# 1

#### A. Interpretation – “War powers authority” is derived from a preexisting congressional statute – an “increase” in “restrictions” can only occur by means of statutory or judicial prohibition on the source Bradley, 2010

[Curtis A., Richard A. Horvitz Professor of Law and Professor of Public Policy Studies, Duke Law School, Harvard Journal of Law & Public Policy, Vol. 33 No. 1,

<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2730&context=faculty_scholarship>]

The scope of the President’s independent war powers is notoriously unclear, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.¶ 1¶ For the most part, the Supreme Court has also followed this¶ approach in deciding executive power issues relating to the¶ war on terror. In Hamdi v. Rumsfeld, for example, Justice¶ O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on¶ Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2¶ Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3 The Court’s decision in Boumediene v. Bush 4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus review in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detain ees.5¶ In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.¶ Statutory authority was also a central issue in the much‐¶ discussed Al‐Marri case in the Fourth Circuit.6¶ Although the Su‐¶ preme Court vacated the Fourth Circuit’s decision as moot, the¶ decision still provides an instructive example. Al‐Marri involved¶ a Qatari citizen, Ali Saleh Kahlah al‐Marri, who came to the¶ United States on September 10, 2001, and was later arrested and¶ charged with various counts of fraud.7¶ Shortly before al‐Marri’s¶ trial, President Bush designated him an enemy combatant, and¶ he was moved to military custody.8¶ As justification for this ac‐¶ tion, the Bush Administration alleged that al‐Marri was an al¶ Qaeda sleeper agent who had come to the United States to await¶ instructions to carry outfurther attacks after September 11.9 ¶ In a closely divided en banc ruling, the Fourth Circuit held¶ that the executive had the authority to detain al‐Marri but that¶ it needed to provide him with additional process by which he¶ could challenge his designation as an enemy combatant.10 The¶ Supreme Court granted review of the decision in December¶ 2008.11 When briefing the case for the Court, al‐Marri focused primarily on statutory arguments, saving a fallback constitu‐¶ tional argument forthe end of his brief.12¶

#### B. Violation:

#### The plan is an implicit delegation of “authority” – a topical plan must stamp the original state in order to “increase restrictions on” Cronogue, 2012

[Graham, Duke University School of Law, J.D. expected 2013; A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR, DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW [Vol. 22:377 2012] http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil

The AUMF’s broad “all necessary and appropriate force” language ¶ confers on the President complete Congressional authorization to wage war ¶ against the specified groups. First, the AUMF’s “all necessary and ¶ appropriate force” language mirrors that found in a declaration of war and, ¶ far from imposing any constraints, bolsters the President’s powers ¶ significantly.37 In Bas v. Tingy, the Court found that Congress could make ¶ narrow authorizations that are “limited in place, in objects, and in time.”38¶ Yet, the AUMF authorization is much broader than that typically found in a ¶ limited or quasi-war context where the President can only use certain ¶ armed forces against a specific type of target in a specified way.39 In the Quasi-War with France, for example, the President’s actions were limited to a specific place and type of enemy force.40 Indeed, the use of force was restricted to the high seas and armed French vessels.41 In these examples, ¶ the President was not authorized to use force in enemy ports or against ¶ many other members of the enemy’s military.42 In contrast, the AUMF does not explicitly limit where or what kind of force the President may ¶ use.43 Rather, it leaves this determination open to the President and merely ¶ names the class of targets.44¶ Second, the AUMF’s language illustrates congressional acquiescence ¶ or approval of broad presidential authority to use force. “[T]he enactment ¶ of legislation closely related to the question of the President’s authority in a ¶ particular case which evinces legislative intent to accord the President ¶ broad discretion may be considered to ‘invite’ ‘measures on independent ¶ presidential responsibility.’”45 The language in the AUMF is very similar to ¶ declarations of war and authorizations, in which presidents have exercised ¶ plenary power in determining the means and type of force.46 In these ¶ “perfect” wars, “all the members act[ed] under a general authority, and all ¶ the rights and consequences of war attach to their condition.”47 For ¶ instance, the Gulf of Tonkin Resolution allowed the President to “take all ¶ necessary measures” and was used as broad authority to wage combat and ¶ detain enemies.48 Similarly, the AUMF allows for the use of “all necessary ¶ and appropriate force.” Presidents have commonly exercised broad ¶ authority under similar grants of power, and Congress’s failure to act in ¶ limiting these powers here suggests acquiescence to this interpretation.49¶ More convincingly than in Dames & Moore, where Congress failed to ¶ object to executive action, there are numerous comments from the ¶ legislature that the President should have broad authority under the ¶ AUMF.50 Given these statements and Congress’s ample opportunity to ¶ limit the scope or type of force, Congress must have acquiesced to past ¶ executive practice and interpretation. Furthermore, the plurality in Hamdi also treated the AUMF as a broad ¶ authorization to use force.51 In upholding the President’s power to detain ¶ enemy combatants, the Court leaned heavily on the similarities between the ¶ current authorization and that of broad authorizations characteristic of full ¶ wars.52 The Court found that the President had many of the same powers ¶ usually granted to the President by war declarations.53 Then, it looked to ¶ past exercises of presidential power to find what actions Congress would ¶ have implicitly authorized.54 Specifically, the Court found that detention ¶ was as “fundamental and accepted an incident to war as to be an exercise of ¶ the ‘necessary and appropriate force’ Congress has authorized the President ¶ to use.”55¶ Given that the AUMF does not contain any specific limitation on the ¶ type of force and that the language describing this force is hashed in the ¶ extremely broad terms, the AUMF must grant the President significant ¶ authority to act. This authority is certainly still constrained by the laws of ¶ war and other independent constitutional checks on the Executive, but it ¶ appears that Congress delegated the President extremely broad powers. ¶ Finally, based on the plurality’s opinion in Hamdi, the exact scope of these ¶ powers will be interpreted in light of past actions by the Executive but still ¶ remains far from clear.56¶ D. Where? ¶ Another significant issue not addressed by the AUMF is where this ¶ “force” may be applied. Again, the text of the statute offers little guidance, ¶ as it does not mention any geographic limitation. The statute does confirm ¶ the existence of a threat to American citizens at home and abroad.57 Of ¶ course, one plausible reading is that there is no limitation whatsoever. ¶ Under this reading, if an organization that satisfies the 9/11 requirement is ¶ in the United States or in a foreign country, the President is always ¶ authorized to use force against that target. Given the President’s duty to protect Americans and the context in ¶ which the AUMF was passed, the AUMF seemingly authorizes force at home. The AUMF passed after an attack on American soil, and the United ¶ States seemed in a very real sense part of the theater of war. Furthermore, ¶ force under the AUMF is designed to “prevent any future acts of ¶ international terrorism against the United States” and its citizens at home.58¶ Since al-Qaeda could have small cells in the United States, a territorial ¶ limitation precluding force at home might hamstring this objective. Despite ¶ these factors, the plurality in Hamdi limited its holding to apply the AUMF ¶ to an American citizen captured in the traditional battlefield.59 However, it ¶ seems that the need to detain enemy combatants picked up on the foreign ¶ battlefield and prevent them from engaging in conflict is at least as strong ¶ as when the enemy is in the United States.60 Later, the Court in Padilla¶ upheld the application of the AUMF to an American citizen captured on ¶ American soil, suggesting the AUMF should apply at home.61¶ The true difficulty with the AUMF’s geographical limitation comes ¶ when the organization or person is in another country. The AUMF does ¶ authorize actions against “nations,” so it clearly is not limited to domestic ¶ threats. However, what happens if the target is in a state that is not an ¶ eligible target? This issue implicates fundamental questions of sovereignty ¶ that have become especially important in the case of targeted killings in ¶ Pakistan and Yemen. Despite the importance of this issue, the AUMF ¶ remains silent on this point. ¶ II. THE IMPORTANCE OF CONGRESSIONAL AUTHORIZATION ¶ In order to evaluate the significance of the AUMF, we must first ¶ determine whether the President actually needs authorization to defend the ¶ United States against these terrorist threats or if he can use his inherent ¶ constitutional authority to accomplish the same goal. The President’s ¶ inherent powers as Commander in Chief are at their height during times of ¶ war and emergency. Therefore, I will first examine the question of “were ¶ we at war.” In light of this answer and the President’s inherent authority, I ¶ will look at whether the AUMF provides any benefits in the prosecution of ¶ this conflict. A. Were We at War? ¶ The text of the AUMF confers on the President strong authorization to ¶ combat a category of enemies for an undefined period of time and in an unspecified location. His powers are much broader than that typically ¶ authorized in limited or quasi-wars. Moreover, the President has ordered ¶ transnational air strikes, electronic surveillance, detentions, and military ¶ invasions pursuant to his powers under the AUMF.62 Yet, the AUMF is not ¶ a formal declaration of war and its targets are not all states or state actors. ¶ This absence of a formal declaration might suggest that we are not in a ¶ state of war. However, if the United States was not in a state of war with alQaeda, the President’s inherent authority to act might be severely limited, ¶ making the AUMF an essential component to the use of force. ¶ The Court held in the Prize cases that a “state of actual war may exist ¶ without any formal declaration of it by either party; and this is true of both ¶ a civil and a foreign war.”63 Rather, a state of war can exist de facto.64 In ¶ the Prize cases, the Court considered President Lincoln’s order of a ¶ blockade against the South “official and conclusive evidence . . . that a ¶ state of war existed which demanded and authorized a recourse to such a ¶ Here, President Bush proclaimed that al-Qaeda’s attacks on American ¶ soil were “acts of war.”69 Even prior to September 11, al-Qaeda had ¶ attacked American embassies, ships, and military bases on several ¶ occasions, leading President Clinton to declare a state of armed conflict ¶ against al-Qaeda.70 But on September 11, 2001, the conflict escalated ¶ dramatically. Al-Qaeda inflicted massive casualties against American ¶ civilians, caused catastrophic economic damage, and fundamentally altered¶ measure.”65 In addition to the President’s declaration, the Court found that ¶ the Queen of England’s proclamation of neutrality after the firing on Fort ¶ Sumter was also adequate evidence of war.66 The Court acknowledged its ¶ deference to the President’s characterization of the conflict and ¶ classification of the enemy as “belligerents.”67 Thus, the President’s ¶ characterization of the conflict and the actions of the enemy can create a ¶ state of war even absent congressional action.68¶ America’s security and foreign policy goals. The President has framed the ¶ conflict as a war and the subsequent invasions, detentions, and killings ¶ confirm this view. These actions as well as the ongoing threat from alQaeda elevate the conflict to a de facto state of war. ¶ It is important to note, however, that the Prize cases dealt with a ¶ defensive war during a national crisis; the confederate rebels severely ¶ threatened the territorial integrity of the United States.71 In the immediate ¶ aftermath of 9/11 and given the ease with which foreign militants can ¶ inflict damage across state borders, the United States could probably claim ¶ that actions at home and overseas were part of a defensive war. Though the ¶ Prize cases should authorize the executive actions immediately following ¶ the attack, it is not clear whether they would authorize executive action ¶ today.72 With the death of the 9/11 mastermind and increased security ¶ measures, actions against al-Qaeda are looking less defensive and more ¶ offensive. Furthermore, the passage of time has made the scenario seem ¶ less like the emergency that required rapid executive action. For these ¶ reasons, it is unclear whether the United States today is actually in a ¶ defensive war with al-Qaeda under the Prize cases framework.73¶ B. Importance of Congressional Authorization¶ Though the President’s inherent authority to act in times of emergency ¶ and war can arguably make congressional authorization of force ¶ unnecessary, it is extremely important for the conflict against al-Qaeda and ¶ its allies. First, as seen above, the existence of a state of war or national ¶ emergency is not entirely clear and might not authorize offensive war ¶ anyway. Next, assuming that a state of war did exist, specific congressional authorization would further legitimate and guide the executive branch in the prosecution of this conflict by setting out exactly what Congress authorizes and what it does not. Finally, Congress should specifically set out what the President can and cannot do to limit his discretionary authority and prevent adding to the gloss on executive power. ¶ Even during a state of war, a congressional authorization for conflict ¶ that clearly sets out the acceptable targets and means would further ¶ legitimate the President’s actions and help guide his decision making ¶ during this new form of warfare. Under Justice Jackson’s framework from ¶ Youngstown, presidential authority is at its height when the Executive is acting pursuant to an implicit or explicit congressional authorization.74 In ¶ this zone, the President can act quickly and decisively because he knows ¶ the full extent of his power.75 In contrast, the constitutionality of ¶ presidential action merely supported by a president’s inherent authority ¶ exists in the “zone of twilight.”76 Without a congressional grant of power, ¶ the President’s war actions are often of questionable constitutionality ¶ because Congress has not specifically delegated any of its own war powers ¶ to the executive.77¶ This problem forces the President to make complex judgments ¶ regarding the extent and scope of his inherent authority. The resulting ¶ uncertainty creates unwelcome issues of constitutionality that might hinder ¶ the President’s ability to prosecute this conflict effectively. In timesensitive and dangerous situations, where the President needs to make splitsecond decisions that could fundamentally impact American lives and ¶ safety, he should not have to guess at the scope of his authority. Instead, ¶ Congress should provide a clear, unambiguous grant of power, which ¶ would mitigate many questions of authorization. Allowing the President to ¶ understand the extent of his authority will enable him to act quickly, ¶ decisively but also constitutionally. ¶ Finally, a grant or denial of congressional authorization will allow ¶ Congress to control the “gloss” on the executive power. There is ¶ considerable tension between the President’s constitutional powers as ¶ Commander in Chief and Congress’s war making powers.78 This tension is ¶ not readily resolved simply by looking at the Constitution.79 Instead courts look to past presidential actions and congressional responses when evaluating the constitutionality of executive actions.80 Indeed Justice ¶ Frankfurter noted in Youngstown that “a systematic, unbroken, executive ¶ practice, long pursued to the knowledge of the Congress and never before ¶ questioned . . . may be treated as a gloss on ‘executive Power’ vested in the ¶ President by § 1 of Art. II.”81 Thus, congressional inaction can be deemed as implicit delegation of war making power to the executive.82 Whether the United States is in a state of war or not, an authorization ¶ of force provides legitimacy and clarity to the war effort. If the President ¶ acts pursuant to such an authorization his authority is at its height; ¶ consequently, he can operate with greater certainty that his actions are ¶ constitutional.83 Absent such a declaration, the President’s power is much less clear. While the President has the authority to frame the conflict and he might still be able to act pursuant to his inherent powers, he is operating in ¶ the zone of twilight.84 Congressional authorizations remove this uncertainty by stamping specific acts with congressional approval or disapproval. This ¶ process also allows Congress to exert control over what the President can do in the future and prevents the “gloss” that comes from congressional ¶ acquiescence.85

#### Vote to require a statutory source:

#### Stabilizes topical authority and both restriction mechanisms – best chance of predictable aff limits and complementary neg ground

#### pleas for reasonability just warrant precision – only check on bi-directionality and Commander-in-Chief affs

Colby P. Horowitz 2013 “CREATING A MORE MEANINGFUL ¶ DETENTION STATUTE: LESSONS LEARNED ¶ FROM HEDGES V. OBAMA,” FORDHAM L.R. Vol. 81, http://fordhamlawreview.org/assets/pdfs/Vol\_81/Horowitz\_April.pdf

Thus, there at least two ways to interpret section 1021 under Justice ¶ Jackson’s framework. The government believes that section 1021 places ¶ the executive firmly in Zone 1. It has argued on appeal in Hedges that ¶ section 1021 is “an essentially verbatim affirmation by Congress of the ¶ Executive Branch’s interpretation of the AUMF.”335 This is supported by ¶ the government’s 2009 brief to the D.C. District Court, which is almost ¶ identical to the description of detention authority in section 1021.336 If ¶ section 1021 places the President in Zone 1, he has clear statutory authorization and does not need to rely on his general Commander-in-Chief powers (which courts view more narrowly).337 Additionally, in Zone 1, any ¶ ambiguities or vague terms in the statute might actually expand the President’s authority.338

338. See Chesney, supra note 33, at 792–93 (explaining that some observers view ambiguities in detention statutes as constituting “an implied delegation of authority to the executive to provide whatever further criteria may be required”).

# 2

#### Budget negotiations and short debt ceiling will pass now- avoids a U.S. default

**Daily News, 10-10** (Republicans blink over US shutdown?, October 10, 2013, <http://india.nydailynews.com/business/f9d620ca63c2e3fec88bb24ed5f86214/republicans-blink-over-us-shutdown>, F.A.B)

Just a week away from a looming debt default deadline amid a federal shut down, Republicans are reported to have warmed to the idea of a short-term increase in the country's borrowing limit.¶ Key Republican leaders, who had earlier linked passage of a spending bill and raising the US debt ceiling to dumping or delaying President Barack Obama's signature healthcare law, were also said to be ready to abandon the idea and instead are scrambling for a fallback strategy.¶ The development came Wednesday as conservative Republicans and leaders of the Republican controlled House prepared for their first meeting Thursday with Obama since the government shutdown began ten days ago.¶ Paul Ryan, 2012 Republican vice presidential candidate and chairman of the House Budget Committee, has outlined a plan to extend the nation's borrowing limit for four to six weeks, paired with a framework for broader deficit-reduction talks, the Wall Street Journal reported.¶ The greater the spending reduction the talks produced, the longer the next extension of the debt ceiling would be under Ryan's plan outlined Wednesday to fellow conservatives, it said.¶ Ryan's proposal for a short-term debt-limit increase drew broad support from conservatives at the Capitol Hill meeting, the Journal reported citing lawmakers who attended.¶ According to Washington Post Republican Party leaders, now widely acknowledge that their effort to kill Obama care by forcing a government shutdown has been a **failure** and they are now looking for a way out of the impasse.¶ Instead, they are regrouping for a longer battle over the health-care law, the influential daily said. They also are trying to refocus the upcoming debt-ceiling showdown on fiscal issues, including entitlements and tax reform.¶ Obama had invited the entire House Republican caucus to the White House as part of a series of meetings with legislators, but Republicans are sending only 18 members representing the party leadership and committee chairmen to¶ Thursday's meeting.¶ "It is our hope that this will be a constructive meeting and that the president finally recognizes Americans expect their leaders to be able to sit down and resolve their differences," an aide of House speaker John Boehner said in a statement.

#### B) Plan ends Obama’s credibility with Congress --- cause stronger GOP pushback on the debt ceiling

Seeking Alpha 9/10/13 (“Syria Could Upend Debt Ceiling Fight”, <http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight>)

Unless President Obama can totally change a reluctant public's perception of another Middle-Eastern conflict, it seems unlikely that he can get 218 votes in the House, though he can probably still squeak out 60 votes in the Senate. This defeat would be totally unprecedented as a President has never lost a military authorization vote in American history. To forbid the Commander-in-Chief of his primary power renders him all but impotent. At this point, a rebuff from the House is a 67%-75% probability.¶ I reach this probability by looking within the whip count. I assume the 164 declared "no" votes will stay in the "no" column. To get to 218, Obama needs to win over 193 of the 244 undecided, a gargantuan task. Within the "no" column, there are 137 Republicans. Under a best case scenario, Boehner could corral 50 "yes" votes, which would require Obama to pick up 168 of the 200 Democrats, 84%. Many of these Democrats rode to power because of their opposition to Iraq, which makes it difficult for them to support military conflict. The only way to generate near unanimity among the undecided Democrats is if they choose to support the President (recognizing the political ramifications of a defeat) despite personal misgivings. The idea that all undecided Democrats can be convinced of this argument is relatively slim, especially as there are few votes to lose. In the best case scenario, the House could reach 223-225 votes, barely enough to get it through. Under the worst case, there are only 150 votes. Given the lopsided nature of the breakdown, the chance of House passage is about one in four.¶ While a failure in the House would put action against Syria in limbo, I have felt that the market has overstated the impact of a strike there, which would be limited in nature. Rather, investors should focus on the profound ripple through the power structure in Washington, which would greatly impact impending battles over spending and the debt ceiling.¶ Currently, the government loses spending authority on September 30 while it hits the debt ceiling by the middle of October. Markets have generally felt that Washington will once again strike a last-minute deal and avert total catastrophe. Failure in the Syrian vote could change this. For the Republicans to beat Obama on a President's strength (foreign military action), they will likely be emboldened that they can beat him on domestic spending issues.¶ Until now, consensus has been that the two sides would compromise to fund the government at sequester levels while passing a $1 trillion stand-alone debt ceiling increase. However, the right wing of Boehner's caucus has been pushing for more, including another $1 trillion in spending cuts, defunding of Obamacare, and a one year delay of the individual mandate. Already, Conservative PACs have begun airing advertisements, urging a debt ceiling fight over Obamacare. With the President rendered hapless on Syria, they will become even more vocal about their hardline resolution, setting us up for a showdown that will rival 2011's debt ceiling fight.¶ I currently believe the two sides will pass a short-term continuing resolution to keep the government open, and then the GOP will wage a massive fight over the debt ceiling. While Obama will be weakened, he will be unwilling to undermine his major achievement, his healthcare law. In all likelihood, both sides will dig in their respective trenches, unwilling to strike a deal, essentially in a game of chicken. If the House blocks Syrian action, it will take America as close to a default as it did in 2011. Based on the market action then, we can expect massive volatility in the final days of the showdown with the Dow falling 500 points in one session in 2011.¶ As markets panicked over the potential for a U.S. default, we saw a massive risk-off trade, moving from equities into Treasuries. I think there is a significant chance we see something similar this late September into October. The Syrian vote has major implications on the power of Obama and the far-right when it comes to their willingness to fight over the debt ceiling. If the Syrian resolution fails, the debt ceiling fight will be even worse, which will send equities lower by upwards of 10%. Investors must be prepared for this "black swan" event.¶ Looking back to August 2011, stocks that performed the best were dividend paying, less-cyclical companies like Verizon (VZ), Wal-Mart (WMT), Coca-Cola (KO) and McDonald's (MCD) while high beta names like Netflix (NFLX) and Boeing (BA) were crushed. Investors also flocked into treasuries despite default risk while dumping lower quality bonds as spreads widened. The flight to safety helped treasuries despite U.S. government issues. I think we are likely to see a similar move this time.¶ Assuming there is a Syrian "no" vote, I would begin to roll back my long exposure in the stock market and reallocate funds into treasuries as I believe yields could drop back towards 2.50%. Within the stock market, I think the less-cyclical names should outperform, making utilities and consumer staples more attractive. For more tactical traders, I would consider buying puts against the S&P 500 and look toward shorting higher-beta and defense stocks like Boeing and Lockheed Martin (LMT). I also think lower quality bonds would suffer as spreads widen, making funds like JNK vulnerable. Conversely, gold (GLD) should benefit from the fear trade.¶ I would also like to address the potential that Congress does not vote down the Syrian resolution. First, news has broken that Russia has proposed Syria turn over its chemical stockpile. If Syria were to agree (Syria said it was willing to consider), the U.S. would not have to strike, canceling the congressional vote. The proposal can be found here. I strongly believe this is a delaying tactic rather than a serious effort. In 2005, Libya began to turn over chemical weapons; it has yet to complete the hand-off. Removing and destroying chemical weapons is an exceptionally challenging and dangerous task that would take years, not weeks, making this deal seem unrealistic, especially because a cease-fire would be required around all chemical facilities. The idea that a cease-fire could be maintained for months, essentially allowing Assad to stay in office, is hard to take seriously. I believe this is a delaying tactic, and Congress will have to vote within the next two weeks.¶ The final possibility is that Democrats back their President and barely ram the Syria resolution through. I think the extreme risk of a full-blown debt stand-off to dissipate. However, Boehner has promised a strong fight over the debt limit that the market has largely ignored. I do believe the fight would still be worse than the market anticipates but not outright disastrous. As such, I would not initiate short positions, but I would trim some longs and move into less cyclical stocks as the risk would still be the debt ceiling fight leading to some drama not no drama.¶ Remember, in politics everything is connected. Syria is not a stand-alone issue. Its resolution will impact the power structure in Washington. A failed vote in Congress is likely to make the debt ceiling fight even worse, spooking markets, and threatening default on U.S. obligations unless another last minute deal can be struck.

#### Obama pressure is key to debt ceiling passage:

Milbank 9-27-2013

Dana is a Washington Post Columnist, “Obama Should Pivot to Dubya’s Playbook,” <http://www.washingtonpost.com/opinions/dana-milbank-obama-should-try-pivoting-to-george-bushs-playbook/2013/09/27/c72469f0-278a-11e3-ad0d-b7c8d2a594b9_story.html>

If President Obama can stick to his guns, he will win his October standoff with Republicans.¶ That’s an awfully big “if.”¶ Obama gave a rousing speech in suburban Washington, in defense of Obamacare, on the eve of its implementation. “We’re now only five days away from finishing the job,” he told the crowd.¶ But before he had even left the room, his administration let slip that it was delaying by a month the sign-up for the health-care exchanges for small businesses. It wasn’t a huge deal, but it was enough to trample on the message the president had just delivered.¶ Throughout his presidency, Obama has had great difficulty delivering a consistent message. Supporters plead for him to take a position — any position — and stick with it. His shifting policy on confronting Syria was the most prominent of his vacillations, but his allies have seen a similar approach to the Guantanamo Bay prison, counterterrorism and climate change. Even on issues such as gun control and immigration where his views have been consistent, Obama has been inconsistent in promoting his message. Allies are reluctant to take risky stands, because they fear that Obama will change his mind and leave them standing alone.¶ Now come the budget showdowns, which could define the rest of his presidency. Republican leaders are trying to shift the party’s emphasis from the fight over a government shutdown to the fight over the debt-limit increase, where they have more support. A new Bloomberg poll found that Americans, by a 2-to-1 margin, disagree with Obama’s view that Congress should raise the debt limit without any conditions.¶ But Obama has a path to victory. That poll also found that Americans think lawmakers should stop trying to repeal Obamacare. And that was before House Republicans dramatically overplayed their hand by suggesting that they’ll allow the nation to default if Obama doesn’t agree to their laundry list of demands, including suspending Obamacare, repealing banking reforms, building a new oil pipeline, easing environmental regulations, limiting malpractice lawsuits and restricting access to Medicare.¶ To beat the Republicans, Obama might follow the example of a Republican, George W. Bush. Whatever you think of what he did, he knew how to get it done: by simplifying his message and repeating it, ad nauseam, until he got the result he was after.¶ Obama instead tends to give a speech and move along to the next topic. This is why he is forever making “pivots” back to the economy, or to health care. But the way to pressure Congress is to be President One Note.¶ In the debt-limit fight, Obama already has his note: He will not negotiate over the full faith and credit of the United States. That’s as good a theme as any; it matters less what the message is than that he delivers it consistently.¶ The idea, White House officials explained to me, is to avoid getting into a back-and-forth over taxes, spending and entitlement programs. “We’re right on the merits, but I don’t think we want to argue on the merits,” one said. “Our argument is not that our argument is better than theirs; it’s that theirs is stupid.”¶ This is a clean message: Republicans are threatening to tank the economy — through a shutdown or, more likely, through a default on the debt — and Obama isn’t going to negotiate with these hostage-takers.¶ Happily for Obama, Republicans are helping him to make the case by being publicly belligerent. After this week’s 21-hour speech on the Senate floor by Sen. Ted Cruz (R-Tex.), the publicity-seeking Texan and Sen. Mike Lee (R-Utah) objected to a bipartisan request to move a vote from Friday to Thursday to give House Republicans more time to craft legislation avoiding a shutdown. On the Senate floor, Sen. Bob Corker (R-Tenn.) accused them of objecting because they had sent out e-mails encouraging their supporters to tune in to the vote on Friday. The Post’s Ed O’Keefe caught Cruz “appearing to snicker” as his colleague spoke — more smug teenager than legislator.¶ Even if his opponents are making things easier for him, Obama still needs to stick to his message. As in Syria, the president has drawn a “red line” by saying he won’t negotiate with those who would put the United States into default. If he retreats, he will embolden his opponents and demoralize his supporters.

#### Failure to raise the debt ceiling causes a DEPRESSION:

Jeff Cox, 10/3/2013 (staff writer, “First a default, then a depression? Some think so”

<http://www.cnbc.com/id/101084623>, Accessed 10/3/2013, rwg)

Traders work the floor on the NYSE the first day of the government shutdown.¶ Damage from a U.S. credit default would be more than bad public relations—it could affect everyone from bankers to pensioners to holders of supposedly sacrosanct money market funds.¶ In a research note analyzing the various consequences of a debt default, banking analyst Dick Bove pointed to a variety of areas:¶ Money market funds, which would "break the buck" and deliver negative returns; banks, which would not be able to lend because of the plunging value of the debt securities they own; and Social Security recipients and pensioners, for whom there would be a shrinking pool of funds, also because of the declining value of Treasurys, which are heavily owned by SS funds and institutional retirement plans.¶ Indeed, dismissal of the government shutdown as a threat to markets has turned to dismay over the potential of a debt default that could have far worse consequences.¶ The Treasury Department is raising serious concerns regarding a possible U.S default. Michael Feroli, JPMorgan, shares his concerns for the economy.¶ For the first three days of the shutdown, equity market prices experienced just a mild net selloff while bond yields held tight.¶ Thursday brought a change to that trend, though, as investors heeded a dire message from President Barack Obama, who intimated in a CNBC interview Wednesday that Wall Street was taking the crisis too lightly.¶ Consequently, stocks sold off sharply and the Treasury Department warned of the dire consequences that might result from a full-blown debt default.¶ Picking up on that message, Bove said the situation could be more dramatic: A Depression that would cause severe and lasting economic damage.¶ "The devastation to the United States would be so severe that it would take decades to recover from the Depression caused by a default and the attendant dumping of trillions of dollars of U.S. Treasury securities on the global financial markets," said Bove, vice president of equity research at Rafferty Capital Markets.

#### **Global economic collapse causes multiple scenarios for nuclear conflict:**

Friedberg and Schoenfeld 8

(Aaron, professor of politics and international relations at Princeton University's Woodrow Wilson School and Gabriel, senior editor of Commentary, is a visiting scholar at the Witherspoon Institute in Princeton, N.J., October 21, 2008, Wall Street Journal, “The Dangers of a Diminished America”, <http://online.wsj.com/article/SB122455074012352571.html>, June 27, 2012) ALK

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures. As for our democratic friends, the present crisis comes when many European nations are struggling to deal with decades of anemic growth, sclerotic governance and an impending demographic crisis. Despite its past dynamism, Japan faces similar challenges. India is still in the early stages of its emergence as a world economic and geopolitical power. What does this all mean? There is no substitute for America on the world stage. The choice we have before us is between the potentially disastrous effects of disengagement and the stiff price tag of continued American leadership.

# 3

#### COUNTERPLAN: The President of the United States should issue an Executive Order committing the executive branch to Solicitor General representation and advance consultation with the Office of Legal Counsel over decisions regarding indefinite detention. The Department of Justice officials involved should state that the President of the United States lacks authority to indefinitely detail individuals arrested by the U.S. government. The Executive Order should also require written publication of Office of Legal Counsel opinions. The counterplan solves through DOJ adjudication—pre-commitment gives it precedent.

**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.

#### Presumptively binding opinions maintain OLC cred 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.

#### Executive flexibility key to prevent extinction

Yoo 2/1/12 (American attorney, law professor, and author. He served as a political appointee, the Deputy Assistant US Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration. “War Powers Belong to the President”¶ Posted Feb 1, 2012,¶ <http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president>, KB)

A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy.¶ The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

# ADV 1

#### No spillover between areas of commitments

Paul K. MacDonald 11, Assistant Professor of Political Science at Williams College, and Joseph M. Parent, Assistant Professor of Political Science at the University of Miami, Spring 2011, “Graceful Decline?: The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4, p. 7-44

Second, pessimists overstate the extent to which a policy of retrenchment can damage a great power's capabilities or prestige. Gilpin, in particular, assumes that a great power's commitments are on equal footing and interdependent. In practice, however, great powers make commitments of varying degrees that are functionally independent of one another. Concession in one area need not be seen as influencing a commitment in another area.25 Far from being perceived as interdependent, great power commitments are often seen as being rivalrous, so that abandoning commitments in one area may actually bolster the strength of a commitment in another area. During the Korean War, for instance, President Harry Truman's administration explicitly backed away from total victory on the peninsula to strengthen deterrence in Europe.26 Retreat in an area of lesser importance freed up resources and signaled a strong commitment to an area of greater significance.

#### No impact to credibility

Stephen M. Walt 11, the Robert and Renée Belfer professor of international relations at Harvard University, December 5, 2011, “Does the U.S. still need to reassure its allies?,” online: <http://walt.foreignpolicy.com/posts/2011/12/05/us_credibility_is_not_our_problem>

A perennial preoccupation of U.S. diplomacy has been the perceived need to reassure allies of our reliability. Throughout the Cold War, U.S. leaders worried that any loss of credibility might cause dominoes to fall, lead key allies to "bandwagon" with the Soviet Union, or result in some form of "Finlandization." Such concerns justified fighting so-called "credibility wars" (including Vietnam), where the main concern was not the direct stakes of the contest but rather the need to retain a reputation for resolve and capability. Similar fears also led the United States to deploy thousands of nuclear weapons in Europe, as a supposed counter to Soviet missiles targeted against our NATO allies.¶ The possibility that key allies would abandon us was almost always exaggerated, but U.S. leaders remain overly sensitive to the possibility. So Vice President Joe Biden has been out on the road this past week, telling various U.S. allies that "the United States isn't going anywhere." (He wasn't suggesting we're stuck in a rut, of course, but saying that the imminent withdrawal from Iraq doesn't mean a retreat to isolationism or anything like that.)¶ There's nothing really wrong with offering up this sort of comforting rhetoric, but I've never really understood why U.S. leaders were so worried about the credibility of our commitments to others. For starters, given our remarkably secure geopolitical position, whether U.S. pledges are credible is first and foremost a problem for those who are dependent on U.S. help. We should therefore take our allies' occasional hints about realignment or neutrality with some skepticism; they have every incentive to try to make us worry about it, but in most cases little incentive to actually do it.

#### Friendly democracies can decipher between good and bad US norms, and authoritarian nations don’t care either way

John O. McGinnis 7, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

#### Human Rights Cred is irrelevant — public opinion, global norms, and NGO networks outweigh US policy

Andrew Moravcsik 5, PhD and a Professor of Politics and International Affairs at Princeton, 2005, "The Paradox of U.S. Human Rights Policy," American Exceptionalism and Human Rights, http://www.princeton.edu/~amoravcs/library/paradox.pdf

It is natural to ask: What are the consequences of U.S. "exemptionalism” and noncompliance? International lawyers and human rights activists regularly issue dire warnings about the ways in which the apparent hypocrisy of the United States encourages foreign governments to violate human rights, ignore international pressure, and undermine international human rights institutions. In Patricia Derian's oft-cited statement before the Senate in I979: "Ratification by the United States significantly will enhance the legitimacy and acceptance of these standards. It will encourage other countries to join those which have already accepted the treaties. And, in countries where human rights generally are not respected, it will aid citizens in raising human rights issues.""' One constantly hears this refrain. Yet there is little empirical reason to accept it. Human rights norms have in fact spread widely without much attention to U.S. domestic policy. In the wake of the "third wave" democratization in Eastern Europe, East Asia, and Latin America, government after government moved ahead toward more active domestic and international human rights policies without attending to U.S. domestic or international practice." The human rights movement has firmly embedded itself in public opinion and NGO networks, in the United States as well as elsewhere, despite the dubious legal status of international norms in the United States. One reads occasional quotations from recalcitrant governments citing American noncompliance in their own defense-most recently Israel and Australia-but there is little evidence that this was more than a redundant justification for policies made on other grounds. Other governments adhere or do not adhere to global norms, comply or do not comply with judgments of tribunals, for reasons that seem to have little to do with U.S. multilateral policy.

**We’ll adapt to warming**

Hendrick **Tennekes 8**, former director of research at the Netherlands’ Royal National Meteorological Institute, 7-15-2008, <http://climaterealists.com/index.php/forum/?id=1554>

“Fortunately**, the time rate of climate change is slow compared to the rapid evolution of our institutions and societies. There is sufficient time for adaptation.** We should monitor the situation both globally and locally, but up to **now global climate change does not cause severe problems requiring immediate emission reductions. Successive IPCC reports have presented no scientific basis for dire warnings concerning climate collapse**. Local and regional problems with shorter time scales deserve priority. They can be managed professionally, just as the Dutch seem to do.” The so-called scientific basis of the climate problem is within my professional competence as a meteorologist. It is my professional opinion that **there is no evidence at all for catastrophic global warming**. It is likely that **global temperatures will rise a little**, much as IPCC predicts, **but** there is a growing body of evidence that the errant behavior of **the Sun may cause some cooling** in the foreseeable future.

# ADV 2

#### No one models US courts

Mila Versteeg 13, Associate Professor at the University of Virginia School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations

Unsurprisingly, attempting to gauge one constitution’s “influence” on another involves various conceptual and methodological challenges. To illustrate, a highly generic constitution may be generic because others have followed its lead, because it has modeled others, or simply by coincidence. That said, if two constitutions are becoming increasingly dissimilar, by definition, one cannot be following the other. That is, neither is exerting influence on the other (at least not in a positive way).

This is the phenomenon we observed in comparing the U.S. Constitution to the rest of the world; based on the rights index, the U.S. has become less similar to the world since 1946 and, with a current index of 0.30, is less similar now than at any point during the studied period. This phenomenon has occurred even among current American allies; among countries in regions with close cultural and historic ties to the U.S. (namely, Latin America and Western Europe); and among democracies. Only among common law countries is constitutional similarity higher than it was after World War II, but even that similarity has decreased since the 1960s.

Rights provisions are not the only constitutional elements that have lost favor with the rest of the world; structural provisions pioneered by American constitutionalism—such as federalism, presidentialism, and judicial review—have also been losing their global appeal.

For instance, in the early 20th century, 22 percent of constitutions provided for federalistic systems, while today, just 12 percent do.

A similar trend has occurred for presidentialism, another American innovation. Since the end of World War II, the percentage of countries employing purely presidential systems has declined, mainly in favor of mixed systems, which were a favorite of former Soviet bloc countries.

Finally, though judicial review is not mentioned in the U.S. Constitution, it has proved the most popular American structural innovation. But though the popularity of judicial review in general has exploded over the past six decades, most countries have opted for the European style of review (which designates a single, constitutional court which alone has the power to nullify laws inconsistent with the constitution) over the American model (in which all courts are empowered to strike unconstitutional laws). In 1946, over 80 percent of countries exercised American-style constitutional review; today, fewer than half do.

Reasons for the Decline

It appears that several factors are driving the U.S. Constitution’s increasing atypicality. First, while in 2006 the average national constitutions contained 34 rights (of the 60 we identify), the U.S. Constitution contains relatively few—just 21—and the rights it does contain are often themselves atypical.

Just one-third of constitutions provide for church and state separation, as does the U.S. Establishment Clause, and only 2 percent of constitutions (including, e.g., Mexico and Guatemala) contain a “right to bear arms.” Conversely, the U.S. Constitution omits some of the most globally popular rights, such as women’s rights, the right to social security, the right to food, and the right to health care.

These peculiarities, together with the fact that the U.S. Constitution is both old and particularly hard to amend, have led some to characterize the Constitution as simply antiquated or obsolete.

#### Stability increasing

DoD July 2013, Department of Defense, July 2013, "Report on¶ Progress Toward Security and¶ Stability in Afghanistan," http://www.defense.gov/pubs/Section\_1230\_Report\_July\_2013.pdf¶

The conflict in Afghanistan has shifted into a fundamentally new phase. For the past 11 years, ¶ the United States and our coalition partners have led the fight against the Taliban, but now ¶ Afghan forces are conducting almost all combat operations. The progress made by the ¶ International Security Assistance Force (ISAF)-led surge over the past three years has put the ¶ Government of the Islamic Republic of Afghanistan (GIRoA) firmly in control of all of ¶ Afghanistan’s major cities and 34 provincial capitals and driven the insurgency into the ¶ countryside. ISAF’s primary focus has largely transitioned from directly fighting the insurgency ¶ to training, advising and assisting the Afghan National Security Forces (ANSF) in their efforts to ¶ hold and build upon these gains, enabling a U.S. force reduction of roughly 34,000 personnel—¶ half the current force in Afghanistan—by February 2014. ¶ As agreed by President Obama and President Karzai at their January 2013 meeting in ¶ Washington, D.C., and in line with commitments made at the Lisbon and Chicago NATO ¶ summits, "Milestone 2013" was announced on June 18, 2013, marking ISAF’s official transition ¶ to its new role. The ANSF has grown to approximately 96 percent of its authorized end-strength ¶ of 352,000 personnel and is conducting almost all operations independently. As a result, ISAF ¶ casualties are lower than they have been since 2008. The majority of ISAF bases has been ¶ transferred to the ANSF or closed (although most large ISAF bases remain), and construction of¶ most ANSF bases is complete. Afghanistan’s populated areas are increasingly secure; the ANSF ¶ has successfully maintained security gains in areas that have transitioned to Afghan lead ¶ responsibility. To contend with the continuing Taliban threat, particularly in rural areas, the ¶ ANSF will require training and key combat support from ISAF, including in extremis close air ¶ support, through the end of 2014.

#### Great power cooperation is far more likely --- they will also prevent a civil war

Hadar 11—former prof of IR at American U and Mount Vernon-College. PhD in IR from American U (1 July 2011, Leon, Saving U.S. Mideast Policy, http://nationalinterest.org/commentary/saving-us-policy-the-mideast-5556)

Indeed, contrary to the warning proponents of U.S. military intervention typically express, the withdrawal of American troops from Iraq and Afghanistan would not necessarily lead to more chaos and bloodshed in those countries. Russia, India and Iran—which supported the Northern Alliance that helped Washington topple the Taliban—and Pakistan (which once backed the Taliban) all have close ties to various ethnic and tribal groups in that country and now have a common interest in stabilizing Afghanistan and containing the rivalries.

#### No modeling---their evidence is delusional

Eric Black 12, former reporter for the Star Tribune and Twin Cities blogger, Some ideas to limit the ‘supremacy’ of the U.S. Supreme Court, 11/27/12, www.minnpost.com/eric-black-ink/2012/11/some-ideas-limit-supremacy-us-supreme-court

It seems to be part of our national DNA. We see ourselves as so unlike the rest of the world that we have developed a semi-religious belief in what we call “American exceptionalism.” Maybe the upside is some kind of boost to our collective self-esteem. But one of the downsides is a reluctance to look around the world and see if anyone (especially not France) has a good idea from which we might benefit.

Especially on democracy. We see ourselves as the world’s model for democracy and the “rule of law.” We expect others to copy us, although they have long since stopped doing so with reference to the specifics of how to design a government. We grumble a good deal about the breakdowns in our system, but we are not much open to ideas for improving it.

University of Minnesota political scientist Lisa Hilbink, whose specialties include comparative constitutional systems around the world, said that basically, since the end of World War II, most of the world outside of Latin America came to the conclusion that the U.S. system was “pretty crazy.”

#### Countries don't model the US for multiple reasons that the aff doesn't deal with---every region has different models to look to

Andrew Moravcsik 5, Professor of Politics at Princeton, Newsweek, p. Lexis

The truth is that Americans are living in a dream world. Not only do others not share America's self-regard, they no longer aspire to emulate the country's social and economic achievements. The loss of faith in the American Dream goes beyond this swaggering administration and its war in Iraq. A President Kerry would have had to confront a similar disaffection, for it grows from the success of something America holds dear: the spread of democracy, free markets and international institutions--globalization, in a word. Countries today have dozens of political, economic and social models to choose from. Anti-Americanism is especially virulent in Europe and Latin America, where countries have established their own distinctive ways--none made in America. Futurologist Jeremy Rifkin, in his recent book "The European Dream," hails an emerging European Union based on generous social welfare, cultural diversity and respect for international law--a model that's caught on quickly across the former nations of Eastern Europe and the Baltics. In Asia, the rise of autocratic capitalism in China or Singapore is as much a "model" for development as America's scandal-ridden corporate culture. "First we emulate," one Chinese businessman recently told the board of one U.S. multinational, "then we overtake." Many are tempted to write off the new anti-Americanism as a temporary perturbation, or mere resentment. Blinded by its own myth, America has grown incapable of recognizing its flaws. For there is much about the American Dream to fault. If the rest of the world has lost faith in the American model--political, economic, diplomatic--it's partly for the very good reason that it doesn't work as well anymore. AMERICAN DEMOCRACY: Once upon a time, the U.S. Constitution was a revolutionary document, full of epochal innovations--free elections, judicial review, checks and balances, federalism and, perhaps most important, a Bill of Rights. In the 19th and 20th centuries, countries around the world copied the document, not least in Latin America. So did Germany and Japan after World War II. Today? When nations write a new constitution, as dozens have in the past two decades, they seldom look to the American model. When the soviets withdrew from Central Europe, U.S. constitutional experts rushed in. They got a polite hearing, and were sent home. Jiri Pehe, adviser to former president Vaclav Havel, recalls the Czechs' firm decision to adopt a European-style parliamentary system with strict limits on campaigning. "For Europeans, money talks too much in American democracy. It's very prone to certain kinds of corruption, or at least influence from powerful lobbies," he says. "Europeans would not want to follow that route." They also sought to limit the dominance of television, unlike in American campaigns where, Pehe says, "TV debates and photogenic looks govern election victories." So it is elsewhere. After American planes and bombs freed the country, Kosovo opted for a European constitution. Drafting a post-apartheid constitution, South Africa rejected American-style federalism in favor of a German model, which leaders deemed appropriate for the social-welfare state they hoped to construct. Now fledgling African democracies look to South Africa as their inspiration, says John Stremlau, a former U.S. State Department official who currently heads the international relations department at the University of Witwatersrand in Johannesburg: "We can't rely on the Americans." The new democracies are looking for a constitution written in modern times and reflecting their progressive concerns about racial and social equality, he explains. "To borrow Lincoln's phrase, South Africa is now Africa's 'last great hope'." Much in American law and society troubles the world these days. Nearly all countries reject the United States' right to bear arms as a quirky and dangerous anachronism. They abhor the death penalty and demand broader privacy protections. Above all, once most foreign systems reach a reasonable level of affluence, they follow the Europeans in treating the provision of adequate social welfare is a basic right. All this, says Bruce Ackerman at Yale University Law School, contributes to the growing sense that American law, once the world standard, has become "provincial." The United States' refusal to apply the Geneva Conventions to certain terrorist suspects, to ratify global human-rights treaties such as the innocuous Convention on the Rights of the Child or to endorse the International Criminal Court (coupled with the abuses at Abu Ghraib and Guantanamo) only reinforces the conviction that America's Constitution and legal system are out of step with the rest of the world.

#### Afghanistan is stabilizing

Fite et al 12 (Brandon Fite, Varun Vira, Erin Fitzgerald, a report of the csis burke chair in strategy, “Competition in Afghanistan, Central Asia, and Pakistan”, 3/13, http://csis.org/files/publication/120312\_Iran\_Chapter\_X\_AfPakCentAsia\_AHC.pdf)

There are some positive signs, ISAF has achieved tactical successes in the south, clearing and holding much of the former Taliban heartland – and they are unlikely to lose this territory in the near term. By 2014 it is probable that much of the country outside of Kabul will still have nonexistent, inefficient, or corrupt governance – but a number of good programs are in place working on this, and progress is being made. The Afghan economy, while deeply troubled, is also making progress. Perhaps for reasons such as this, the Afghan government decided to reject a Memorandum of Understanding on military cooperation proposed by Iran.

#### China will get countries on board to stabilize the region

Reuters 12 (Myra MacDonald, “Amid Afghan gloom, a glimmer of hope on regional front”, 3/12, http://blogs.reuters.com/pakistan/2012/03/03/amid-afghan-gloom-a-glimmer-of-hope-on-regional-front/)

China, whose help has long been sought by the administration of President Barack Obama to stabilise Afghanistan and Pakistan, hosted a meeting in Beijing at the end of last month in which the three countries pledged to support an Afghan-led process of reconciliation and to work together to accommodate each others’ concerns, a foreign ministry statement quoted by the China Daily said. “Analysts spoke highly of the significance of the dialogue,” the China Daily added, “which marked the beginning of new process for countries in the region to tackle problems by themselves.” Given Pakistan’s own near-reverence for China, Beijing is in a strong position to encourage Islamabad/Rawalpindi to play a positive role. It has significant economic stakes in Afghanistan and Pakistan; it has shown impatience in the past if its own interests are threatened by militants, but does not have the same ideological opposition to Islamists abroad, maintained, at least until recently, by the United States, prioritising stability above all. That makes it a potentially strong and pragmatic partner in helping to shepherd a political settlement.

#### Regional politics have changed – cooperation is more likely than proxy war

Reuters 12 (Myra MacDonald, “Amid Afghan gloom, a glimmer of hope on regional front”, 3/12, http://blogs.reuters.com/pakistan/2012/03/03/amid-afghan-gloom-a-glimmer-of-hope-on-regional-front/)

ISTANBUL PROCESS Of the other regional powers with a stake in Afghanistan, Russia has been working on building up the role of the Shanghai Cooperation Organization (SCO) — which also includes China and Central Asia states. While supporting full membership for Pakistan of the SCO, Russia also has also been able to draw in India, with which it has ties which long predate their more recent association as BRIC economies. It was during an SCO meeting in Yekaterinburg, Russia in 2009that the leaders of India and Pakistan held their first talks since the November 2008 attack on Mumbai by Pakistan-based militants. And Iran, which has the potential to act as a spoiler to U.S. plans in Afghanistan if there is any spillover of its nuclear dispute, held its own trilateral meeting with Afghanistan and Pakistan in Islamabad last month. Foreign ministers from countries involved in Afghanistan, including those with troops there and regional powers, will also meet in Kabul in June to follow up on the so-called Istanbul Process – a commitment to regional cooperation launched at an international conference in Turkey last year. In short, the faultlines which led to Russia, Iran and India backing the then Northern Alliance in Afghanistan in a proxy war with Pakistan in the 1990s, are far more fluid today than they were then. And while the often tedious business of international diplomacy rarely makes headlines, it has some hope for success if nothing else but because all countries involved have an interest in Afghan stability.

#### No Indo-Pak War – International pressures

Dhanda 11 [Suresh Dhanda, Department of Political Science, S.A.Jain College,, Haryana, India, International Affairs and Global Strategy www.iiste.org ISSN 2224-574X (Paper) ISSN 2224-8951 (Online) Vol 2, 2011, “Dangers of Missile Race in South Asia: an India-Pakistan Perspective” http://www.iiste.org/Journals/index.php/IAGS/article/view/1065/985 SS]

Fourthly, India and Pakistan will face international opprobrium if they opt to deploy nuclear weapons. Although the international community may have reluctantly accepted their possession of nuclear weapons, the transition to operational deployments will likely lead to sanctions and isolation. This factor is unique to South Asia and constrains the implementation of deterrence strategies by Pakistan and India. For example, during the Kargil conflict, reports that both countries had activated and deployed their nuclear missile forces triggered intense international pressure on both countries.6 National actions, such as signaling, that play a role in deterrence strategy may thus be constrained by international pressure. In contrast, offensive conventional force deployments do not seem to engender the same level of concern in the international community.

# S

#### Courts can’t enforce the plan

**Katyal 2006** – debate rockstar, JD from Yale, Saunders Professor of National Security Law at Georgetown (10/26, Neal, Yale Law Journal, “Toward Internal Separation of Powers”, http://yalelawjournal.org/the-yale-law-journal-pocket-part/executive-power/toward-internal-separation-of-powers/)

CONCLUSION America faces a choice. It can either take its chances with an extremely powerful executive branch and the attendant risks that the courts will underreact and overreact, or it can harken back to a tradition of divided government that has served our country well. September 11 did change everything, but it is up to us to figure out how to translate the ideas of divided government into a modern age in which Presidents must act quickly to avoid calamity.

Courts, of course, are not unaware that a trend toward greater executive power in this time of crisis exists. As a result, one can expect that as the executive becomes more monolithic, courts will function as a sort of check. But judicial checking is bound to fail. It will often occur too late, if at all. Courts lack expertise in many areas, and they may intervene when they should not and refrain from intervening when they should. For this reason, and others advanced in this Essay, a set of institutional design choices must be made that permits both sources of executive legitimacy—democratic will and expertise— to function simultaneously.

# 2NC

#### Their answers don’t assume a united front of OLC and Solicitor General

**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/)

\*NOTE: OLC = Office of Legal Counsel; SG = Solicitor General. Both in Justice Department.

One such difference is that all of the OLC deputies are politically appointed, whereas in the SG's Office, three out of the four deputies are career employees. A more politically led office seems less likely to make impartial, arms-length constitutional decisions, but the political pedigree of OLC's leadership may give it credibility with the political leadership of client entities by helping them to trust that OLC will not use constitutional objections as a back-door way to stop or limit policies with which it simply disagrees. Only when clients are willing to abide by its advice can OLC play a client-checking role. Another difference between the two offices is that, whereas only one deputy reviews each matter in the SG's office, OLC customarily follows a "two-deputy rule," permitting advice on behalf of the office only after review and approval by two deputies. Without the immediate threat of an adverse court judgment against an agency that fails to follow its advice, OLC's clout depends more on support from other sources. Presenting a "united front," rather than lone authors more readily questioned as idiosyncratic, may enhance OLC's authority with its clients.125

#### Here’s ev in the context of war powers

**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/)

Just as the SG is the federal government's chief litigator, the head of the Office of Legal Counsel is the executive branch's chief legal advisor. The Attorney General has formally delegated the legal-advice-giving part of his statutory responsibility to OLC.104 OLC has no enforcement or litigation responsibilities, and is devoted exclusively to giving legal advice. OLC's role within the executive branch has evolved over the years, with tasks calling for legal and, especially, constitutional judgment migrating to OLC, while more politicized tasks, like OLC's short involvement in vetting potential judicial nominees, being reassigned elsewhere.105

OLC's core work is to provide written and oral legal opinions to others within the executive branch, including the president, the Attorney General, and heads of other departments. In practice, the White House and the Attorney General are by far the most frequent requesters, often asking complex, momentous questions, frequently on short notice. OLC clients may seek opinions on matters such as the sustainability of a claim of executive privilege, or the lawfulness in a particular circumstance of a quarantine, detention, or use of military force. OLC has been consulted when troops have been sent abroad and when international criminals were arrested overseas.106 Much of OLC's work is more quotidian, including topics such as the constitutionality under the Appointments Clause of various boards and commissions, or the scope of an agency's statutory authority to alter a regulation or settle a case in a particular way. Its opinions "involve domestic problems, international issues, pet plans of bureaucrats, the application of the Constitution and the laws to administrative policies and procedures, the powers and jurisdictions of departments and agencies, the advisability of contemplated actions, [and various mundane and] momentous matters." 107

OLC traditionally requires that requests for advice come from the head or general counsel of the requesting agency, that advice-seekers submit their own view of the question to OLC, and that independent agencies (not already presumptively bound) agree in advance to abide by the advice - even oral advice - that OLC delivers.108 The agreement to be bound forestalls opportunistic advice-shopping by entities willing to abide only by advice they like, and it preserves the resources and authority of OLC against being treated merely as an extra source of legal research on issues that other lawyers or officials will ultimately resolve for themselves.109

### 2nc solicitor general solves

#### Solicitor General positions are binding—constrains the executive, even if courts and Congress fail—our mechanism solves

**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/)

\*NOTE: gendered language in this card is in reference to Paul D. Clement, who was SG in 2005

The SG is assisted by a small legal and administrative staff operating within a relatively flat office hierarchy. Only two of the office's lawyers - the SG and one of his four Deputies - are political appointees; all of the others, including the three other Deputies and all of the Assistants to the SG, who research and draft the office's briefs, are "career" employees with civil-service protection.95 The office's functional separation from policymaking is further shown by the pattern of hiring lawyers for their general skill at legal analysis and appellate advocacy, rather than for any particular area of substantive expertise. Consistent with that pattern, SGs routinely hire lawyers from the Justice Department's appellate divisions, but rarely hire from client agencies.

The work flow in the SG's Office typically follows a bottom-up path that reflects an assumption that skilled, dispassionate legal analysis by career lawyers will unearth constitutional issues relevant to the litigating position proposed by an agency or a component of the Justice Department. The SG and his Deputies assign each matter to an Assistant who completes the research and drafting. Sometimes the assigning Deputy will discuss the merits of a new assignment briefly with the Assistant, but more often the Deputy has no advance conversation with the Assistant. The Assistant typically learns of the assignment once it is deposited in his or her in-box by an office courier, and the Assistant independently develops a draft.96 Thus, the SG's Office's work is not a collaborative political-legal enterprise, promoting "all-things-considered" judgments,97 but is quite formally doctrinal. Only occasionally do executive agency officials - i.e. those who are responsible for executive branch policy decisions - even meet with the Solicitor General or his staff. Those patterns reflect the office's focus on legal, rather than policy-oriented or political, analysis.

3. Client-Checking

The SG is **not merely a mouthpiece** for his federal clients. Although he seeks to advocate (or authorize other government lawyers to advocate) the positions and interests of the client entities, lawyers in the SG's Office critically evaluate the input they get from the government's policymaking agencies. Departments and agencies seek the SG's approval for hundreds of petitions each year, but he typically authorizes less than ten to twenty percent of them.9 " He also turns down a sizeable fraction of requests for authorization to appeal, and the overwhelming majority of requests for authorization to seek rehearing en banc.

The SG often declines to make particular arguments in briefing and may even confess error, abandoning the government's victory in a lower court.99 If the SG's own analysis disagrees with the judgment of the lower court that sustained the government's position, he can choose not to defend the favorable decision against the opposing party's appeal or effort to obtain Supreme Court review. Giving up a victory already in hand is virtually unheard of in the private bar, but it is an established practice by the SG, occurring on average two to three times per year.100

Each of these ways through which the SG checks client initiatives - rejecting requests to appeal or petition, declining to make certain proposed arguments in briefs to the courts, and even confessing error - might be thought to illustrate the law's capacity to constrain politics within the executive branch. OLC, the other centralized source of executive constitutional interpretation, can also play a checking role.

### solves precedent

#### We solve precedent by invoking constitutional limits

**Atkinson 2013** – JD NYU, National Security Division, Department of Justice (L. Rush, Vanderbilt Law Review, forthcoming issue, “The Fourth Amendment’s National Security Exception”, http://ssrn.com/abstract=2226404)

When identifying constitutional parameters for the executive, it is particularly instructive to look at historical moments when the executive is restrained. When congressional prohibition draws executive power to its “ebb,” for example, one can identify the executive’s core inextinguishable powers.47 Constitutional boundaries are similarly discernible in some cases where the executive branch **limits its own** conduct. Specifically, the executive’s self-restraint is precedential when it stems from a sense of constitutional obligation.48 Such fealty towards the Constitution might be **unprompted by judicial command or legislative action**, and there may be no record as obvious as a judicial opinion or legislative bill. Nevertheless, where a discernible opinio juris has shaped executive action, such legal opinion should be considered both for its persuasive power and a historical understanding about what protections the Constitution establishes.49

#### Disclosure solves precedent

**Morrison 2010** – Professor of Law, Columbia University (Trevor, Columbia Law Review, “STARE DECISIS IN THE OFFICE OF LEGAL COUNSEL”, 110 Colum. L. Rev. 1448, Lexis)

Second, the special precedential force of prior opinions in this area also requires disclosure, especially to Congress. This is entailed in the Madisonian model of the separation of powers, which continues to dominate separation of powers doctrine today - both in OLC and elsewhere. n200 "The great security against a gradual concentration of the several powers in the same department," Madison explained, "consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others." n201 Assertions of executive power that are kept secret from [\*1500] Congress constitute evasions of this checking mechanism, and for that reason cannot claim special precedential weight on Madisonian terms. In contrast, assertions of executive power known to and acquiesced in by Congress are at the opposite end of the spectrum. To return to Justice Frankfurter's Steel Seizure concurrence, courts should treat historical patterns of executive practice "as a gloss on 'executive Power' vested in the President" when they are "long pursued to the knowledge of the Congress and never before questioned." n202 This theory of acquiescence obviously requires notice.

### 2nc at: future rollback

#### Executives rely on OLC too much to be flippant

**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)

The White House is one of the main beneficiaries of that reputation. When OLC concludes that a government action is lawful, its conclusion carries a legitimacy that other executive offices cannot so readily provide. That legitimacy is a function of OLC’s deep traditions and unique place within the executive branch. Other executive offices — be they agency general counsels or the White House Counsel’s Office — do not have decades-long traditions of providing legal advice based on their best view of the law after fully considering the competing positions; they have not generated bodies of authoritative precedents to inform and constrain their work; and they do not issue legal opinions that, whether or not they favor the President, are treated as presumptively binding within the executive branch. (Nor should those other offices mimic OLC; that is not their job.) Because the value of a favorable legal opinion from OLC is tied inextricably to these aspects of its work, each successive presidential administration has a strong incentive to respect and preserve them.

#### The counterplan involves a unique agency commitment—it’s irreversible

**Magill 2009** – Horace W. Goldsmith Research Professor, University of Virginia School of Law (5/31, Elizabeth, The George Washington Law Review, Vol. 77, “Agency Self-Regulation”, http://law.bepress.com/cgi/viewcontent.cgi?article=1192&context=uvalwps&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fstart%3D30%26q%3Drelated%3A1PuVXzR0CFZ8hM%3Ascholar.google.com%2F%26hl%3Den%26as\_sdt%3D0%2C11#search=%22related%3A1PuVXzR0CFZ8hM%3Ascholar.google.com%2F%22)

A. Control of Delegated Authority

Perhaps the most obvious case is where self-regulatory measures are used to control the exercise of authority that is delegated within the agency. Just as the legislature delegates some decisions to agencies95 and delegates within its own institutions,96 so there is a great deal of delegation within agencies.97 Although the amount of decentralization of decisionmaking varies across agencies, those at the top of agencies simply cannot make all decisions. Some of this internal delegation is the result of statutory design98 and some is the result of agency decisions.99 In many agencies, frontline and midlevel decisionmakers make hundreds, if not thousands, of decisions each month that represent the on-the-ground implementation of the laws the agency administers.100 Administrative law judges determine who is eligible for social security disability benefits, FDA field inspectors determine whether a food product is misbranded or adulterated, customs and immigration officers make decisions at the border about the legal status of a product or an individual.

Where there is delegation, as night follows day, there will be strategies to control the exercise of that delegated authority.101 The agent does not have the same incentives as the principal and also can have superior information.102 Thus, the policy makers at the top of the agency will attempt to control the substance of the decisions made by those in the lower rungs of the hierarchy and to assure consistent application of those decisions across decisionmakers. Self-regulatory measures are a key mechanism by which top-level agency “principals” assert this control over agents exercising delegated authority.

Agencies can rely on self-regulatory measures to control the exercise of delegated authority. Most straightforwardly, an agency might instruct lower-level decisionmakers how to make their decisions.103 In a more subtle way, self-regulatory measures might structure the decisionmaking process to facilitate desired outcomes.104 A self-regulatory rule might allow field offices to make the decision whether to bring enforcement actions, or, conversely, it might allow (only) the central office to make such decisions; likewise, a self-regulatory rule might empower a large number of officials with sign-off authority before a major action is undertaken, or it might dictate a more streamlined process.105 Finally, the agency might adopt various monitoring mechanisms to assure compliance with instructions.106 Effectively controlling those who exercise delegated authority is a hard problem for any organization, and there are trade-offs associated with each mechanism of control.107 That complexity aside, the point for present purposes is that many self-regulatory measures will be best explained as efforts by the top-level agency decisionmakers to control authority delegated to others within the agency.

B. Self-Constraint

Agencies may also use self-regulatory measures to advance policy goals where there is little need to control delegation. That is, they may wish to constrain themselves. Consider enforcement strategy in an agency that makes only a few enforcement decisions a year. One option for the agency would be to pursue an enforcement strategy informally. As a matter of practice, for instance, the agency may choose not to bring enforcement actions against certain categories of violators.108 Or, the agency could transform that practice into a self-regulatory rule to advance the same policy objective.109

There are advantages to formalizing the agency policy in a self-regulatory measure. Some of those advantages are internal. The process of actually articulating the practice in writing may clarify the contours of the agency policy. Some ambiguities that do not arise as the policy is followed as a matter of practice may come to the surface and be resolved when the agency decision makers anticipate the widest range of possible circumstances. Articulating the policy formally may also satisfy an internal need of certain bureaucrats by providing them with an explanation for their decisions. The bureaucrats and bureaucracies described in the tradition that starts with Max Weber—neutral, impersonal, expert—would prefer to enforce rules written down to an amorphous set of informal practices.110

Formalizing the policy also provides external benefits. Although close observers of the agency will have known the earlier practice, a rule would publicize the policy in a broader way. More importantly, formalizing the policy evidences more commitment by the agency to the stability of the policy. If the agency, for instance, chooses to promulgate the selfregulatory measure in a legislative rule, it is opting into judicial enforcement of the rule against the agency in the future and such commitment may induce desired reliance by external actors.111

#### Internal agency rules are durable—it’s judicially enforceable across administrations

**Magill 2009** – Horace W. Goldsmith Research Professor, University of Virginia School of Law (5/31, Elizabeth, The George Washington Law Review, Vol. 77, “Agency Self-Regulation”, http://law.bepress.com/cgi/viewcontent.cgi?article=1192&context=uvalwps&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fstart%3D30%26q%3Drelated%3A1PuVXzR0CFZ8hM%3Ascholar.google.com%2F%26hl%3Den%26as\_sdt%3D0%2C11#search=%22related%3A1PuVXzR0CFZ8hM%3Ascholar.google.com%2F%22)

Whether self-regulation does constrain the agency, then, depends on whether and, if so, how these self-regulatory measures bind the agency going forward. In other words, the question whether self-regulation constrains the agency reduces to an interesting question that is familiar to us from other contexts: can an agency make a credible commitment to the stability of the position it takes in a self-regulatory measure?

1. Government and Precommitments

There is a rich theoretical literature across a range of fields about voluntarily imposed constraints on choices,32 but the literature that is most relevant here explores two questions.33 Why would government (as opposed to individuals or private firms) wish to make credible commitments about its future behavior? And what are the mechanisms by which government can do so? To understand why these questions are worthy of attention, consider a commonly invoked example. Because government has a monopoly on the exercise of coercive powers, it has the authority, and sometimes the short-term incentive, to take private assets for its own purposes, ignoring property and contract rights in the process.34 But without stable property and contract rights, those with resources will not want to engage in financial dealings with the government, and they will be leery of engaging in economic exchange more generally if they cannot be assured that their property and contract rights will be respected.35 A government that seeks to induce investment by private parties and foster economic growth thus has good reason to promise that it will respect property and contract rights in the future.

That there are good reasons for government to limit its options in the future does not mean that there are good mechanisms for doing so. Government may announce today that it will respect contract rights tomorrow, but as the saying goes, talk is cheap, and next year when government needs cash it may change its mind and use its coercive power in violation of those earlier promises. So how can government credibly commit today that it will respect private rights tomorrow? Lawyers think of constitutional constraints (the Takings Clause36 or the Contracts Clause37) as mechanisms by which government attempts to make a credible commitment of this sort;38 social scientists point to particular institutional arrangements like separation of powers or an independent judiciary (constitutionally protected or not) that make it difficult for the government to change course in the future because those arrangements tend to maintain the status quo and protect whatever policy the government commits to in the first instance.39

2. Agencies and Precommitment

Translating these insights to the narrow context of the agency, the most striking fact is that an agency has limited ability to make credible commitments.40 That is because an agency is (to invoke the embarrassingly obvious) an agent. It is formally controlled by other principals, like Congress, the courts, or the President.41 An agency does not even fully control its own destiny because those principals can force the agency to change its commitments. Congress can pass a new statute that displaces an agency’s approach, a court can reject the agency’s policy as an arbitrary choice or an unreasonable reading of a statute, or a (new) President can order his (newly-installed) subordinate to change the previous policy choice. This status substantially limits agencies’ ability to make credible commitments.

Accepting the important reality that agencies are subordinate to these principals, is there any room for an agency to constrain itself when it self-regulates? Some strategies that other government actors might adopt are not available to agencies. As just noted, an agency does not even ultimately control the choices delegated to it, and it has little authority over its formal relationships with other governmental actors. It thus cannot facilitate credible commitments by rearranging its institutional relationships with those actors. Consider one example. A design choice that would facilitate credible commitments would be an arrangement where the agency’s approach could only be changed if Congress consented to the change. But agencies have no such authority.

3. The Accardi Principle and Precommitment

Accepting all of this, an agency does have some limited capacity to make credible commitments.42 There are no doubt a variety of interesting reasons for this, such as an agency’s ability to discern and rely on stable allocations of political, institutional, or economic power.43 Here this Article focuses on one formal, legal reason why agencies can commit to the stability of their policy over time. This is due to the operation of an administrative law doctrine that goes by different names but will be called here the Accardi principle.44 The complexities of that doctrine will be explored shortly, but consider now a simple statement of it: an agency has an obligation to follow its own rules.45 From the perspective of permitting an agency to credibly commit to future action, the most important feature of that doctrine is that its enforcement is not up to the agency, but is rather up to the courts.46 It is true that the courts only enforce the Accardi doctrine if a proper party comes along and brings a timely challenge to an agency’s failure to abide by its own rules, but if that occurs, a court can invalidate agency action that does not comply with existing rules.

And all relevant parties proceed in the shadow of that possibility. Thus, if an agency chooses to embed its self-regulatory measure in a rule, it can rely on the fact that a court will require it to adhere to that rule in the future. This doctrine gives the agency some capacity to make credible commitments.

The problem of a government agent promising adherence to a policy in the future is that the government agent (or her successor), absent some effective enforcement mechanism, can thereafter ignore the promise.47 Government can say today that it will respect contract rights, but tomorrow it can exercise its coercive powers in ways that ignore them. The availability of an effective third party enforcer of the original promise permits the agent to back it with some level of credibility and thus induces whatever behavior the original promise was intended to facilitate.48 And an effective third party enforcer of self-regulation is what the Accardi doctrine provides. An agency can say today that it will only bring certain cases and not others and, if the doctrine applies, parties can rely on the fact that a court will force the agency to follow it in the future.

The Accardi doctrine provides third party enforcement of a particular status quo baseline that the agency must follow—namely, the existing rules that limit the agency’s discretion. It is worth noting that it would be possible for the regime to be otherwise. It could be that every time a new administration begins its tenure, the prior administration’s self-regulatory measures would not bind the new administration, or at least not be judicially enforceable by the courts. The new administration would start from scratch, as it were. Such a regime would have obvious advantages in terms of electoral responsiveness, but at a cost to stability. Regardless, it is not the regime we have.

### 2NC CP Avoids Flex DA

#### Executive restraint does not hurt presidential authority or perception.

Steve Koppes 8/4/13 (News Officer for the University of Chicago, Why power-hungry presidents are good for democracy, <http://www.futurity.org/society-culture/why-power-hungry-presidents-are-good-for-democracy/>, Accessed 8/18/13 MRS)

Interestingly, even as presidents accumulate more power for themselves, at no time are they seen more as failures than when they do not exercise that power, especially when it appears that they are refusing to act.

One example of this is President Jimmy Carter and the Iran hostage crisis. In 1979, a group of young Islamic militants stormed the embassy in Tehran and held 66 Americans prisoner for 444 days.

Carter’s failure to end the crisis earlier derived not from unwillingness to act but from a lack of viable options. But the fact that more wasn’t done ultimately led to Carter’s downfall.

Still, beyond the Constitutional limits on presidential power are other restrictions, such as cultural misgivings. Built into the American psyche, largely as a result of the dislike of the absolute power held by the British monarchy they left behind, is a condemnation of presidential candidates who betray too much interest in holding the office.

### bioterror

#### No risk of a bioterror attack, and there won’t be retaliation - their evidence is hype

MATISHAK ‘10 (Martin, Global Security Newswire, “U.S. Unlikely to Respond to Biological Threat With Nuclear Strike, Experts Say,” 4-29, <http://www.globalsecuritynewswire.org/gsn/nw_20100429_7133.php>)

WASHINGTON -- The United States is not likely to use nuclear force to respond to a biological weapons threat, even though the Obama administration left open that option in its recent update to the nation's nuclear weapons policy, experts say (See GSN, April 22). "The notion that we are in imminent danger of confronting a scenario in which hundreds of thousands of people are dying in the streets of New York as a consequence of a biological weapons attack is fanciful," said Michael Moodie, a consultant who served as assistant director for multilateral affairs in the U.S. Arms Control and Disarmament Agency during the George H.W. Bush administration. Scenarios in which the United States suffers mass casualties as a result of such an event seem "to be taking the discussion out of the realm of reality and into one that is hypothetical and that has no meaning in the real world where this kind of exchange is just not going to happen," Moodie said this week in a telephone interview. "There are a lot of threat mongers who talk about devastating biological attacks that could kill tens of thousands, if not millions of Americans," according to Jonathan Tucker, a senior fellow with the James Martin Center for Nonproliferation Studies. "But in fact, no country out there today has anything close to what the Soviet Union had in terms of mass-casualty biological warfare capability. Advances in biotechnology are unlikely to change that situation, at least for the foreseeable future." No terrorist group would be capable of pulling off a massive biological attack, nor would it be deterred by the threat of nuclear retaliation, he added. The biological threat provision was addressed in the Defense Department-led Nuclear Posture Review, a restructuring of U.S. nuclear strategy, forces and readiness. The Obama administration pledged in the review that the United States would not conduct nuclear strikes on non-nuclear states that are in compliance with global nonproliferation regimes. However, the 72-page document contains a caveat that would allow Washington to set aside that policy, dubbed "negative security assurance," if it appeared that biological weapons had been made dangerous enough to cause major harm to the United States. "Given the catastrophic potential of biological weapons and the rapid pace of biotechnology development, the United States reserves the right to make any adjustment in the assurance that may be warranted by the evolution and proliferation of the biological weapons threat and U.S. capacities to counter that threat," the posture review report says. The caveat was included in the document because "in theory, biological weapons could kill millions of people," Gary Samore, senior White House coordinator for WMD counterterrorism and arms control, said last week after an event at the Carnegie Endowment for International Peace. Asked if the White House had identified a particular technological threshold that could provoke a nuclear strike, Samore replied: "No, and if we did we obviously would not be willing to put it out because countries would say, 'Oh, we can go right up to this level and it won't change policy.'" "It's deliberately ambiguous," he told Global Security Newswire. The document's key qualifications have become a lightning rod for criticism by Republican lawmakers who argue they eliminate the country's previous policy of "calculated ambiguity," in which U.S. leaders left open the possibility of executing a nuclear strike in response to virtually any hostile action against the United States or its allies (see GSN, April 15). Yet experts say there are a number of reasons why the United States is not likely to use a nuclear weapon to eliminate a non-nuclear threat. It could prove difficult for U.S. leaders to come up with a list of appropriate targets to strike with a nuclear warhead following a biological or chemical event, former Defense Undersecretary for Policy Walter Slocombe said during a recent panel discussion at the Hudson Institute. "I don't think nuclear weapons are necessary to deter these kinds of attacks given U.S. dominance in conventional military force," according to Gregory Koblentz, deputy director of the Biodefense Graduate Program at George Mason University in Northern Virginia. "There's a bigger downside to the nuclear nonproliferation side of the ledger for threatening to use nuclear weapons in those circumstances than there is the benefit of actually deterring a chemical or biological attack," Koblentz said during a recent panel discussion at the James Martin Center. The nonproliferation benefits for restricting the role of strategic weapons to deterring nuclear attacks outweigh the "marginal" reduction in the country's ability to stem the use of biological weapons, he said. In addition, the United States has efforts in place to defend against chemical and biological attacks such as vaccines and other medical countermeasures, he argued. "We have ways to mitigate the consequences of these attacks," Koblentz told the audience. "There's no way to mitigate the effects of a nuclear weapon." Regardless of the declaratory policy, the U.S. nuclear arsenal will always provide a "residual deterrent" against mass-casualty biological or chemical attacks, according to Tucker. "If a biological or chemical attack against the United States was of such a magnitude as to potentially warrant a nuclear response, no attacker could be confident that the U.S. -- in the heat of the moment -- would not retaliate with nuclear weapons, even if its declaratory policy is not to do so," he told GSN this week during a telephone interview. Political Benefits Experts are unsure what, if any, political benefit the country or President Barack Obama's sweeping nuclear nonproliferation agenda will gain from the posture review's biological weapons caveat. The report's reservation "was an unnecessary dilution of the strengthened negative security and a counterproductive elevation of biological weapons to the same strategic domain as nuclear weapons," Koblentz told GSN by e-mail this week. "The United States has nothing to gain by promoting the concept of the biological weapons as 'the poor man's atomic bomb,'" he added.

## CP

### 2NC Perception-Public

#### The president is the focal point of American politics – everyone perceives executive action

Fitts-prof law, Penn-96 [Michael, Professor of Law @ UPenn Law School, “The Paradox Of Power In The Modern State”, University of Pennsylvania Law Review, 144 U. Pa. L. Rev. 827, Lexis]

I. The Presidency A. The Modern Presidency What is the nature of the presidency in the modern state? Numerous political scientists and legal academics claim that our recent chief executives have inherited a "modern presidency," [33](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n33" \t "_self) which began to develop with Franklin Roosevelt and is structurally distinct from earlier regimes. [34](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n34" \t "_self) Of course, the balance of power among the president, Congress, and the agencies is exceedingly complex, since the amount of bureaucratic activity and legislative oversight has increased greatly over the years. Nevertheless, "the resources of modern presidents [are thought by many to] dwarf those of their predecessors." [35](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n35" \t "_self) Commentators point to three related changes that centralize greater formal power in the institution and increase the informal political assets at the president's command. The first change, which is to some extent considered the most important and defining quality of the modern presidency, is the increased visibility of the president as an individual within the electoral process. Prior to the Roosevelt Administration, the president was viewed more as a member of both a party and a complicated and elite system of government. He was also relatively distant from the population. The modern presidents, in contrast, are elected increasingly as individuals in the primary and general elections on the basis of direct public exposure in the media. This [\*842] evolution, which has occurred over a number of years, is a result of social forces, such as the decline of political parties [36](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n36" \t "_self) and the rise of the media, as well as legal changes, such as the ascendancy of primaries. [37](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n37" \t "_self) Second, once in power, modern presidents have increasingly attempted to take greater formal and informal control of the executive branch, through policy expansion of the OMB and the Executive Office of the President and increased oversight of agencies under Executive Order 12,291 [38](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n38" \t "_self) and its successor orders. Indeed, every president since Roosevelt has attempted to centralize power in the White House to oversee the operations of the executive branch and to make its resources more responsive to his policy and political needs. [39](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n39" \t "_self) [\*843] Finally, and relatedly, the modern presidency has become more centralized and personalized through its public media role - that is, its "rhetorical functions." [40](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n40" \t "_self) Given changes in the press and the White House office, the president has become far more effective in setting the agenda for public debate, sometimes even dominating the public dialogue when he chooses. [41](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n41" \t "_self) Economists would probably attribute the president's ability to "transmit information" to the centralized organization of the presidency - an "economy of scale" in public debate. [42](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n42" \t "_self) At the same time, the president can establish [\*844] a "focal point" around preferred public policies. [43](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n43" \t "_self) This proposition can also be stated somewhat differently. As an institution embodied in a single individual, the president has a unique ability to "tell" a simple story that is quite personal and understandable to the public. As a number of legal academics have shown, stories can be a powerful mode for capturing the essence of a person's situated perspective, improving public comprehension of particular facts, and synthesizing complex events into accessible language. [44](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n44" \t "_self) Complex institutions, such as Congress, have difficulty [\*845] assembling and transmitting information as part of a coherent whole; they represent a diversity - some would say a babble - of voices and perspectives. In contrast, presidents have the capacity to project a coherent and empathetic message, especially if it is tied to their own life stories. In this sense, the skill of the president in telling a story about policy, while sometimes a source of pointed criticism for its necessary simplicity, [45](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n45" \t "_self) may greatly facilitate public understanding and acceptance of policy. [46](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n46" \t "_self) B. The Theory of the Unitary Presidency This picture of the modern presidency is quite consistent with those parts of the legal and political science literatures exploring the advantages of presidential (as opposed to legislative) power and advocating a more unitary or centralized presidency. According to this view, [47](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n47" \t "_self) power and accountability in government and in the executive branch should be moved more toward the top, giving the [\*846] president and his staff greater ability to make decisions themselves or to leave them, subject to oversight, in the hands of expert agency officials. In the legal literature, this position is usually associated with support for strengthening the president's directorial powers over the agencies, unfettered presidential removal authority, and Chevron deference to agency regulations [48](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n48" \t "_self) reviewed by the White House. Similarly, political scientists emphasize the plebiscitarian president's growing informal influence with the agencies and the public, as well as the association between a strong president and the "national" interest. [49](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n49" \t "_self) To be sure, legal proponents of a strong unitary presidency usually do not outline a comprehensive policy defense of the legal position but rely more on doctrinal justifications and related policy arguments. [50](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n50" \t "_self) By synthesizing and integrating the interrelated legal and policy rationales in the legal and political science literatures, however, one can sketch the outlines of a common theory. This analysis suggests that the structure of a more unitary, centralized presidency should enhance the power, legitimacy, and effectiveness of the office, especially as compared to Congress, in three different but related ways. [\*847] First, with respect to the administration of the executive branch, centralized power, or at least the opportunity for the exercise of centralized power, is thought to facilitate better development and coordination of national programs and policies. Because federal government programs interrelate in countless ways, a centralized figure or institution such as the president is seemingly in a good position to recognize and respond to the demands of the overall situation. [51](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n51" \t "_self) For similar reasons, as social and political change accelerates, the president may be well-situated to foresee and implement adaptive synoptic changes - that is, to engage in strategic planning. One of the rationales for the existence of the federal government is the national effect of its policies, which under this view can be reconciled most easily at the top. [52](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n52" \t "_self) To the extent that the president is successful in putting together such programs, he should receive political credit, which would redound to his political strength. [53](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n53" \t "_self) Second, centralized power facilitates greater political accountability by placing in one single individual the public's focus of government performance. If the public had to evaluate electorally the activities of hundreds of different officials in the executive branch, its information about the positions, actions, and effects of government behavior would be extraordinarily limited. [54](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n54" \t "_self) Only those most [\*848] interested in a particular function would be likely to have information about its behavior or attempt to influence that behavior through election, lobbying, or litigation. This is the standard concern with New Deal agencies captured by the so-called iron triangle of Washington politics. [55](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n55" \t "_self) By contrast, placing overall political responsibility in one individual is thought to facilitate broader political accountability. While this oversight can have mixed effects depending on presidential performance, it has the potential for strengthening the president's political support and influence. [56](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n56" \t "_self) Because he is more likely to approximate the views of the median voter, [57](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n57" \t "_self) a unitary president is thought to enjoy a clear majoritarian mandate, as the only elected representative of all "The People." This democratic legitimacy should be, in turn, a major source of his political strength. [58](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n58" \t "_self) As one commentator has [\*849] argued: "Every deviation from the principle of executive unitariness will necessarily undermine the national majority electoral coalition." [59](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n59" \t "_self) Finally, on an elite political level, the existence of a single powerful political actor serves a political coordination function. [60](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n60" \t "_self) A dispersed government with a decentralized political structure has a great deal of difficulty in reaching cooperative solutions on policy outcomes. Even if it does reach cooperative solutions, it has great difficulty in reaching optimal results. Today, there are simply too many groups in Washington and within the political elite to reach the necessary and optimal agreement easily. [61](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n61" \t "_self) A central and visible figure such as the president, who can take clear positions, can serve as a unique focal point for coordinating action. [62](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n62" \t "_self) With the ability to focus public attention and minimize information costs, [63](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n63" \t "_self) [\*850] a president can also be highly effective in overcoming narrow but powerful sources of opposition and in facilitating communication (that is, coordination and cooperation) between groups and branches. [64](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n64" \t "_self) In technical terms, he might be viewed as the "least cost avoider." [65](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n65" \t "_self) The budget confrontation between Clinton and Congress is only the most recent example of the president's strategic abilities. [66](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n66" \t "_self) In this regard, it is not surprising that most studies have found that the president's popularity is an important factor in his ability to effectively negotiate with Congress. [67](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n67" \t "_self)

### 2NC Perception-International

#### Presidential action is perceived globally

Sunstein-prof law, Chicago- 95 [Cass, Karl N. Llewellyn Professor of Jurisprudence, University of Chicago Law School and Department of Political Science, “An Eighteenth Century Presidency in a Twenty-First Century World” Arkansas Law Review, 48 Ark. L. Rev. 1, Lexis]

With the emergence of the United States as a world power, the President's foreign affairs authority has become far more capacious than was originally anticipated. For the most part this is because the powers originally conferred on the President have turned out - in light of the unanticipated position of the United States in the world - to mean much more than anyone would have thought. The constitutionally granted authorities have led to a great deal of unilateral authority, simply because the United States is so central an actor on the world scene. The posture of the President means a great deal even if the President acts clearly within the scope of his constitutionally-granted power. Indeed, mere words from the President, at a press conference or during an interview, can have enormous consequences for the international community.

### International Law

#### Executive order incorporation of international law has massive symbolic and legal importance for future policy and court action-solves better than the plan

Nachbar-prof law Virginia-11

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1967217>

Executive Order 13567: Executive Branch Policy Meets International Law in the Evolution of the Domestic Law of Detention

Conclusion Neither the Order nor the accompanying Fact Sheet will have a major impact on U.S. detention operations. The Order applies only to a small group of detainees, all of whom have been subjected to similar procedures in the recent past. The Fact Sheet’s signaling of compliance with Article 75 is not technically applicable to the current conflict, and ratification of AP II is still beyond the horizon. Moreover, the procedures contained in the Order (which do not differ dramatically from the procedures they replace) arguably conform with Article 75 and APII, neither of which contain robust procedures with regard to detention, except perhaps with regard to the use of classified information (an area in which states are likely to receive considerable leeway given the vague requirements of Article 75) and the continued detention of detainees identified for release but for whom the U.S. is unable to locate an acceptable non-U.S. destination. The procedures and substantive standards contained in the Order do not dramatically change the landscape of U.S. detention policy and practice, but that does not mean that the Order and the Fact Sheet are of no moment. The U.S. has previously been careful to maintain a strong approach to the lex specialis conception of LOAC, but Article 75 and AP II represent an approach to LOAC that more closely tracks human rights protections than earlier instruments, like the GCs themselves. It is often the executive branch that argues most strongly for the U.S.- exceptionalist view of international law; if the Fact Sheet signals a shift by the executive branch, it is likely to be followed by a shift by courts as well. In many times, the content of the international law of armed conflict has been mostly a matter of academic interest in the U.S., but today, many cases applying domestic law turn directly on the content of the law of armed conflict, which means that the content of international human rights law as implicated by a shifting approach to LOAC may soon find itself in domestic law, binding by U.S. federal courts on the conduct of the current armed conflict. Even those changes are, for the moment, hypothetical. The policy announced by the Fact Sheet – the administration’s willingness to embrace aspects of the law of armed conflict closely tied with international human rights law – has the potential for substantially altering the evolution of U.S. detention law and policy by providing even more space to incorporate international legal norms into U.S. domestic law. Of course, the most important implication of the Fact Sheet’s embrace of Article 75 and AP II is one for diplomats, not lawyers—at least not yet. By finally saying in a public forum that the U.S. will apply Article 75 in IAC out of a sense of legal obligation and that the administration will pursue ratification of AP II, the Obama administration is signaling future engagement with the international community on matters relating to armed conflict. Doing so likely changes the diplomatic landscape more than it does the legal landscape in the near term, although the impact over the long term may be more profound than the recognition of any particular rule or the ratification of any particular treaty. I leave it to the diplomats to debate whether that change should be welcomed.198

#### Executive Orders can effectively encourage judicial incorporation of international law

Nachbar-prof law Virginia-11

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1967217>

Executive Order 13567: Executive Branch Policy Meets International Law in the Evolution of the Domestic Law of Detention

In the short term, neither the Order nor the President’s statement of adherence to Article 75 (which amounts to opinio juris under international law) are likely to affect most detention operations conducted by the U.S. Armed Forces. The Order applies to a very small number of detainees—only those held at Guantanamo Bay—all of whom have already undergone similar reviews pursuant to Executive Order 13492. Moreover, many of the procedures outlined in the Order have direct antecedents in previous executive branch detention determination procedures, such as Combatant Status Review Tribunals (CSRTs) and Administrative Review Boards (ARBs). However, the Order is of a piece with the Obama administration’s longstanding policies on detainee procedures, and the Fact Sheet suggests an increased role for international law in the current conflict. The first-order effects of recognizing Article 75 as having legal force (and even ratifying AP II) are likely to be mild for a variety of reasons, but both Article 75 and AP II are closely tied to international human rights law, especially the International Covenant on Civil and Political Rights. At the same time, the international law applicable to armed conflict has become a major point of litigation in U.S. civilian courts. Adopting substantive positions that implicate the ICCPR and international human rights law generally is likely to provide greater opportunity for courts to read human rights restrictions into the U.S. domestic law of armed conflict. Moreover, the Obama administration’s willingness to embrace international law will likely be reflected in the litigation position it takes in cases related to the law of armed conflict in U.S. courts. Conversely, the increased embrace of international law may increase the legitimacy of certain legal positions the U.S. has taken with regard to international law, both in litigation in U.S. courts and in international legal circles.

#### Executive Order can tie US policy to International law commitments

Nachbar-prof law Virginia-11

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1967217>

Executive Order 13567: Executive Branch Policy Meets International Law in the Evolution of the Domestic Law of Detention

On March 7, 2011, President Obama issued Executive Order 13567 (the “Order”),1 which established revised detention review procedures for the detainees currently being held at the U.S. Naval Station Guantanamo Bay. The press-release “Fact Sheet”2 that accompanied the Order expanded upon the topic of the Order, not only touching upon the detention regulated by the Order itself, but also stating the Obama administration’s position that it would apply Article 75 of Additional Protocol I of the Geneva Conventions of 19493 (respectively “Article 75” and “AP I”) “out of a sense of legal obligation” and that that the U.S. “expects all other nations to adhere to these principals as well”.4 Additionally, the President urged the Senate to ratify Additional Protocol II of the Geneva Conventions of 19495 (“AP II”). In this paper, I consider the effect of the combined revision of binding detention procedures and potentially binding statements of administration policy regarding both Article 75 and AP II in the Order and the accompanying Fact Sheet. Although Article 75 and AP II contain provisions potentially impacting the full range of detainee-related issues (such as conditions of confinement and the trial and punishment of detainees for criminal offenses), the Order itself applies only to detention determinations, and so my detailed analysis of the Order is correspondingly limited. The broader impact of the policy shift that the Order and Fact Sheet represent, though, reaches far beyond questions of detention determinations, and the topics covered by my analysis expands accordingly

topical counterplans good 2nc

1. **No Abuse**- They don’t defend the whole resolution. If we read case turns to a different aff they would say no link. There is no reason we shouldn’t get the rest of the resolution as advocacy.
2. **Competition Checks**- Net benefits ensure the counterplan is mutually exclusive with the plan.
3. **Topicality is an aff question only**- If we agree that they are topical it becomes a non-issue in counterplan debate.
4. **Negation Theory**- The 1AC chose their ground and the negative gets everything else.
5. **No research distortion**- Topical counterplans are more predictable because they come from a set of already defined research ground.
6. **The plan is the focus of debate, not the resolution**- This prevents counter warrants and hypo-testing.
7. **Err Negative**- They get the first and last speech as well as infinite prep time- we’re just leveling the playing field.
8. **Education**- We talk about different solvency mechanisms within the resolution, this increases both negative and affirmative critical thinking.
9. **Reject the argument, not the team**- They can’t win credible in-round abuse, reject the counterplan if we lose this theory debate.

### 2NC Perm-Do CP-Judicial

#### It’s a severance permutation

#### A. It severs judicial restrictions

Singer 7 (Jana, Professor of Law, University of Maryland School of Law, SYMPOSIUM A HAMDAN QUARTET: FOUR ESSAYS ON ASPECTS OF HAMDAN V. RUMSFELD: HAMDAN AS AN ASSERTION OF JUDICIAL POWER, Maryland Law Review 2007 66 Md. L. Rev. 759)

n25. See, e.g., Dep't of the Navy v. Egan, 484 U.S. 518, 530 (1988) (noting the reluctance of courts "to intrude upon the authority of the Executive in military and national security affairs"); see also Katyal, supra note 1, at 84 (noting that "in war powers cases, the passive virtues operate at their height to defer adjudication, sometimes even indefinitely"); Harold Hongju Koh, Why the President (Almost) Always Wins in Foreign Affairs: Lessons of the Iran-Contra Affair, 97 Yale L.J. 1255, 1313-17 (1988) (discussing the Court's use of justiciability doctrines to refuse to hear challenges to the President's authority in cases involving foreign affairs); Gregory E. Maggs, The Rehnquist Court's Noninterference with the Guardians of National Security, 74 Geo. Wash. L. Rev. 1122, 1124-38 (2006) (discussing the Rehnquist Court's general policy of nonintervention in cases concerning actions of governmental agencies and political entities in national security matters); Peter E. Quint, Reflections on the Separation of Powers and Judicial Review at the End of the Reagan Era, 57 Geo. Wash. L. Rev. 427, 433-34 (1989) (discussing the use of the political question doctrine as a means to avoid judicial restrictions on presidential power in cases involving military force).

#### B. Severance is illegitimate and a voting issue. It destroys negative ground since no counterplan would compete if the 2AC could pick and choose what parts of the plan to defend. It also makes the plan a moving target and conditional. Affirmative conditionality is worse than negative conditionality because the plan is the focus of the debate.

### 2NC Perm-Do Both-Statutory-Flexibility

#### The perm still links to the D/A, only unilateral executive action solves the DA.

Moe and Howell, Fellow for the Hoover Institution and Harvard Professor, 99

Terry M. Moe and William G. Howell, senior fellow for the Hoover Institution and Associate Professor for the Government Department at Harvard University, “Unilateral Action and Presidential Power: A theory”, LexisNexus.com 12-99

If the president had the power to act unilaterally in this same situation, as depicted in Figure 1B, things would turn out much more favorably. He would not have to accept Congress's shift in policy from [SQ.sub.2] to [SQ.sub.2\*] and could take action on his own to move the status quo from [SQ.sub.2\*] to V--using his veto to prevent any movement away from this point. V would be the equilibrium outcome (as it was in the earlier case of unilateral action). And although the president would still lose some ground as policy moves from the original [SQ.sub.2] to V, unilateral action allows him to keep policy much closer to his ideal point--and farther from Congress's ideal point--than would otherwise have been the case. He clearly has more power over outcomes when he can act unilaterally.

The permutation weakens presidential powers

Bellia, Law Professor at Notre Dame, 02

Patricia L Bellia, Associate Law Professor for Notre Dame Law School, “Executive power in Youngstown’s shadows”, LexisNexus.com, 02

Justice Jackson suggested that presidential powers "are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress." (59) He offered the following grouping of presidential actions and their legal consequences: 1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. 2. 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. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law. 3. 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. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. (60)

### Precedent Solvency

CP creates precedent against unrestrained drone usage—that is their only internal link

Twomey 13 (Laura Twomey, Trinity College, Dublin. “Setting a Global Precedent: President Obama's Codification of Drone Warfare,” http://www.cjicl.org.uk/index.php/cjicl-blog/setting-a-global-precedent-president-obamas-codification-of-drone-warfare)

It is clear that, as the first State to deploy remote targeting technology in a non international armed conflict, the legal framework forged by the US during President Obama's second term will set significant precedent for the future practice of the estimated 40 States developing their own drone technology. On 7 March 2013, members of the European Parliament expressed deep concern about the “unwelcome precedent” the programme sets, citing its “destabilising effect on the international legal framework” that “destroys ... our common legal heritage.” This 'destabilising effect' arises from the classified and seemingly amorphous substantive legal basis for the programme and the apparent lack of procedural standards in place. It remains to be seen if the classified 'rulebook' will be released for public scrutiny, and allay these concerns. Reliance on international law in world order is based on consent, consensus, good faith and, crucially in this instance, reciprocity. The US programme may harbour short term gains in the pursuit of al-Qaeda operatives, however, if the aforementioned substantive legal justifications continue to be invoked, it risks engendering long term disadvantages. Pursuing this policy encourages other States to adopt similar policies. Administration officials have cited particular concern about setting precedent for Russia, Iran and China, all of which are developing their own remote targeting technology. It is therefore suggested that the Administration should take this opportunity to codify the rules, clarify terms where ambiguity may currently allow for broader interpretations, and to bring its regulations in line with the existing framework of international law. This legal framework should then be made available to the public, with covert operational necessities redacted. This could set a valuable legal precedent, of particular importance at this turning point wherein international law must adapt to the 21st century model of warfare, a model which lacks a clear enemy and a demarcated battlefield.

# 1NR

#### Disad outweighs & turns the case:

#### a. Time Frame– failure to raise the debt ceiling causes quick unraveling of the U.S. and global economy – collapse before November

Sahadi 9/10/2013

Jeanne, “Debt ceiling 'X date' could hit Oct. 18”, <http://money.cnn.com/2013/09/10/news/economy/debt-ceiling-bills-coming-due/index.html>, MCR

A new analysis by a think tank shows that **Washington's drop-dead deadline for the debt ceiling could hit as soon as Oct. 18**.¶ Estimating exactly when the Treasury Department will be unable to pay all the bills coming due if Congress fails to raise the nation's legal borrowing limit is notoriously difficult.¶ That's why, in an analysis released Tuesday, the Bipartisan Policy Center put the "X date" between Oct. 18 and Nov. 5.¶ Treasury Secretary Jack Lew has warned that **by mid-October the agency will have only $50 billion in cash on top of incoming revenue.**¶That may sound like a lot. But, as the Bipartisan Policy Center details, **it won't last very long**.¶ If the "X" date turns out to be Oct. 18, Treasury would run about $106 billion short of the money it owes between then and Nov.15. That means it wouldn't be able to pay the equivalent of a third of all the bills due during that period.¶ Here's why: Treasury handles about 80 million payments a month. Those payments are not evenly spaced out so on some days more is owed than on others. And the revenue flowing into federal coffers is unpredictable and varies from day to day.¶ Payments include IRS refunds, Social Security and veterans benefits, Medicare reimbursements for doctors and hospitals, bond interest owed investors, payments to contractors and paychecks for federal workers and military personnel.¶ If Congress fails to act in time, Treasury will have to make difficult -- and legally questionable -- decisions about who should get paid and who should be stiffed. It may decide to pay some bills in full and on time and not others.¶ Or it may decide to delay all payments due on a given day until it has sufficient revenue on hand to pay in full. in a Treasury Inspector General's report that this might be the most plausible and least harmful approach.¶ But under that scenario, **delays would grow over time from a day or two to several weeks**. For example, the payments due to seniors, veterans and active duty military personnel on Nov. 1 wouldn't go out until Nov. 13.¶ In any case, the expectation is that the agency will try to prioritize payments to bond investors over everyone else, lest the financial markets go haywire. Politically, of course, that carries risk, said Steve Bell, the senior director of the Bipartisan Policy Center's economic policy project.¶ "There's a political danger you'll be accused of paying bondholders over Social Security recipients," Bell said.¶ On both Oct. 23 and Nov. 14, $12 billion in Social Security benefits come due, while another $25 billion comes due on Nov. 1, according to the analysis.¶ Meanwhile, on Oct. 24, Treasury will have to roll over $57 billion in outstanding debt and another $115 billion on Oct. 31. Normally that's not a problem, because U.S. Treasury auctions attract a lot of buyers willing to purchase bonds at low rates.¶ But if those rollover dates come after the "X" date, and **the perception is that the United States is defaulting on some of its obligations, Treasury could have trouble finding enough buyers or investors could demand higher interest rates**.¶ The debt ceiling is currently set at $16.7 trillion. That ceiling was reached on May 19, and ever since Treasury has been using a host of special measures to keep the country's borrowing at or below that ceiling. But those measures will be exhausted by mid-October, according to Treasury.¶ If lawmakers want to raise the ceiling enough to get past the 2014 midterm elections in November, the Bipartisan Policy Center estimates they will have to raise it by $1.1 trillion to $17.8 trillion. To top of page

#### b. Magnitude: Friedenberg & Schonfeld evidence indicates global conflicts around the world are triggered by economic decline—outweighs and turns their conflict scenarios.

#### c. Probability—history’s on our side—the 30’s prove economic collapse causes global nuclear war—that’s our Friedenberg & Schonfeld evidence form the 1nc…

#### d. Turns the case:

#### Failure to increase the debt ceiling destroys US credibility:

Richard N. Haass, 10/2/2013 (President, Council on Foreign Relations

<http://www.cfr.org/budget-debt-and-deficits/shutdown-weakens-us-foreign-policy/p31534>, Accessed 10/4/2013, rwg)

What about the debt ceiling?¶ At the risk of being even more pessimistic, what worries me is we may not have bottomed out. In two weeks, we come up against the debt ceiling. Right now we're dealing with the shutdown of the government. With the debt ceiling, we're dealing with the fundamentals of this country's relationship with the rest of the world financially. It's not self-evident that we will avoid hurting ourselves badly over the debt ceiling. So, what's happened with the shutdown is a real warning sign that what is going on inside the Beltway is being fought with a kind of partisan myopia, and I simply don't see very many people standing up and saying, "Hey, wait a minute, what is going on inside the Beltway is threatening America's national security." I don't see people making that connection, but that connection is there, and simply because politicians don't see the connection doesn't mean it doesn't exist. We've reached the point now where the greatest threat to our national security, for the immediate and the foreseeable future, is not some other country or organization; it's increasingly our own political dysfunction.

#### Economic crisis blocks solutions to global warming:

Michael Graham Richard, 2/6/2008 (“Counter-Point: 4 Reasons Why Recession is BAD for the Environment,” [http://www.treehugger.com/files/2008/02/4\_reasons\_recession \_bad\_environment.php](http://www.treehugger.com/files/2008/02/4_reasons_recession%20_bad_environment.php), Accessed 11/7/2012, rwg)

Thirdly, there's less money going into the stock markets and bank loans are harder to get, which means that many small firms and startups working on the breakthrough green technologies of tomorrow can have trouble getting funds or can even go bankrupt, especially if their clients or backers decide to make cuts.¶ Fourthly, during economic crises, voters want the government to appear to be doing something about the economy (even if it's government that screwed things up in the first place). They'll accept all kinds of measures and laws, including those that aren't good for the environment. Massive corn subsidies anyone? Don't even think about progress on global warming...

#### Growth solves their war impacts—interdependence checks conflict:

**Griswold 2007** - director of the Center for Trade Policy Studies (4/20, Daniel, “Trade, Democracy and Peace”, http://www.freetrade.org/node/681)

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

Group their 2 economic decline cards: the first one is empirically denied, global economic collapse has been prevented every time we’ve raised the debt ceiling, and their second card is in the context of a recession. Our Cox 13 card from the 1NC specifically states that the impact will be an unprecedented depression that will take decades to overcome.

Their only UQ arg was tea party wont compromise:

#### (--) Extend our Daily News evidence: Republicans are now supporting a short term debt limit increase—they are scrambling for a fall back strategy now.

#### (--) Debt ceiling will be raised now: Recent rhetorical shifts from Republican leaders prove:

**Washington Post, 10-9** (Key Republicans signal willingness to back down on effort to defund health-care law, <http://www.washingtonpost.com/politics/key-republicans-signal-willingness-to-back-down-on-effort-to-defund-health-care-law/2013/10/09/865b9284-30f6-11e3-89ae-16e186e117d8_story.html>, F.A.B.)

House Republican leaders — who had been backed into the shutdown strategy by demands from Cruz and tea party forces — have been trying to recalibrate since the shutdown began Oct. 1.

The latest signs of the shift came in editorial columns Wednesday by [House Majority Leader Eric Cantor (R-Va.) in The Washington Post](http://www.washingtonpost.com/opinions/eric-cantor-divided-government-requires-bipartisan-negotiation/2013/10/08/98f6b7e6-3062-11e3-bbed-a8a60c601153_story.html?hpid=z2) and [Budget Committee Chairman Paul Ryan (R-Wis.) in the Wall Street Journal.](http://online.wsj.com/article/SB10001424052702303442004579123943669167898.html)

Both implored Obama to negotiate the debt ceiling — but, tellingly, neither mentioned the health-care law as an item to be discussed. Instead, they focused on entitlements, and Ryan wrote that there are many potential areas of agreement between Obama and the Republicans.

The president has expressed a willingness to negotiate on long-term fiscal problems, but only if Republicans first vote to reopen the government and remove the threat of a federal default.

On Tuesday, House Speaker John A. Boehner (R-Ohio) also made no mention of the health-care law when he delivered a statement on the shutdown and the Oct. 17 deadline to raise the debt ceiling.

Boehner spokesman Brendan Buck insisted that Republicans have not given up on their demand that concessions on the health-care legislation be part of any deal to reopen the government. He acknowledged, however, that the demand has shifted from defunding the law — the original rallying cry — to a much narrower goal of delaying a requirement that uninsured individuals obtain coverage.

Some of the most influential players in the conservative movement also were taking pains Wednesday to maintain their distance from the shutdown strategy, while reaffirming their opposition to Obamacare.

The chief lobbyist for Koch Industries sent a letter to Capitol Hill offices saying the company’s owners — heavyweight conservative donors Charles and David Koch — have never publicly supported the defund strategy, despite assertions by Senate Majority Leader Harry M. Reid (Nev.) and other Democrats to the contrary.

“Koch believes that Obamacare will increase deficits, lead to an overall lowering of the standard of health care in America, and raise taxes,” Koch lobbyist Philip Ellender wrote. “However, Koch has not taken a position on the legislative tactic of tying the [spending bill needed to keep the government open] to defunding Obamacare nor have we lobbied on legislative provisions defunding Obamacare.”

One major Koch-funded organization, Americans for Prosperity, has emphasized potential problems with the law but has kept its distance from efforts to defund it and from the shutdown strategy.

“We see this as a long-term effort,” said Tim Phillips, executive director of the group, which plans to resume a $6 million ad campaign against the law. “We think this effort continues into the fall of 2014 and even beyond.”

#### (--) Common ground being found now:

**Pergram, 10-9** (Chad, “House Republicans eye short-term debt ceiling fix, ahead of White House meeting,” <http://www.foxnews.com/politics/2013/10/09/house-republicans-eye-short-term-debt-ceiling-fix-ahead-white-house-meeting/>, F.A.B.)

Conservative lawmakers are exploring the possibility of a short-term increase in the debt ceiling, perhaps trying to seize the opening after President Obama said a day earlier he would consider the option.¶ Members of the Republican Study Committee, the most conservative bloc in the House, told Fox News they're looking at that possibility. Their inclination is to consider a short-term increase only if there is an agreement on a broader spending framework. ¶ But the option could help buy time for lawmakers to nail down the specifics of a longer-term deal. The U.S. government is facing what the Treasury Department says is an Oct. 17 deadline to raise the nation's debt ceiling. ¶ Though a short-term deal would by definition be only a stopgap fix, the development Wednesday pointed to at least a sliver of possible common ground -- something to potentially work toward, after nine days of a partial government shutdown during which lawmakers seemed to mostly talk past one another. ¶ "Clearly, Republicans want to avoid default," Rep. Kevin Brady, R-Texas, said, adding they also want to cut spending. ¶ Obama, speaking to reporters for over an hour on Tuesday, reiterated that he does not plan to negotiate with Republicans until a spending bill is passed and the debt ceiling is raised. ¶ But he said he's "absolutely" willing to accept a short-term measure to fund the government and raise the debt ceiling, and negotiate with Republicans after that. ¶ Republicans appear to still want some negotiations to take place before such a bill is passed. ¶ The issue will no doubt be part of the discussion as Democrats and Republicans meet, separately, at the White House this week.

A/T: Tea Party Gridlock

#### (--) No such thing as gridlock, it is only a question of convincing the GOP, not the Tea Party

Johnson 9/1/13 (Dave, Campaign for America’s Future, “Three Words/Phrases That Reinforce Republican Anti-Government Propaganda,” http://truth-out.org/opinion/item/18529-three-words-phrases-that-reinforce-republican-anti-government-propaganda)

“Three Words/Phrases That Reinforce Republican Anti-Government Propaganda,” I keep reading that Congress is suffering from “gridlock.” But if they were suffering from gridlock, wouldn’t that mean they are working on too many things at once? Gridlock is a traffic jam. Gridlock occurs when there are so many cars that they back up across intersections and block other cars from crossing. Congress would be “gridlocked” if they were working on so many things at once that they were backing up and getting in each others’ way. To anyone who follows what has been going on in DC, the idea that this Republican Congress is working on too many things at once is ludicrous. (Unless you count voting against Obamacare over and over again as “getting a lot done.”) Using the word “gridlock” to describe what is happening is not just incorrect, it also tends to convey an impression that our Congress — and by extension representative democracy — is not designed to function in our interest. This advances a key Republican argument that government is meddlesome burdensome, “in the way,” inefficient, weak and an all-around bad way to decide how to do things. Republicans want us to lose faith in government, and saying that government is in “gridlock” just helps make their case. What is happening in Washington is not “gridlock.” What is going on is that Republicans in the House and Senate are obstructing the House and Senate from getting things done. They are blocking things from happening. They are keeping the country from implementing the will of the people. Don’t call it gridlock, call it obstruction. Because that is what it is.

Link debate: First I’ll answer the theory first because that’s where they read it

#### Intrinsicness is illegitimate and a voting issue:

#### 1) Decimates disad ground: allows them to just wish away the impact to any disad.

#### 2) Makes the AFF not topical: The intrinsicness answer is not topical, proves the resolution alone is inadequate to solve and is a reason to vote negative.

#### 3) Begs the question of political capital—political capital is an intrinsic resource of Obama: if we prove the plan trades off with that, it is an intrinsic disad.

#### 4) Makes the AFF a moving target: NEG needs a fixed target to shoot at in order to promote clash and in-depth education

#### 5) Politics is core negative disad ground—mentioned in the topic paper and literature is AFF biased—NEG needs the politics disad to offset.

#### 6) Debating politics is educational—teaches us about how government functions and about relevant pieces of legislation of the day—their argument wishes politics disads away.

They say PC not real

#### (--) PC is real and key

Beckmann and Kumar, 11

(Matthew Beckmann, Assistant Professor Department of Political Science & Center for the Study of Democracy University of California, Irvine, and Vimal Kumar, Ph.D. Candidate Department of Economics University of California, Irvine, “Opportunism in Polarization: Presidential Success in the U.S. Senate, 1953-2006*”,* 2011, pdf NL)

Washington politics have transformed in the postwar period, as Keith Poole and Howard Rosenthal have noted: “Beginning in the mid-1970s, congressional politics became much more divisive. More Democrats staked out consistently liberal positions, and more Republicans supported wholly conservative ones” (2007, 104). Part and parcel of strong partisans’ ascendance has been ideological moderates’ demise. The result is a Capitol characterized by a few centrists caught between two opposing camps of resolute ideologues - a pattern labeled polarization and sure to persist. In light of the Capitol’s increasingly polarized character, the scholarly task is clear: understanding the implications - both for the legislative process and the outcomes that result. Here we aimed to build on previous research that finds congressional polarization often, but not always, produces legislative gridlock. Specifically, our theory helps specify the conditions when polarization will lead to gridlock and when it will not. So even as we find polarization does make coalition-building more difficult when the president lacks political capital or chooses not to use it promoting legislation, we also uncover a somewhat unintuitive prediction: polarization around the pivotal voter can actually provide presidents a unique opportunity not just to pass legislation, but to pass legislation closer to their ideal than would be possible in chamber filled with ideological moderates. Indeed, by allowing presidents to focus their efforts on fewer members, we hypothesize polarization can improve presidents’ prospects for winning key votes, securing legislative success, and influencing national legislation. Using of all Senate CQ key votes from 1954 to 2006 allowed a first test of this account, and results corroborated all principal predictions. Most important, we found clear support for the proposition that polarization qua polarization boosts presidents’ chances for prevailing on important, contested roll-call votes, especially when enjoying high approval ratings and strong economic growth.

#### (--) Political capital gets bills passed

Beckmann and Kumar, 11

(Matthew Beckmann, Assistant Professor Department of Political Science & Center for the Study of Democracy University of California, Irvine, and Vimal Kumar, Ph.D. Candidate Department of Economics University of California, Irvine, “Opportunism in Polarization: Presidential Success in the U.S. Senate, 1953-2006*”,* 2011, pdf NL)

That the last half-century has seen increased polarization in Washington is clear. Holders of most key posts and key votes just a few decades back, conservative Democrats and liberal Republicans are now few and far between, so much so that one pundit recently referred to the former as “endangered species” and the latter as “essentially extinct” (Roll Call, October 27, 2005). Replacing these moderates have been resolute ideologues and loyal partisans (Fleisher and Bond (2004); McCarty et al. (2006); Poole and Rosenthal (1984, 1997); Sinclair (2006); Theriault (2004)). Thus Jim Hightower’s aphorism that “There’s nothing in the middle of the road but yellow stripes and dead armadillos” remains instructive, and more so with each passing year. In light of Congress’ increasingly polarized character, a burgeoning literature has sought to uncover the causes and consequences. While a myriad of factors have been identified as contributing to congressional polarization (Carson et al. (2007); Fleisher and Bond (2004); Brady and Han (2007), Jacobson (2000); McCarty et al. (2006); Poole and Rosenthal (1997); Sinclair (2006); Stonecash et al. (2003); Theriault (2004)), the hypothesized effect is comparatively clear: legislative gridlock. Partisan polarization (via divided government) is thought to engender gridlock by promoting posturing over compromising (Gilmour (1995); Groseclose and McCarty (2001); Sinclair (2006)), and ideological polarization is predicted to encourage gridlock by reducing the range of status quos that can be beat by a coalition preferring something else (Brady and Volden (1998); Krehbiel (1998)). But, of course, gridlock is not an all-or-nothing proposition. Although polarization certainly inhibits lawmaking(Binder (1999, 2003); Coleman (1999); Edwards III et al. (1997); Howell et al. (2000); Jones (2001); Kelly (1993)), significant laws continue to pass – under unified and divided government, and even in the face of substantial polarization (see esp. Mayhew (1991)). This paper considers these exceptions to the general rule. Specifically, developing a simple game-theoretic model in which the president allocates scarce political capital to induce changes in senators’ votes, we show how a polarized chamber, compared to one with more homogenous preferences, can actually improve a president’s prospects for prevailing on important roll-call votes and passing preferred legislation.1 This hypothesis is tested against data on presidents’ success on key Senate roll-call votes from 1953-2006.

#### (--) Obama’s ironclad political capital is forcing the GOP to give in on debt ceiling now:

Brian Beutler 10/3/13, “Republicans finally confronting reality: They’re trapped!,” Salon <http://www.salon.com/2013/10/03/republicans_finally_confronting_reality_theyre_trapped/>

After struggling for weeks and weeks in stages one through four, Republicans are finally entering the final stage of grief over the death of their belief that President Obama would begin offering concessions in exchange for an increase in the debt limit.¶ The catalyzing event appears to have been an hour-plus-long meeting between Obama and congressional leaders at the White House on Wednesday. Senior administration officials say that if the meeting accomplished only one thing it was to convey to Republican leaders the extent of Obama’s determination not to negotiate with them over the budget until after they fund the government and increase the debt limit. These officials say his will here is stronger than at any time since he decided to press ahead with healthcare reform after Scott Brown ended the Democrats’ Senate supermajority in 2010.¶ There’s evidence that it sunk in.¶ First, there’s this hot mic moment in which Senate Minority Leader Mitch McConnell tells Sen. Rand Paul, R-Ky., that the president’s position is ironclad.¶ Then we learn that House Speaker John Boehner has told at least one House Republican privately what he and McConnell have hinted at publicly for months, which is that they won’t execute their debt limit hostage. Boehner specifically said, according to a New York Times report, and obliquely confirmed by a House GOP aide, that he would increase the debt limit before defaulting even if he lost more than half his conference on a vote.¶ None of this is to say that Republicans have “folded” exactly, but they’ve pulled the curtain back before the stage has been fully set for the final act, and revealed who’s being fitted with the red dye packet.

The second part of their link arguments were court shields link:

First their card doesn’t talk about war powers decisions, our 1NC link ev does

#### (--) Extend our Seeking Alpha evidence, a loss by the president of his war powers emboldens the GOP and causes them to pushback harder in negotiations on the debt ceiling.

#### (--) Debates on the authority to use force take up enormous time & political energy:

Steve Vladeck, 3/14/2013 (staff writer, “Hard National Security Choices,” <http://www.lawfareblog.com/2013/03/drones-domestic-detention-and-the-costs-of-libertarian-hijacking/>, Accessed 8/19/2013, rwg)

But the cost to the government is also relevant. As last week demonstrates, government officials end up having to expend a remarkable amount of energy to either defend or reject the government’s authority to undertake conduct it would seldom (or never) attempt, and to then endure and be forced to respond to criticisms because it had the temerity to suggest that there might be exceptional circumstances where such uses of force might be permissible.¶ Ultimately, there are difficult and important conversations to have about current and future U.S. policy when it comes to, inter alia, targeted killings and detention. But if last week’s filibuster and accompanying public relations storm are any indication, the most visible libertarians in Congress don’t appear to be interested in having them. That’s certainly their prerogative. But in that case, we might all be better off if they let these conversations take place, rather than hijacking them and turning them into debates in which there is virtually no one on the other side–not because there’s nothing to their points, but because there’s so much more in what’s not

#### (--) Health care proves: Republicans will rally against Supreme Court decisions they oppose:

Fox News Latino, 2012 **6/28/2012** (“Supreme Court Upholds Health Care Reform Law in Big Win for Obama,” <http://latino.foxnews.com/latino/politics/2012/06/28/supreme-court-obama-health-care-reform-act-is-constitutional/>, rwg)

Republicans immediately cast the Supreme Court decision as a wake-up call for Americans. In what is surely to be a campaign theme for Romney going forward, the Republican National committee chairman Reince Priebus said: "We need market-based solutions that give patients more choice, not less. The answer to rising health care costs is not, and will never be, Big Government.” Democrats heralded the decision as a much needed extension of basic health care to millions of Americans without access to medical attention.

#### (--) Conservatives will push other branches of Congress to reverse unpopular Supreme Court decisions:

Steffi Porter, 2012 **6/28/2012** (staff writer, “Conservative groups denounce Supreme Court ruling on ‘ObamaCare’” Porter <http://blog.chron.com/txpotomac/2012/06/conservative-groups-denounce-supreme-court-ruling-on-obamacare/>, Accessed 7/26/2012, rwg)

Conservative opponents of “ObamaCare” were not happy to hear that the Supreme Court ruled 5-4 in favor of upholding the controversial health care law. Not just unhappy. Furious. “Today’s Supreme Court decision will do serious harm to American families,” said Family Research Council President Tony Perkins. “Not only is the individual mandate a profound attack on our liberties, but it is only one section among hundreds of provisions in the law that will force taxpayers to fund abortions, violate their conscience rights, and impose a massive tax and debt burden on American families.” American Conservative Union Chairman Al Cardenas called for the law to be “thrown out.” “Today’s unfortunate decision by the Supreme Court to uphold an unpopular and ill-considered law puts the American healthcare system at the mercy of Washington bureaucrats,” Cardenas said in a statement. “This law needs to be thrown out by the Congress and the President immediately, as it exceeds federal power, asserting enormous federal control over the healthcare of every man, woman and child in America. We need a bill that that will actually solve our healthcare problems and reduce the cost — not add to the legacy of debt to our children with trillions of dollars in new spending.”

#### (--) Detention centers popular with Congress

Rosenberg, 12

(Carol, writer for The Miami Herald, "Congress, rules keep Obama from closing Guantanamo Bay", Jan 9, [www.mcclatchydc.com/2012/01/09/135179/congress-rule-keep-obama-from.html#.UeLDrY2TiSI](http://www.mcclatchydc.com/2012/01/09/135179/congress-rule-keep-obama-from.html#.UeLDrY2TiSI) NL)

The responsibility lies not so much with the White House but with Congress, which has thwarted President Barack Obama’s plans to close the detention center, which the Bush administration opened on Jan. 11, 2002, with 20 captives. Congress has used its spending oversight authority both to forbid the White House from financing trials of Guantánamo captives on U.S. soil and to block the acquisition of a state prison in Illinois to hold captives currently held in Cuba who would not be put on trial — a sort of Guantánamo North. The latest defense bill adopted by Congress moved to mandate military detention for most future al Qaida cases. The White House withdrew a veto threat on the eve of passage, and then Obama signed it into law with a “signing statement” that suggested he could lawfully ignore it. On paper, at least, the Obama administration would be set to release almost half the current captives at Guantánamo. The 2009 Task Force Review concluded that about 80 of the 171 detainees now held at Guantánamo could be let go if their home country was stable enough to help resettle them or if a foreign country could safely give them a new start. But Congress has made it nearly impossible to transfer captives anywhere. Legislation passed since Obama took office has created a series of roadblocks that mean that only a federal court order or a national security waiver issued by Secretary of Defense Leon Panetta could trump Congress and permit the release of a detainee to another country. Neither is likely: U.S. District Court judges are not ruling in favor of captives in the dozens of unlawful detention suits winding their way from Cuba to the federal court in Washington. And on the occasions when those judges have ruled for detainees, the U.S. Court of Appeals has consistently overruled them in an ever-widening definition of who can be held as an affiliate of al Qaida or the Taliban. Meanwhile, Defense Department General Counsel Jeh Johnson, the Pentagon’s top lawyer, believes that Congress crafted the transfer waivers a year ago in such a way that Panetta (and Robert Gates before him) would be ill-advised to sign them. (In essence, the Secretary of Defense is supposed to guarantee that the detainee would never in the future engage in violence against any American citizen or U.S. interest.)

At a point where there’s a significant risk of a backlash, D/A o/w

And their NSA thumper card is a month old, prefer our UQ evidence that takes the current political climate into account

More work on the Impact:

#### Economic downturn causes conflicts to erupt across the globe

Auslin and Lachman, 2009 (Michael, AEI's [American Enterprise Institute] director of Japan Studies, was an associate professor of history and senior research fellow at the MacMillan Center, and Desmond, AEI fellow, former deputy director in the International Monetary Fund's Policy Development and Review Department, “The Global Economy Unravels” Forbes, 3-6, http://www.forbes.com/2009/03/06/global-economy-unravels-opinions-contributors-g20.html

What do these trends mean in the short and medium term? **The Great Depression showed how social and global chaos followed hard on economic collapse.** The mere fact that parliaments across the globe, from America to Japan, are unable to make responsible, economically sound recovery plans suggests that they do not know what to do and are simply hoping for the least disruption. Equally worrisome is the adoption of more statist economic programs around the globe, and the concurrent decline of trust in free-market systems. **The threat of instability is a pressing concern. China**, until last year the world's fastest growing economy, just reported that 20 million migrant laborers lost their jobs. Even in the flush times of recent years, China faced upward of 70,000 labor uprisings a year. A **sustained downturn poses grave and possibly immediate threats to Chinese internal stability. The regime in Beijing may be faced with a choice of repressing its own people or diverting their energies outward, leading to conflict with China's neighbors. Russia, an oil state completely dependent on energy sales, has had to put down riots in its Far East as well as in downtown Moscow.** Vladimir Putin's rule has been predicated on squeezing civil liberties while providing economic largesse. If that devil's bargain falls apart, then **wide-scale repression inside Russia, along with a continuing threatening posture toward Russia's neighbors, is likely.** Even apparently stable societies face increasing risk and the threat of internal or possibly external conflict. As Japan's exports have plummeted by nearly 50%, one-third of the country's prefectures have passed emergency economic stabilization plans. Hundreds of thousands of temporary employees hired during the first part of this decade are being laid off. Spain's unemployment rate is expected to climb to nearly 20% by the end of 2010; Spanish unions are already protesting the lack of jobs, and the specter of violence, as occurred in the 1980s, is haunting the country. Meanwhile, in Greece, workers have already taken to the streets. **Europe as a whole will face dangerously increasing tensions** between native citizens and immigrants, largely from poorer Muslim nations, who have increased the labor pool in the past several decades. Spain has absorbed five million immigrants since 1999, while nearly 9% of Germany's residents have foreign citizenship, including almost 2 million Turks. The xenophobic labor strikes in the U.K. do not bode well for the rest of Europe. **A prolonged global downturn, let alone a collapse, would dramatically raise tensions inside these countries**. Couple that with possible protectionist legislation in the United States, unresolved ethnic and territorial disputes in all regions of the globe and a loss of confidence that world leaders actually know what they are doing. **The result may be a series of small explosions that coalesce into a big bang.** One has to hope that ahead of the next G-20 summit in London this April, global policymakers will get real about the gravity of the present global economic and political situation. **For only with a coordinated and forceful economic policy response is there any hope of extricating ourselves from what is turning out to be the most serious global economic slump since the Great Depression.**

#### Global economic crisis causes nuclear war

Cesare Merlini 11, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs, May 2011, “A Post-Secular World?”, Survival, Vol. 53, No. 2

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism**.**