taken it easy on the Obama Administration:¶ For four years, Mr. Obama has benefited at least in part from the reluctance of Mr. Bush’s most virulent critics to criticize a Democratic president. Some liberals acknowledged in recent days that they were willing to accept policies they once would have deplored as long as they were in Mr. Obama’s hands, not Mr. Bush’s.¶ “We trust the president,” former Gov. Jennifer Granholm of Michigan said on Current TV. “And if this was Bush, I think that we would all be more up in arms because we wouldn’t trust that he would strike in a very targeted way and try to minimize damage rather than contain collateral damage.”¶ Presumably for the same reason, European governments, who were unrelenting in their criticism of Guantanamo and other Bush Administration counterterrorism policies, have simply looked the other way as most of those same policies have continued (or, in the case of drones, dramatically increased). One does wonder whether the Nobel Prize Committee is suffering from at least a modicum of buyer’s remorse.¶ As the Obama Administration begins its second term, the big question now is whether the domestic and international criticism will snowball and, if so, how the Administration will respond.

### AT: Circumvention

#### The President would use the NSC

Harvey Rishikof 8, Professor of Law and Former Chair of the Department of National Security Strategy at the National War College and Kevin E Lunday, Captain and judge advocate in the US Coast Guard, "Due Process Is a Strategic Choice: Legitimacy and the Establishment of an Article III National Security Court", December 19, www.cwsl.edu/content/journals/Rishikof.pdf

The primary triggering mechanism for establishing NSC jurisdiction would fall within the discretion and control of the Attorney General. Through certification and charging provisions, the Attorney General could invoke NSC jurisdiction by certifying that persons in custody inside the United States are suspected of terrorist activity, or by charging persons in custody outside the United States with one or more specific terrorism offenses. However, the NSC would provide the government with a preferred venue to manage terrorism cases and proceedings, reducing the risk of the NSC being sidelined like the current ATRC.102 Further, the NSC could review challenges to the executive certification or charging decisions,103 transferring those cases in which the government has improperly attempted to employ the NSC for non-terrorism cases to the appropriate district court. This review power will reduce government incentives to dress up any case in terrorism clothing to obtain the advantages of the NSC procedures. The review power would not prevent the government from pursuing a terrorism matter in district court instead of the NSC. However, even without an executive action triggering NSC jurisdiction, if a district court determines that it is unable to adequately manage a terrorism case, it would be permitted to sua sponte transfer the case to NSC jurisdiction.

## CP

### 2AC Executive CP

#### Obama tried to the do the CP and Congress rolled it back

WSJ 10, Congress Bars Gitmo Transfers, online.wsj.com/article/SB10001424052748704774604576036520690885858.html

Congress on Wednesday passed legislation that would effectively bar the transfer of Guantanamo detainees to the U.S. for trial, rejecting pleas from Obama administration officials who called the move unwise.¶ A defense authorization bill passed by the House and Senate included the language on the offshore prison, which President Barack Obama tried unsuccessfully to close in his first year in office.¶ The measure for fiscal year 2011 blocks the Department of Defense from using any money to move Guantanamo prisoners to the U.S. for any reason. It also says the Pentagon can't spend money on any U.S. facility aimed at housing detainees moved from Guantanamo, in a slap at the administration's study of building such a facility in Illinois.¶ The Guantanamo ban was originally included in a broad appropriations bill earlier this month in the House, which died for unrelated reasons. At the time, Attorney General Eric Holder sent a letter to congressional leaders calling the ban "an extreme and risky encroachment on the authority of the executive branch to determine when and where to prosecute terrorist suspects."¶ Republicans and some Democrats say the prison at Guantanamo Bay, Cuba, which the government has spent millions of dollars upgrading, is the most secure place to keep terror suspects.¶ By banning transfers to the U.S., Congress is blocking trials of detainees in U.S. civilian courts. Proponents of the ban say military tribunals, not civilian courts, are the proper forum for bringing to justice suspects accused of trying to attack the U.S.¶ Those contentions grew stronger last month when a New York federal jury acquitted a former Guantanamo detainee of all but one count in the 1998 bombings of U.S. embassies in Africa. The defendant, Ahmed Ghailani, still faces 20 years to life in prison.¶ [2justice]¶ ERIC HOLDER¶ Mr. Obama originally pledged to close the prison by January 2010. That goal has foundered amid congressional opposition, and some 174 detainees remain at Guantanamo.¶ At a news conference Wednesday, the president expressed renewed desire to close Guantanamo, saying it has "become a symbol" and a recruiting tool for "al Qaeda and jihadists." "That's what closing Guantanamo is about," he said, adding: "I think we can do just as good of a job housing [detainees] somewhere else.

#### Future presidents prevent solvency

Harvard Law Review 12, "Developments in the Law: Presidential Authority," Vol. 125:2057, www.harvardlawreview.org/media/pdf/vol125\_devo.pdf

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. It remains to be seen, however, if this more restrained view of signing statements can remain intact, for **it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers**. To be sure, President Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations. Yet, in practice, this apparent constraint (however well intentioned) may amount to little more than voluntary self-restraint. 146 Without a formal institutional check, it is unclear what mechanism will prevent the next President (or President Obama himself) from reverting to the allegedly abusive Bush-era practices. 147 Only time, and perhaps public opinion, will tell.

#### Links to politics through bypassing debate – reporting requirements are statutes

Billy Hallowell 13, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

#### Internal processes destroy legitimacy

Kent Roach 13, Professor of Law and Prichard-Wilson Chair of Law and Public Policy at the University of Toronto, editor-in-chief of the Criminal Law Quarterly, “Managing secrecy and its migration in a post-9/11 world,” Ch 8 in Secrecy, National Security And The Vindication Of Constitutional Law, ed. David Cole, Federico Fabbrini, and Arianna Vedaschi, google books

Secret evidence is used by the US military and the CIA in decisions about targeted killing. Attorney General Holder has stressed that the evidence supporting such decisions is carefully reviewed within the government and has argued that the process satisfies due process because due process need not be judicial process.11 The problem with this approach is that it requires people to trust the government that the secret evidence has been thoroughly tested and vetted even though the executive has an incentive to err on the side of security. In contrast to the Israeli courts, American courts have taken a hands-off approach to review of targeted killing.12 The Israeli courts have in one prominent case reviewed targeted killings and have stressed the importance of both ex ante and ex post review within the military and involving the courts.13 To be sure, Israel has not gone as far as the United Kingdom in giving security cleared special advocates access to secret information, but it has provided a process that goes beyond the executive simply reviewing itself. The Obama administration does not seem to think that anyone could seriously challenge the legitimacy of their attempts to keep strategic military information behind targeted killings secret. In a sense, this is a return to a Cold War strategy where the need to preserve secrets from the other side was widely accepted. What has changed since 9;11, however, is that terrorism as opposed to invasion or nuclear war is widely accepted as the prime threat to national security. Terrorism is seen by many as a crime and the use of war-like secrecy is much more problematic in responding to a crime than to a threat of invasion or nuclear war. Hence, the legitimacy of the US’s use of secrets to kill people in its controversial war against al Qaeda has been challenged. It may become a liability in the US’s dealings with the Muslim world.

## K

### 2AC Legalism K (USC)

#### Academic debate regarding war powers is makes checks on excessive presidential authority effective---college students key

Kelly Michael Young 13, Associate Professor of Communication and Director of Forensics at Wayne State University, "Why Should We Debate About Restriction of Presidential War Powers", 9/4, public.cedadebate.org/node/13

Beyond its obviously timeliness, we believed debating about presidential war powers was important because of the stakes involved in the controversy. Since the Korean War, scholars and pundits have grown increasingly alarmed by the growing scope and techniques of presidential war making. In 1973, in the wake of Vietnam, Congress passed the joint War Powers Resolution (WPR) to increase Congress’s role in foreign policy and war making by requiring executive consultation with Congress prior to the use of military force, reporting within 48 hours after the start of hostiles, and requiring the close of military operations after 60 days unless Congress has authorized the use of force. Although the WPR was a significant legislative feat, 30 years since its passage, presidents have frequently ignores the WPR requirements and the changing nature of conflict does not fit neatly into these regulations. After the terrorist attacks on 9-11, many experts worry that executive war powers have expanded far beyond healthy limits. Consequently, there is a fear that continued expansion of these powers will undermine the constitutional system of checks and balances that maintain the democratic foundation of this country and risk constant and unlimited military actions, particularly in what Stephen Griffin refers to as a “long war” period like the War on Terror (http://www.hup.harvard.edu/catalog.php?isbn=9780674058286). In comparison, pro-presidential powers advocates contend that new restrictions undermine flexibility and timely decision-making necessary to effectively counter contemporary national security risks. Thus, a debate about presidential wars powers is important to investigate a number of issues that have serious consequences on the status of democratic checks and national security of the United States.¶ Lastly, debating presidential war powers is important because we the people have an important role in affecting the use of presidential war powers. As many legal scholars contend, regardless of the status of legal structures to check the presidency, an important political restrain on presidential war powers is the presence of a well-informed and educated public. As Justice Potter Stewart explains, “the only effective restraint upon executive policy and power…may lie in an enlightened citizenry – in an informed and critical public opinion which alone can protect the values of a democratic government” (http://www.law.cornell.edu/supct/html/historics/USSC\_CR\_0403\_0713\_ZC3.html). As a result, this is not simply an academic debate about institutions and powers that that do not affect us. As the numerous recent foreign policy scandals make clear, anyone who uses a cell-phone or the internet is potential affected by unchecked presidential war powers. Even if we agree that these powers are justified, it is important that today’s college students understand and appreciate the scope and consequences of presidential war powers, as these students’ opinions will stand as an important potential check on the presidency.

### AT: Posner/Vermeule

#### Posner and Vermeule are wrong---external checks are effective

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

Paulson ’ s genuflection and Obama ’ s reticence, I will contend here, are symptomatic of our political system ’ s operation rather than being aberration al . It is generally the case that even in the heart of crisis, and even on matters where executive competence is supposedly at an acme , legislators employ formal institutional powers not only to delay executive initiatives but also affirmatively to end presidential policies. 20 Numerous examples from recent events illustrate the point. Congressional adversaries of Obama, for instance, cut off his policy of emptying Guantánamo Bay via appropriations riders. 21 Deficit hawks spent 2011 resisting the President’s solutions to federal debt, while the President declined to short - circuit negotiations with unilateral action. 22 Even in military matters, a growing body of empirical research suggests Congress often successfully influences the course of overseas engagements to a greater degree than legal scholars have discerned or acknowledged. 23¶ That work suggests that the failure of absolute congressional control over military matters cannot be taken as evidence of “the inability of law to constrain the executive ” in more subtle ways (p 5). The conventional narrative of executive dominance , in other words, is at best incomplete and demands supplementing .¶ This Review uses The Executive Unbound as a platform to explore how the boundaries of discretionary executive action are established. As the controversial national security policies of the Bush administration recede in time, the issue of executive power becomes ripe for reconsideration. Arguments for or against binding the executive are starting to lose their partisan coloration. There is more room to investigate the dynamics of executive power in a purely positive fashion without the impinging taint of ideological coloration.¶ Notwithstanding this emerging space for analys i s, t here is still surprising inattention to evidence of whether the executive is constrained and to the positive question of how constraint works. The Executive Unbound is a significant advance because it takes seriously this second “ mechanism question. ” Future studies of the executive branch will ignore its i mportant and trenchant analysis at their peril. 24 Following PV ’ s lead, I focus on the descriptive , positive question of how the executive is constrained . I do speak briefly and in concluding to normative matters . B ut f irst and foremost, my arguments should be understood as positive and not normative in nature unless otherwise noted.¶ Articulating and answering the question “ W hat binds the executive ?” , The Executive Unbound draws a sharp line between legal and political constraints on discretion — a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand . While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/ politics dichotomy. ” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law ’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority. 25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

### No Impact

#### No biopower impact---US democratic system prevents genocide

Edward Ross Dickinson 4, Associate Professor, History Ph.D., U.C. Berkeley, Central European History, Vol. 37 No. 1, p. 34-36

And it is, of course, embedded in a broader discursive complex (institutions, professions, fields of social, medical, and psychological expertise) that pursues these same aims in often even more effective and inescapable ways.89 In short, the continuities between early twentieth-century biopolitical discourse and the practices of the welfare state in our own time are unmistakable.¶ Both are instances of the “disciplinary society” and of biopolitical, regulatory, social-engineering modernity, and they share that genealogy with more authoritarian states, including the National Socialist state, but also fascist Italy, for example. And it is certainly fruitful to view them from this very broad perspective. But that analysis can easily become superficial and misleading, because it obfuscates the profoundly different strategic and local dynamics of power in the two kinds of regimes. Clearly the democratic welfare state is not only formally but also substantively quite different from totalitarianism. Above all, again, it has nowhere developed the fateful, radicalizing dynamic that characterized National Socialism (or for that matter Stalinism), the psychotic logic that leads from economistic population management to mass murder. Again, there is always the potential for such a discursive regime to generate coercive policies.¶ In those cases in which the regime of rights does not successfully produce “health,” such a system can —and historically does— create compulsory programs to enforce it. But again, there are political and policy potentials and constraints in such a structuring of biopolitics that are very different from those of National Socialist Germany. Democratic biopolitical regimes require, enable, and incite a degree of self-direction and participation that is functionally incompatible with authoritarian or totalitarian structures. And this pursuit of biopolitical ends through a regime of democratic citizenship does appear, historically, to have imposed increasingly narrow limits on coercive policies, and to have generated a “logic” or imperative of increasing liberalization. Despite limitations imposed by political context and the slow pace of discursive change, I think this is the unmistakable message of the really very impressive waves of legislative and welfare reforms in the 1920s or the 1970s in Germany.90¶ Of course it is not yet clear whether this is an irreversible dynamic of such systems. Nevertheless, such regimes are characterized by sufficient degrees of autonomy (and of the potential for its expansion) for sufficient numbers of people that I think it becomes useful to conceive of them as productive of a strategic configuration of power relations that might fruitfully be analyzed as a condition of “liberty,” just as much as they are productive of constraint, oppression, or manipulation. At the very least, totalitarianism cannot be the sole orientation point for our understanding of biopolitics, the only end point of the logic of social engineering. ¶ This notion is not at all at odds with the core of Foucauldian (and Peukertian) theory. Democratic welfare states are regimes of power/knowledge no less than early twentieth-century totalitarian states; these systems are not “opposites,” in the sense that they are two alternative ways of organizing the same thing. But they are two very different ways of organizing it. The concept “power” should not be read as a universal stifling night of oppression, manipulation, and entrapment, in which all political and social orders are grey, are essentially or effectively “the same.” Power is a set of social relations, in which individuals and groups have varying degrees of autonomy and effective subjectivity. And discourse is, as Foucault argued, “tactically polyvalent.” Discursive elements (like the various elements of biopolitics) can be combined in different ways to form parts of quite different strategies (like totalitarianism or the democratic welfare state); they cannot be assigned to one place in a structure, but rather circulate. The varying possible constellations of power in modern societies create “multiple modernities,” modern societies with quite radically differing potentials.91

## DA

### 2AC CMR DA

#### Zero link---NSC wouldn’t affect CMR

Harvey Rishikof 8, Professor of Law and Former Chair of the Department of National Security Strategy at the National War College and Kevin E Lunday, Captain and judge advocate in the US Coast Guard, "Due Process Is a Strategic Choice: Legitimacy and the Establishment of an Article III National Security Court", December 19, www.cwsl.edu/content/journals/Rishikof.pdf

The involvement of an Article III court in review of actions traditionally reserved almost entirely to the discretion of the executive raises concerns about interference with the President’s constitutional commander-in-chief and foreign relations powers to direct military operations under the laws of war or the statutory authority to direct special activities such as covert actions.98 However, the executive’s authority is not plenary. Article I of the Constitution provides Congress with the power to make rules for capture on land and sea.99 Additionally, Congress is granted authority by statute to conduct general oversight of certain special activities.100 The NSC’s jurisdiction provides a constitutional balance between these grants of authority, without interfering with the President’s prerogative to direct military operations as commander-in-chief, nor Congress’ authority to make laws and provide oversight in order to ensure political accountability.101

#### Policy disagreements don’t spill over --- no turns case

Hansen 9 – Victor Hansen, Associate Professor of Law, New England Law School, Summer 2009, “SYMPOSIUM: LAW, ETHICS, AND THE WAR ON TERROR: ARTICLE: UNDERSTANDING THE ROLE OF MILITARY LAWYERS IN THE WAR ON TERROR: A RESPONSE TO THE PERCEIVED CRISIS IN CIVIL-MILITARY RELATIONS,” South Texas Law Review, 50 S. Tex. L. Rev. 617, p. lexis

According to Sulmasy and Yoo, these conflicts between the military and the Bush Administration are the latest examples of a [\*624] crisis in civilian-military relations. n32 The authors suggest the principle of civilian control of the military must be measured and is potentially violated whenever the military is able to impose its preferred policy outcomes against the wishes of the civilian leaders. n33 They further assert that it is the attitude of at least some members of the military that civilian leaders are temporary office holders to be outlasted and outmaneuvered. n34 If the examples cited by the authors do in fact suggest efforts by members of the military to undermine civilian control over the military, then civilian-military relations may have indeed reached a crisis. Before such a conclusion can be reached, however, a more careful analysis is warranted. We cannot accept at face value the authors' broad assertions that any time a member of the military, whether on active duty or retired, disagrees with the views of a civilian member of the Department of Defense or other member of the executive branch, including the President, that such disagreement or difference of opinion equates to either a tension or a crisis in civil-military relations. Sulmasy and Yoo claim there is heightened tension or perhaps even a crisis in civil-military relations, yet they fail to define what is meant by the principle of civilian control over the military. Instead, the authors make general and rather vague statements suggesting any policy disagreements between members of the military and officials in the executive branch must equate to a challenge by the military against civilian control. n35 However, until we have a clear understanding of the principle of civilian control of the military, we cannot accurately determine whether a crisis in civil-military relations exists. It is to this question that we now turn.

#### No impact – empirics prove

Feaver and Kohn 5 - Peter Feaver, professor of Political Science and Public Policy and the director of the Triangle Institute for Security Studies at Duke University, and Richard H. Kohn, Professor of History at the University of North Carolina, 2005, “The Gap: Soldiers, Civilians, and Their Mutual Misunderstanding,” in American Defense Policy, 2005 edition, ed. Paul J. Bolt, Damon V. Coletta, Collins G. Shackelford, p. 339

Concerns about a troublesome divide between the armed forces and the society they serve are hardly new and in fact go back to the beginning of the Republic. Writing in the 1950s, Samuel Huntington argued that the divide could best be bridged by civilian society tolerating, if not embracing, the conservative values that animate military culture. Huntington also suggested that politicians allow the armed forces a substantial degree of cultural autonomy. Countering this argument, the sociologist Morris Janowitz argued that in a democracy, military culture necessarily adapts to changes in civilian society, adjusting to the needs and dictates of its civilian masters.2 The end of the Cold War and the extraordinary changes in American foreign and defense policy that resulted have revived the debate. The contemporary heirs of Janowitz see the all volunteer military as drifting too far away from the norms of American society, thereby posing problems for civilian control. They make tour principal assertions. First, the military has grown out of step ideologically with the public, showing itself to be inordinately right-wing politically, and much more religious (and fundamentalist) than America as a whole, having a strong and almost exclusive identification with the Republican Party. Second, the military has become increasingly alienated from, disgusted with, and sometimes even explicitly hostile to, civilian culture. Third, the armed forces have resisted change, particularly the integration of women and homosexuals into their ranks, and have generally proved reluctant to carry out constabulary missions. Fourth, civilian control and military effectiveness will both suffer as the military—seeking ways to operate without effective civilian oversight and alienated from the society around it—loses the respect and support of that society. By contrast, the heirs of Huntington argue that a degenerate civilian culture has strayed so far from traditional values that it intends to eradicate healthy and functional civil-military differences, particularly in the areas of gender, sexual orientation, and discipline. This camp, too, makes four key claims. First, its members assert that the military is divorced in values from a political and cultural elite that is itself alienated from the general public. Second, it believes this civilian elite to be ignorant of, and even hostile to, the armed forces—eager to employ the military as a laboratory for social change, even at the cost of crippling its warfighting capacity. Third, it discounts the specter of eroding civilian control because it sees a military so thoroughly inculcated with an ethos of subordination that there is now too much civilian control, the effect of which has been to stifle the military's ability to function effectively Fourth, because support for the military among the general public remains sturdy, any gap in values is inconsequential. The problem, if anything, is with the civilian elite. The debate has been lively (and inside the Beltway, sometimes quite vicious), but it has rested on very thin evidence—(tunneling anecdotes and claims and counterclaims about the nature of civilian and military attitudes. Absent has been a body of systematic data exploring opinions, values, perspectives, and attitudes inside the military compared with those held by civilian elites and the general public. Our project provides some answers.

### Oversight = More Credibility

#### Stronger statutory checks on Presidential war powers increase America’s deterrence capabilities by providing credibility behind threats

Matthew C. Waxman 13, Professor of Law at Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power to Threaten War”, Forthcoming in Yale Law Journal, vol. 123 (2014), 8/25/2013, PDF

A second argument, this one advanced by some congressionalists, is that stronger legislative checks on presidential uses of force would improve deterrent and coercive strategies by making them more selective and credible. The most credible U.S. threats, this argument holds, are those that carry formal approval by Congress, which reflects strong public support and willingness to bear the costs of war; requiring express legislative backing to make good on threats might therefore be thought to enhance the potency of threats by encouraging the President to seek congressional authorization before acting.181 A frequently cited instance is President Eisenhower’s request (soon granted) for standing congressional authorization to use force in the Taiwan Straits crises of the mid- and late-1950s – an authorization he claimed at the time was important to bolstering the credibility of U.S. threats to protect Formosa from Chinese aggression.182 (Eisenhower did not go so far as to suggest that congressional authorization ought to be legally required, however.) “It was [Eisenhower’s] seasoned judgment … that a commitment the United States would have much greater impact on allies and enemies alike because it would represent the collective judgment of the President and Congress,” concludes Louis Fisher. “Single-handed actions taken by a President, without the support of Congress and the people, can threaten national prestige and undermine the presidency. Eisenhower’s position was sound then. It is sound now.”183 A critical assumption here is that legal requirements of congressional participation in decisions to use force filters out unpopular uses of force, the threats of which are unlikely to be credible and which, if unsuccessful, undermine the credibility of future U.S. threats.¶ A third view is that legal clarity is important to U.S. coercive and deterrent strategies; that ambiguity as to the President’s powers to use force undermines the credibility of threats. Michael Reisman observed, for example, in 1989: “Lack of clarity in the allocation of competence and the uncertain congressional role will sow uncertainty among those who depend on U.S. effectiveness for security and the maintenance of world order. Some reduction in U.S. credibility and diplomatic effectiveness may result.”184 Such stress on legal clarity is common among lawyers, who usually regard it as important to planning, whereas strategists tend to see possible value in “constructive ambiguity”, or deliberate fudging of drawn lines as a negotiating tactic or for domestic political purposes.185 A critical assumption here is that clarity of constitutional or statutory design with respect to decisions about force exerts significant effects on foreign perceptions of U.S. resolve to make good on threats, if not by affecting the substance of U.S. policy commitments with regard to force then by pointing foreign actors to the appropriate institution or process for reading them.

### 2AC Syria DA

#### Won’t pass – vote counts, GOP, public

David Smith 9/12, Lecturer at the United States Studies Centre and the School of Social and Political Sciences at the University of Sydney, PhD in political science from the University of Michigan, “Obama’s Syria strategy: the war he doesn't want,” http://www.businessspectator.com.au/article/2013/9/12/politics/obamas-syria-strategy-war-he-doesnt-want

At this point, it looks very unlikely that Obama could get the votes required in Congress to authorise military action in Syria. According to a useful chart from the Washington Post, 253 House members have indicated they are against a military strike while just 26 have said they are in favour of one. In the Senate, the tally is 40-23 against.¶ It is possible that Obama has reversed two years of profound reluctance to get involved in Syria. But it seems more likely that he would have known how difficult it would be to get a Syria resolution through a Congress which has tried to thwart nearly all of his initiatives. Congressional Republicans used to be reliably hawkish on foreign policy, but this is no longer the case with a Democratic president and an increasingly influential strand of thinking that sees military spending as just another part of government spending.¶ Above all, public opinion has been consistently against intervention in Syria. This is unsurprising after ten years of incredibly costly Middle Eastern wars which were also sold as being quick and cheap. Members of Congress have little incentive to support it. Obama, as a senator, would not have supported it.

#### Insiders prove no passage even if Russian plan falls through

John Bennett 9/11, Defense News, “Senior US Senators: Congress May Never Vote on Syria Strikes,” http://www.defensenews.com/article/20130911/DEFREG02/309110025/Senior-US-Senators-Congress-May-Never-Vote-Syria-Strikes

The US Senate is unlikely to vote on a resolution authorizing military force in Syria, even if a Russian plan to take control of Bashar al-Assad’s chemical weapons falls through, senior senators say.¶ The Senate Foreign Relations Committee moved at breakneck speed — while still on recess — to last week craft and approve a measure authorizing President Barack Obama to launch a limited military strike.¶ But with Obama during a primetime Tuesday address announcing he has asked congressional leaders in both chambers to delay a vote, some senators involved in the crafting of Syria force measures said Wednesday they doubt lawmakers will ever vote to approve military action.¶ “I think it’s going to be very, very quiet. Everyone has been holding their breath. Now there’s nothing for them to be doing,” Senate Armed Services Committee Ranking Member James Inhofe, R-Okla., told Defense News. “All these efforts … are kind of subsiding. Since the president has abandoned this [vote], I think it’s going to settle down and no one is going to be talking about it.”¶ Would either or both chambers likely vote on a Syria use-of-force measure should a Russian-offered plan to have Assad give up his weapons fall apart, and Obama decides to launch Tomahawk missile strikes?¶ “No, I don’t think so,” Inhofe said during a brief interview. “I think it goes away.”¶ SASC member Jeff Sessions, R-Ala., called the prospect for a vote “unlikely.”¶ “I think it’s very possible there will be no vote,” Sessions said. “I don’t think [Senate Majority Leader Harry] Reid is going to ask his people to vote if the president doesn’t want it.”¶ To that end, House Democrats left a classified Syria briefing earlier Wednesday and told reporters they believe a use-of-force measure would fail in their chamber.

#### PC can’t build support for Syria---their link ev is bad

Andy Kroll 9/11, reporter for Mother Jones, “On Syria Debate, Congress Shifts From Frenzied to Frozen,” http://www.motherjones.com/mojo/2013/09/congress-frozen-syria-obama-vote-bombing

On Tuesday night, President Obama took his case for bombing Syria to the American public, but he also kept open the possibility that US attacks could be averted if Bashar al-Assad's regime agrees to give up its chemical weapons. Obama asked lawmakers to delay a vote on whether to approve attacks on Syria, and just like that, the Syria debate in Congress went from frenzied to frozen. It's crickets on Capitol Hill.¶ Senate Majority Leader Harry Reid (D-Nev.) canceled the vote on Syria he was expected to schedule for this week. The Senate canceled an afternoon briefing on Syria. Lawmakers instead gathered on the US Capitol steps for a remembrance of the attacks of September 11, 2001, and trotted out onto House and Senate floors to opine on the budget, Obamacare, 9/11, and the Energy Savings and Industrial Competitiveness Act of 2013. On Syria, they mostly waited. "Everyone's just sitting around," says a Senate Democratic aide.¶ That's quite a change from the past week or so. To build support for bombing Syria, the White House threw practically every staffer and surrogate into the lobbying effort, briefing congressional Democrats and Republicans and trying mightily to convince skeptical lawmakers why they should vote yes on an authorization to use military force in Syria. The mighty American Israel Public Affairs Committee dispatched 300 members to the Hill to twist arms and convince lawmakers to support the attacks. By Monday, the president and members of the administration had met with some 85 senators and more than 165 House members, according to PBS NewsHour. It was an all-hands-on-deck effort—and it wasn't working.

#### Plan’s bipartisan---previous proposals prove support

Nick Sibilla 12, "Bipartisan effort to ban indefinite detention, amend the NDAA", May 18, www.constitutioncampaign.org/blog/?p=7479#.UjHhXz8uhuk

Democrats and Tea Party Republicans are advocating a new proposal to ban indefinite detention on American soil. After President Obama signed the National Defense Authorization Act (NDAA) last year, anyone accused of being a terrorist, committing any “belligerent act” or even providing “material support,” can now be detained indefinitely by the military without a trial. This includes American citizens.¶ Fortunately, a bipartisan coalition is working to stop the NDAA. Congressmen Adam Smith (D-WA), a Ranking Member of the House Armed Services Committee, and Justin Amash (R-MI), who Reason magazine called “the next Ron Paul,” have sponsored an amendment to the latest defense authorization bill, currently on the House floor.¶ If adopted, the Smith-Amash Amendment would make three significant changes to the NDAA. First, it would amend Section 1021 (which authorizes indefinite detention) to ensure that those detained will not be subject to military commissions, but civilian courts established under Article III of the Constitution. As Congressman Smith put it, this would “restore due process rights.”¶ Second, the Smith-Amash Amendment would ban “transfer to military custody:”¶ No person detained, captured, or arrested in the United States, or a territory or possession of the United States, may be transferred to the custody of the Armed Forces for detention…¶ Finally, their amendment would repeal Section 1022 of the NDAA, which mandates military custody for those accused of foreign terrorism.¶ Both Smith and Amash have criticized the NDAA. Amash blasted the NDAA as “one of the most anti-liberty pieces of legislation of our lifetime.” In a letter urging his Republican colleagues to support the amendment, Amash writes:¶ A free country is defined by the rule of law, not the government’s whim. Americans demand that we protect their right to a charge and trial.¶ Meanwhile, in an interview with The Hill, Smith was concerned about the potential abuses of power:¶ It is very, very rare to give that amount of power to the president [and] take away any person’s fundamental freedom and lock them up without the normal due process of law…Leaving this on the books is a dangerous threat to civil liberties.¶ The Smith-Amash Amendment is expected to be voted on later this week. So far, it has 60 co-sponsors in the House. Meanwhile, Senators Mark Udall (D-CO) and Patrick Leahy (D-VT) have introduced a similar bill in the Senate.

#### Energy floor debates pound the DA

Amy Harder 9/12, and Clare Foran, National Journal, "The Energy Debate That Wasn't", 2013, www.nationaljournal.com/daily/the-energy-debate-that-wasn-t-20130912?mrefid=mostViewed

The second day of the Senate's first floor debate on an energy bill in six years was marked by obstruction, opposition, and frustration.¶ Sen. David Vitter, R-La., held firm in his refusal to allow debate to move forward to an energy-efficiency bill until Senate leaders agree on a time to vote on his amendment related to President Obama's health care law. Vitter first interfered with the energy debate Wednesday afternoon, shortly after Senate Majority Leader Harry Reid, D-Nev., moved to the bill in place of the Syria resolution that was put on hold.¶ Vitter's stance put an uncontroversial measure with broad support on a difficult legislative obstacle course.¶ "Senators who have talked about energy policy for years and years now say they want to have their issues that are unrelated to energy advance today, even though they have the potential to undermine this bill," Senate Energy and Natural Resources Chairman Ron Wyden, D-Ore., said on the floor, showing clear frustration. "I don't know how that adds up, if you give a lot of speeches at home about sensible energy policy and then take steps to undermine it."¶ Wyden didn't name any names, but he didn't have to.¶ "Since they were all directed at my activity, I want to respond," said Vitter just moments after Wyden concluded his comments. "I have nothing against this bill, I applaud that work. I did hear a lot this summer—quite frankly, I didn't hear about this bill or any provision of this bill. But I'm not denigrating it."¶ Vitter isn't the only Republican seeking to pivot the debate. Senate Minority Leader Mitch McConnell, R-Ky., also filed an amendment to the energy bill seeking to delay a key part of Obamacare. He spoke about the amendment Thursday morning but didn't mention the energy bill at all.¶ A number of other Republican senators also used floor time to voice opposition to the health care law, including John Barrasso of Wyoming, Dan Coats of Indiana, and Jeff Flake of Arizona.¶ Among the GOP voices, Vitter's was the loudest. Whether senators will actually get to debate energy—even controversial issues like the Keystone XL pipeline and climate-change regulations—now hinges on whether Vitter either backs down from his amendment or comes to an agreement with Senate leaders on another path to vote on it down the road.¶ Even if a deal is reached with Vitter, more obstacles await. Sens. John Hoeven, R-N.D., and Mary Landrieu, D-La., introduced an amendment Thursday that would declare the Keystone pipeline to be in the national interest. A decision on a permit for the controversial project is still pending at the State Department.¶ On another thorny issue, Sens. Joe Donnelly, D-Ind., and Roy Blunt, R-Mo., introduced an amendment that would ban the Environmental Protection Agency from requiring costly carbon-capture and sequestration technology to be used in order to comply with climate-change regulations. The amendment would instead require the EPA to develop technology standards for different fuels and different sources of emissions.¶ Barrasso is also pushing an amendment to block the agency's upcoming climate rules unless they are approved by Congress. The EPA is expected to issue regulations limiting carbon emissions for new power plants very soon.

### AT: Cred Impact

#### Focus on credibility causes terrible policy---the aff's a better approach

Jonathan Mercer 8/28, 2013, associate professor of political science at the University of Washington in Seattle and a Fellow at the Center for International Studies at the London School of Economics. Bad Reputation, 28 August 2013, www.foreignaffairs.com/articles/139376/jonathan-mercer/bad-reputation

Even if Assad were so simpleminded, the administration’s critics are wrong to suggest that the president should have acted sooner to protect U.S. credibility. After the red line was first crossed, Obama could have taken the United States to war to prevent Assad from concluding that an irresolute Obama would not respond to any further attacks -- a perception on Syria’s part that seems to have now made a U.S. military response all but certain. But going to war to prevent a possible misperception that might later cause a war is, to paraphrase Bismarck, like committing suicide out of fear that others might later wrongly think one is dead.

It is also possible that the United States did not factor into Assad’s calculations. A few months before the United States invaded Iraq, Saddam Hussein’s primary concerns were avoiding a Shia rebellion and deterring Iran. Shortsighted, yes, but also a good reminder that although the United States is at the center of the universe for Americans, it is not for everyone else. Assad has a regime to protect and he will commit any crime to win the war. Finally, it is possible that Assad never doubted Obama’s resolve -- he just expects that he can survive any American response. After all, if overthrowing Assad were easy, it would already have been done.

Instead of worrying about U.S. credibility or the president’s reputation, the administration should focus on what can be done to reinforce the longstanding norm against the use of weapons of mass destruction.

#### Legitimacy is more important than resolve

Schwarz 7 senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, (Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 201)

The Administration insists that its plunge into torture, its lawless spying, and its lock-up of innocents have made the country safer. Beyond mere posturing, they provide little evidence to back up their claims. Executive unilateralism not only undermines the delicate balance of our Constitution, but also lessens our human liberties and hurts vital counterterrorism campaigns. How? Our reputation has always mattered. In 1607, Massachusetts governor John Winthrop warned his fellow colonists that because they were a "City on a Hill," "the eyes of all people are upon us."4 Thomas Jefferson began the Declaration of Independence by invoking the need for a "decent respect to the opinions of mankind:' In today's battle against stateless terrorists, who are undeterred by law, morality, or the mightiest military power on earth, our reputation matters greatly.¶ Despite its military edge, the United States cannot force needed aid and cooperation from allies. Indeed, our status as lone superpower means that only by persuading other nations and their citizens—that our values and interests align with theirs, and so merit support, can America maintain its influence in the world. Military might, even extended to the globe's corners, is not a sufficient condition for achieving America's safety or its democratic ideals at home. To be "dictatress of the world," warned John Quincy Adams in 1821, America "would be no longer the ruler of her own spirit." A national security policy loosed from the bounds of law, and conducted at the executive's discretion,

will unfailingly lapse into hypocrisy and mendacity that alienate our allies and corrode the vitality of the world's oldest democracy.5

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## AT: Syria

### No Cred Impact

#### Syria can’t solve cred

Steve Chapman 9/5/13, columnist and editorial writer for the Chicago Tribune, “War in Syria: The Endless Quest for Credibility,” http://reason.com/archives/2013/09/05/war-in-syria-the-endless-quest-for-credi

The United States boasts the most powerful military on Earth. We have 1.4 million active-duty personnel, thousands of tanks, ships and planes, and 5,000 nuclear warheads. We spend more on defense than the next 13 countries combined. Yet we are told we have to bomb Syria to preserve our credibility in world affairs.¶ Really? You'd think it would be every other country that would need to confirm its seriousness. Since 1991, notes University of Chicago security scholar John Mearsheimer, the U.S. has been at war in two out of every three years. If we haven't secured our reputation by now, it's hard to imagine we ever could.¶ On the surface, American credibility resembles a mammoth fortress, impervious to anything an enemy could inflict. But to crusading internationalists, both liberal and conservative, it's a house of cards: The tiniest wrong move, and it collapses.¶ In a sense, though, they're right. The U.S. government doesn't have to impress the rest of the world with its willingness to defend against actual attacks or direct threats. But it does have to continually persuade everyone that we will lavish blood and treasure for purposes that are irrelevant to our security.¶ Syria illustrates the problem. Most governments don't fight unless they are attacked or have dreams of conquest and expansion. War is often expensive and debilitating even for the winners, and it's usually catastrophic for losers. Most leaders do their best to avoid it.¶ So even though the Syrian government is a vicious, repressive dictatorship with a serious grudge against Israel, it has mostly steered clear of military conflict. Not since 1982 has it dared to challenge Israel on the battlefield. When Israeli warplanes vaporized a Syrian nuclear reactor in 2007, Bashar al-Assad did nothing. The risks of responding were too dire.¶ But the U.S. never faces such sobering considerations. We are more secure than any country in the history of the world. What almost all of our recent military interventions have in common is that they involved countries that had not attacked us: Libya, Iraq, Serbia, Haiti, Somalia, Panama, Grenada and North Vietnam.¶ With the notable exception of the Afghanistan invasion, we don't fight wars of necessity. We fight wars of choice.¶ That's why we have such an insatiable hunger for credibility. In our case, it connotes an undisputed commitment to go into harm's way even when -- especially when -- we have no compelling need to do so. But it's a sale we can never quite close.¶ Using force in Iraq or Libya provides no guarantee we'll do the same in Syria or Iran or Lower Slobbovia. Because we always have the option of staying out, there's no way to make everyone totally believe we'll jump into the next crisis.¶ The parallel claim of Washington hawks is that we have to punish Assad for using nerve gas, because otherwise Iran will conclude it can acquire nuclear weapons. Again, our credibility is at stake. But how could the Tehran regime draw any certain conclusions based on what happens in Syria?¶ Two American presidents let a troublesome Saddam Hussein stay in power, but a third one decided to take him out. George W. Bush tolerated Moammar Gadhafi, but Barack Obama didn't. Ronald Reagan let us be chased out of Lebanon, only to turn around and invade Grenada. If you've seen one U.S. intervention, you've seen one.¶ What should be plain to Iran is that Washington sees nuclear proliferation as a unique threat to its security, which Syria's chemical weapons are not. Just because we might let Assad get away with gassing his people doesn't mean we will let Iran acquire weapons of mass destruction that would be used only against other countries. Heck, we not only let Saddam get away with using chemical weapons against Iran -- we took his side.¶ Figuring out the U.S. government's future impulses is hard even for Americans. There's no real rhyme or reason. But because we're so powerful, other governments can ill afford to be wrong. What foreigners have to keep in the front of their minds is not our inclination to act but our capacity to act -- which remains unparalleled whatever we do in Syria.¶ Credibility is overrated. Sure, it's possible for hostile governments to watch us squabble over Syria and conclude that they can safely do things we regard as dangerous. But there are graveyards full of people who made that bet.

### PC Wrong

#### Reject journalists’ issue specific internals

Dickinson 9 (Matthew, professor of political science at Middlebury College and taught previously at Harvard University where he worked under the supervision of presidential scholar Richard Neustadt, 5/26, Presidential Power: A NonPartisan Analysis of Presidential Politics, “Sotomayor, Obama and Presidential Power,” <http://blogs.middlebury.edu/presidentialpower/2009/05/26/sotamayor-obama-and-presidential-power/>)

What is of more interest to me, however, is what her selection reveals about the basis of presidential power. Political scientists, like baseball writers evaluating hitters, have devised numerous means of measuring a president’s influence in Congress. I will devote a separate post to discussing these, but in brief, they often center on the creation of legislative “box scores” designed to measure how many times a president’s preferred piece of legislation, or nominee to the executive branch or the courts, is approved by Congress. That is, how many pieces of legislation that the president supports actually pass Congress? How often do members of Congress vote with the president’s preferences? How often is a president’s policy position supported by roll call outcomes? These measures, however, are a misleading gauge of presidential power – they are a better indicator of congressional power. This is because how members of Congress vote on a nominee or legislative item is rarely influenced by anything a president does. Although journalists (and political scientists) often focus on the legislative “endgame” to gauge presidential influence – will the President swing enough votes to get his preferred legislation enacted? – this mistakes an outcome with actual evidence of presidential influence. Once we control for other factors – a member of Congress’ ideological and partisan leanings, the political leanings of her constituency, whether she’s up for reelection or not – we can usually predict how she will vote without needing to know much of anything about what the president wants. (I am ignoring the importance of a president’s veto power for the moment.) Despite the much publicized and celebrated instances of presidential arm-twisting during the legislative endgame, then, most legislative outcomes don’t depend on presidential lobbying. But this is not to say that presidents lack influence. Instead, the primary means by which presidents influence what Congress does is through their ability to determine the alternatives from which Congress must choose. That is, presidential power is largely an exercise in agenda-setting – not arm-twisting. And we see this in the Sotomayer nomination. Barring a major scandal, she will almost certainly be confirmed to the Supreme Court whether Obama spends the confirmation hearings calling every Senator or instead spends the next few weeks ignoring the Senate debate in order to play Halo III on his Xbox. That is, how senators decide to vote on Sotomayor will have almost nothing to do with Obama’s lobbying from here on in (or lack thereof). His real influence has already occurred, in the decision to present Sotomayor as his nominee.

## AT: K

### Huq

#### Posner and Vermuele vastly overgeneralize --- law can effectively restrain the executive

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

The Executive Unbound paints a n image of executive discretion almost or completely unbridled by law or coequal branch. But PV also concede that “ the pre sident can exert control only in certain [policy] areas ” (p 59). 51 They give no account, however, of what limits a President ’ s discretionary actions. To remedy that gap, this Section explores how the President has been and continues to be hemmed in by Congress and law. My aim here is not to present a comprehensive account of law as a constraining mechanism. Nor is my claim that law is always effective. Both as a practical matter and as a result of administrative law doctrine, the executive has considerable a uthority to leverage ambiguities in statutory text into warrants for discretionary action. 52 Rather, my more limited aspiration here is to show that Congress and law do play a meaningful role in cabining executive discretion than The Executive Unbound credits . I start with Congress and then turn to the effect of statutory restrictions on the presidency.¶ Consider first a simple measure of Presidents ’ ability to obtain policy change : Do they obtain the policy changes they desire? Every President enters office with an agenda they wish to accomplish. 53 President Obama came into office, for example, promising health care reform, a cap - and - trade solution to climate change, and major immigration reform. 54 President George W. Bush came to the White House committed to educational reform, social security reform, and a new approach to energy issues. 55 One way of assessing presidential influence is by examining how such presidential agendas fare , and asking whet her congressional obstruction or legal impediments — which could take the form of existing laws that preclude an executive policy change or an absence of statutory authority for desired executive action — is correlated with presidential failure. Such a correlation would be prima facie evidence that institutions and laws play some meaningful role in the production of constraints on executive discretion. ¶ Both recent experience and long - term historical data suggest presidential agenda items are rarely achieved , and that legal or institutional impediments to White House aspirations are part of the reason . In both the last two presidencies, the White House obtained at least one item on its agenda — education for Bush and health care for Obama — but failed to secure othe rs in Congress . Such limited success is not new. His famous first hundred days notwithstanding, Franklin Delano Roosevelt saw many of his “ proposals for reconstruction [of government] . . . rejected outright. ” 56 Even in the midst of economic crisis, Congres s successfully resisted New Deal initiatives from the White House . This historical evidence suggests that the diminished success of presidential agendas cannot be ascribed solely to the narrowing scope of congressional attention in recent decades; it is a n older phenomenon. Nevertheless, in more recent periods, presidential agendas have shrunk even more . President George W. Bush ’ s legislative agenda was “ half as large as Richard Nixon ’ s first - term agenda in 1969 – 72, a third smaller than Ronald Reagan ’ s firs t - term agenda in 1981 – 84, and a quarter smaller than his father ’ s first - term agenda in 1989 – 92. ” 57 The White House not only cannot always get what it wants from Congress but has substantially downsized its policy ambitions.¶ Supplementing this evidence of pr esidential weakness are studies of the determinants of White House success on Capitol Hill . These find that “ presidency - centered explanations ” do little work. 58 Presidents ’ legislative agendas succeed not because of the intrinsic institutional characteristi cs of the executive branch, but rather as a consequence of favorable political conditions within the momentarily dominant legislative coalition. 59 Again, correlational evidence suggests that institutions and the legal frameworks making up the statutory status quo ante play a role in delimiting executive discretion.

#### Best recent scholarship and examples prove

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

There is some merit to this story. But in my view it again understates the observed effect of positive legal constraints on executive discretion. Recent scholarship, for example, has documented congressional influence on the shape of military policy via framework statutes . This work suggests Congress influences executive actions during military engagements through hearings and legislative proposals. 75 Consistent with this account, two legal scholars have recently offered a revisionist history of constitutional war powers in which “ Congress has been an active participant in setting the terms of battle, ” in part because “ congressional willingness to enact [ ] laws has only increased ” over time. 76 In the last decade, Congress has often taken the initiative on national security, such as enacting new statutes on military commissions in 2006 and 2009. 77 Other recent landmark security reforms, such as a 2004 statute restr ucturing the intelligence community, 78 also had only lukewarm Oval Office support. 79 Measured against a baseline of threshold executive preferences then , Congress has achieved nontrivial successes in shaping national security policy and institutions through both legislated and nonlegislated actions even in the teeth of White House opposition.

80¶ The same point emerges more forcefully from a review of our “ fiscal constitution. ” 81 Article I, § 8 of the Constitution vests Congress with power to “ lay and collect Tax es ” and to “ borrow Money on the credit of the United States, ” while Article I, § 9 bars federal funds from being spent except “ in Consequence of Appropriations made by Law. ” 82 Congress has enacted several framework statutes to effectuate the “ powerful limitations ” implicit in these clauses. 83 The resulting law prevents the President from repudiating past policy commitments (as Skowronek suggests) as well as imposing barriers to novel executive initiatives that want for statutory authorization . 84¶ Three statutes merit attention here. First, the Miscellaneous Receipts Act of 1849 85 requires that all funds “ received from customs, from the sales of public lands, and from all miscellaneous sources, for the use of the United States, shall be paid . . . into the treasur y of the United States. ” 86 It ensures that the executive cannot establish off - balance - sheet revenue streams as a basis for independent policy making. Second, the Anti - Deficiency Act, 87 which was first enacted in 1870 and then amended in 190 6 , 88 had the effect of cementing the principle of congressional appropriations control. 89 With civil and criminal sanctions, it prohibits “ unfunded monetary liabilities beyond the amounts Congress has appropriated, ” and bars “ the borrowing of funds by federal a gencies . . . in anticipation of future appropriations. ” 90 Finally, the Congressional Budget and Impoundment Control Act of 1974 91 (Impoundment Act) channels presidential authority to decline to expend appropriated funds. 92 It responded to President Nixon ’ s e xpansive use of impoundment. 93 Congress had no trouble rejecting Nixon ’ s claims despite a long history of such impoundments. 94 While the Miscellaneous Receipts Act and the Anti - Deficiency Act appear to have succeeded, the Impoundment Act has a more mixed rec ord. While the Supreme Court endorsed legislative constraints on presidential impoundment, 95 President Gerald Ford increased impoundments through creative interpretations of the law. 96 But two decades later, Congress concluded the executive had too little di scretionary spending authority and expanded it by statute. 97 ¶ Moreover, statutory regulation of the purse furnishes a tool for judicial influence over the executive. Judicial action in turn magnifies congressional influence. A recent study of taxation litiga tion finds evidence that the federal courts interpret fiscal laws in a more pro - government fashion during military engagements supported by both Congress and the White House than in the course of unilateral executive military entanglements. 98 Although the r esulting effect is hard to quantify, the basic finding of the study suggests that fiscal statutes trench on executive discretion not only directly, but also indirectly via judicially created incentives to act only with legislative endorsement. 99¶ To be sure, a persistent difficulty in debates about congressional efficacy, and with some of the claims advanced in The Executive Unbound , is that it is unclear what baseline should be used to evaluate the outcomes of executive - congressional struggles. What counts, that is, as a “win” and for whom? What, for example, is an appropriate level of legislative control over expenditures? In the examples developed in this Part , I have underscored instances in which a law has been passed that a President disagrees with in substantial part, and where there are divergent legislative preferences reflected in the ultimate enactment. I do not mean to suggest, however, that there are not alternative ways of delineating a baseline for analysis. 100¶ In sum, there is strong evidence that law and lawmaking institutions have played a more robust role in delimiting the bounds of executive discretion over the federal sword and the federal purse than The Executive Unbound intimates. Congress in fact impedes presidential agendas. The White House in practice cannot use presidential administration as a perfect substitute. Legislation implementing congressional control of the purse is also a significant, if imperfect, tool of legislative influence on the ground. This is true even when Presidents influence the budgetary agenda 101 and agencies jawbone their legislative masters into new funding. 102 If Congress and statutory frameworks seem to have such nontrivial effects on the executive ’ s choice set , this at minimum i mplies that the conditions in which law matters are more extensive than The Executive Unbound suggests and that an account of executive discretion that omits law and legal institutions will be incomplete .

### AT: Law Bad

#### Critical legal philosophy is non-empirical, cherry-picked garbage

John Stick 86, Assistant Professor of Law at Tulane University School of Law, “Can Nihilism Be Pragmatic?”, Harvard Law Review, Vol. 100, No. 2 (Dec., 1986), pp. 332-401, JSTOR

This Article examines the relationship between the critical legal nihilists and the philosophers they rely upon for support. The nihilists' use of philosophy is important, because their critique is at bottom conceptual and not empirical. Legal nihilists do not study the work of large numbers of practicing attorneys or judges to discover the extent of agreement about whether particular legal arguments are valid. Instead, they parse the words of theorists and appellate judges to discover contradictions and opposed values. This selective parsing of the language of a few theorists and judges (neglecting the hundreds of thousands of practicing attorneys) is itself far from adequate empirical technique. More important, the nihilists' leap from the general inconsistencies they discover to a claim that law does not follow standards of rationality is unconvincing without philosophical argument. Nihilists rarely attempt to supply that argument themselves; if they feel any need of further discussion they usually rely upon theorists outside the discipline of law.9 ¶ This Article demonstrates that the nihilists misuse much of the philosophy they attempt to appropriate. In order to focus the discussion, this Article concentrates on one comprehensive statement of nihilism and the major intellectual influences upon it. The best and most complete exposition of the nihilist critique of law was written by Joseph Singer in a recent article in the Yale Law Journal.10 His article is the most philosophically sophisticated and judicious work to date. Singer states that he relies heavily on the analysis of the philosophers Richard Bernstein, Michael Sandel, and Roberto Unger,11 but he acknowledges that he owes his greatest intellectual debt to Richard Rorty, 12 a scholar who identifies his own position with pragmatism. 13 I focus on the relationship between Singer and Rorty not only because Singer claims that Rorty has had the greatest influence on his thought, but also because Rorty is the closest in spirit to Singer.14 For example, Bernstein,15 Sandel,16 and Unger17 all allow rationality and shared values larger roles in political and moral argument than does Rorty. If Singer is too much of an irrationalist for Rorty, then a fortiori Singer is too much of an irrationalist for the others. 18