# UNLV R7 v Baylor

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#### Restrictions on authority prohibit- the aff is a condition

William **Conner 78**,former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. **Properly interpreted,** **the "conditions" that had been imposed by plaintiff's** Board of Directors and by the Venezuelan Cabinet **were not "restrictions" or "limitations"** up**on** the **authority of** plaintiff's **agents but rather conditions precedent to the granting of authority**. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

**Vote neg
limits and ground- anything can indirectly affect war powers--also makes the topic bidirectional because conditions can enhance executive power**

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#### Politics is Schmittian – trying to fight the executive on their own battlefield is naïve – the aff is just a liberal knee-jerk reaction that swells executive power

Kinniburgh, 5/27 **–** (Colin, Dissent, 5-27, <http://www.dissentmagazine.org/blog/partial-readings-the-rule-of-law>)

The shamelessness of the endeavor is impressive—a far cry, in many ways, from the CIA’s secretive Cold War–era assassination plots. Obama has succeeded in anchoring a legal infrastructure for state-sponsored assassinations on foreign soil while trumpeting it, in broad daylight, as a framework for accountability. Peppered with allusions to the Constitution and to “the law” more generally, the call for transparency instead appears to provide an Orwellian foil for a remarkable expansion of executive powers. Existing laws, domestic or international, are proving a hopelessly inadequate framework with which to hold the Obama administration accountable for arbitrary assassinations abroad. No doubt it is tempting to turn to the Constitution, the Universal Declaration of Human Rights, and other relevant legal documents as a litmus test for the validity of government actions. Many progressive media outlets have a tendency to seize on international law, especially, as a straightforward barometer of injustice: this is particularly true in the case of the Israel-Palestine conflict, as an editorial in the current issue of Jacobin points out. Both domestic and international legal systems often do afford a certain clarity in diagnosing excesses of state power, as well as a certain amount of leverage with which to pressure the states committing the injustices. To hope, however, that legal systems alone can redress gross injustices is naive. Many leftists—and not just “bloodless liberals”—feel obliged to retain faith in laws and courts as a lifeline against oppression, rather than as mere instruments of that same oppression. Even Marx, when he was subjected, along with fellow Communist League exiles, to a mass show trial in Prussian courts in the 1850s, was convinced that providing sufficient evidence of his innocence would turn the case against his accuser, Wilhelm Stieber, a Prussian secret agent who reportedly forged his evidence against the communists. In his writings, Marx expressed his disillusionment with all bourgeois institutions, including the courts; in practice, he hoped that the law would serve him justice. Richard Evans highlights this tension in his insightful review of Jonathan Sperber’s Karl Marx: A Nineteenth-Century Life, published in the most recent London Review of Books. “Naively forgetting,” writes Evans, “what they had said in the Manifesto – that the law was just an instrument of class interests – Marx and Engels expected [their evidence against Stieber] to lead to an acquittal, but the jury found several of the defendants guilty, and Stieber went unpunished.” Marx’s disappointment is all too familiar. It is familiar from situations of international conflict, illustrated by Obama’s drone strikes justifications; it is evident, too, when a police officer shoots dead an unarmed Bronx teenager in his own bathroom, and the charge of manslaugher—not murder—brought against the officer is dropped for procedural reasons by the presiding judge. This is hardly the first such callous ruling by a New York court in police violence cases; the last time charges were brought against an NYPD officer relating to a fatal shooting on duty, in 2007, they were also dropped. Dozens of New Yorkers have died at the hands of the police since then, and Ramarley Graham’s case was the first that even came close to a criminal conviction—only to be dropped for ludicrous reasons. Yet New York’s stop-and-frisk opponents are still fighting their battle out in the courts. In recent months, many activists have invested their hopes for fairer policing in a civil class action suit, Floyd, et. al. vs. City of New York, which may just convict the NYPD of discrimination despite the odds. District court judge Shira Scheindlin, profiled in this week’s New Yorker, has gained a reputation for ruling against the NYPD in stop-and-frisk cases, even when it has meant letting apparently dangerous criminals off the hook. In coming weeks, she is likely to do the same for the landmark Floyd case, in what may be a rare affirmation of constitutional law as a bulwark against state violence and for civil liberties. Even if the city wins the case, the spotlight that stop-and-frisk opponents have shined on the NYPD has already led to a 51 percent drop in police stops in the first quarter of this year. Still, when the powerful choose the battlefield and write the laws of war, meeting them on their terms is a dangerous game.

#### Legality feeds a new form of muscular liberalism where these illusions cannot see how much they sustain it which legitimizes wars for democracies and doctrines of pre-emption

Motha 8 \*Stewart, Senior Lecturer, Kent Law School, University of Kent, Canterbury, Kent, Journal of Law, Culture, and Humanities Forthcoming 2008, Liberal Cults, Suicide Bombers, and other Theological Dilemmas

A universalist liberal ideology has been re-asserted. It is not only neo-con hawks or Blairite opportunists that now legitimise wars for democracy. Alarmingly, it is a generation of political thinkers who opposed the Nixonian logic of war (wars to show that a country can ‘credibly’ fight a war to protect its interests1), and those humbled by the anticolonial struggles of liberation from previous incarnations of European superiority that are renewing spurious civilizational discourses. This ‘muscular liberalism’ has found its voice at the moment of a global political debate about the legality and effectiveness of ‘just wars’ – so called ‘wars for democracy’ or ‘humanitarian war’. The new political alignment of the liberal left emerged in the context of discussions about the ‘use of force’ irrespective of UN Security Council endorsement or the sovereign state’s territorial integrity, such as in Kosovo – but gained rapid momentum in response to attacks in New York City and Washington on September 11, 2001. Parts of the liberal left have now aligned themselves with neoconservative foreign policies, and have joined what they believe is a new anti-totalitarian global struggle – the ‘war on terror’ or the battle against Islamist fundamentalism. One task of this essay, then, is to identify this new formation of the liberal left. Much horror and suffering has been unleashed on the world in the name of the liberal society which must endure. However, when suicide bombing and state-terror are compared, the retort is that there is no moral equivalence between the two. Talal Asad in his evocative book, On Suicide Bombing, has probed the horror that is felt about suicide bombing in contrast to state violence and terror.2 What affective associations are formed in the reaction to suicide bombing? What does horror about suicide bombing tell us about the constitution of inter-subjective relations? In this essay I begin to probe these questions about the relation between death, subjectivity, and politics. I want to excavate below the surface oppositions of good deaths and bad, justifiable killing and barbarism, which have been so central to left liberal arguments. As so much is riding on the difference between ‘our good war’ and ‘their cult of death’, it seems apt to examine and undo the opposition. The muscular liberal left projects itself as embodying the values of the ‘West’, a geo-political convergence that is regularly opposed to the ‘East’, ‘Muslims’, or the ‘Islamic World’. I undo this opposition, arguing that thanatopolitics, a convergence of death, sacrifice, martyrdom and politics, is common to left liberal and Islamist political formations. How does death become political for left liberals and Islamist suicide bombers? In the case of the latter, what is most immediately apparent is how little is known about the politics and politicization of suicide bombers. Suicide bombers are represented as a near perfect contrast to the free, autonomous, self-legislating liberal subject – a person overdetermined by her backward culture, oppressive setting, and yet also empty of content, and whose death can have no temporal political purchase. The ‘suicide bomber’ tends to be treated by the liberal left as a trans-historical ‘figure’, usually represented as the ‘Islamo-fascist’ or the ‘irrational’ Muslim.3 The causes of suicide bombing are often implicitly placed on Islam itself – a religion that is represented as devoid of ‘scepticism, doubt, or rebellion’ and thus seen as a favourable setting for totalitarianism.4 The account of the suicide bomber as neo-fascist assassin supplements a lack – that is, that the association of suicide bombing with Islam explains very little. The suicide bomber is thus made completely familiar as totalitarian fascist, or wholly other as “[a] completely new kind of enemy, one for whom death is not death”.5 So much that is written about the suicide bomber glosses over the unknown with political subjectivities, figures, and paradigms (such as fascism) which are familiar enough to be vociferously opposed. By drawing the suicide bomber into a familiar moral register of ‘evil’, political and historical relations between victim and perpetrator are erased.6 In the place of ethnographically informed research the ‘theorist’ or ‘public intellectual’ erases the contingency of the suicide bomber and reduces her death to pure annihilation, or nothingness. The discussion concludes by undoing the notion of the ‘West’, the very ground that the liberal left assert they stand for. The ‘West’ is no longer a viable representation of a geo-political convergence, if it ever was. Liberal discourse has regarded itself as the projection of the ‘West’ and its enlightenment. But this ignores important continuities between Islam, Christianity, and contemporary secular formations. The current ‘clash of monotheisms’, I argue after J-L Nancy, reveals a crisis of sense, authority, and meaning which is inherent to the monotheistic form. An increasingly globalised world is made up of political communities and juridical orders that have been ‘emptied’ of authority and certainty. This crisis of sense conditions the horror felt by the supposedly rational liberal in the face of Islamist terrorism. Horror at terrorism is then the affective bond that sustains a grouping that otherwise suffers the loss of a political project with a definite end. The general objective of this essay is to challenge the unexamined assumptions about politics and death that circulate in liberal left denunciations of Islamic fascism. The horror and fascination with the figure of the suicide bomber reveals an unacknowledged affective bond that constitutes the muscular liberal left as a political formation. This relies on disavowing the sacrificial and theological underpinnings of political liberalism itself – and ignores the continuities between what is called the ‘West’ and the theologico-political enterprise of monotheism. Monotheism is not the preserve of something called the ‘West’, but rather an enterprise that is common to all three Religions of the Book. The article concludes by describing how the writings of Jean-Luc Nancy on monotheism offer liberal left thinkers insights for rethinking the crisis of value that resulted from the collapse of grand emancipatory enterprises as well as the fragmentation of politics resulting from a focus on political identification through difference. I opened with a reference to the ‘liberal left’. Of course the ‘liberal left’ signifies a vast and varied range of political thinking and activism – so I must clarify how I am deploying this term. In this essay the terms ‘liberal left’ or ‘muscular liberal’ are used interchangeably. Paul Berman and Nick Cohen, whose writing I will shortly refer to, are exemplars of the new political alignment who self-identify as ‘democrats and progressives’, but whose writings feature bellicose assertions about the superiority of western models of democracy, and universal human rights.7 Among this liberal left, democracy and freedom become hemispheric and come to stand for the West. More generally, now, the ‘liberal left’ can be distinguished from political movements and thinkers who draw inspiration from a Marxist tradition of thought with a socialist horizon. The liberal left I am referring to would view the Marxist tradition as undervaluing democratic freedoms and human rights. Left liberals also tend to dismiss the so called post-Marxist turn in European continental philosophy as ‘postmodern relativism’.8 PostMarxists confronted the problem of the ‘collective’ – addressing the problem of masses and classes as the universal category or agent of historical transformation. This was a necessary correction to all the disasters visited on the masses in the name of a universal working class. The liberal state exploited these divisions on the left. It is true that a left fragmented through identity politics or the politics of difference were reduced to group based claims on the state. However, liberal multiculturalism was critiqued by anti-racist and feminist thinkers as early as the 1970s for ignoring the structural problems of class or as yet another nation-building device. The new formation of the muscular liberal left have only just discovered the defects of multiculturalism. The dismissal of liberal multiculturalism is now code for ‘too much tolerance’ of ‘all that difference’. The liberal left, or muscular liberal, as I use these terms, should not be conflated with the way ‘liberal’ is generally used in North America to denote ‘progressive’, ‘pro-choice’, open to a multiplicity of forms of sexual expression, generally ‘tolerant’, or ‘left wing’ (meaning socialist). It might be objected that it is not the liberal left, but ‘right wing crazies’ driven by Christian evangelical zeal combined with neo-liberal economic strategies that have usurped a post-9/11 crime and security agenda to mount a global hegemonic enterprise in the name of a ‘war on terror’. It might also be said that this is nothing new – global expansionist enterprises such as 18th and 19th century colonialism mobilised religion, science, and theories of economic development to secure resources and justify extreme violence where necessary. Global domination, it might be argued, has always been a thanatopolitical enterprise. So what’s different now? What is crucial, now, is that the entire spectrum of liberalism, including the ‘rational centre’, is engaged in the kind of mindset whereby a destructive and deadly war is justified in the name of protecting or establishing democracy, the rule of law, and human rights. It might then be retorted that this ‘rational centre’ of liberalism have ‘always’ been oriented in this way. That is partly true, but it is worth recalling that the liberal left I have in mind is the generation that came of age with opposition to the war in Vietnam, other Indo-Chinese conflagrations, and the undoing of empire. This is a left that observed the Cold War conducted through various ‘hot wars’ in Africa, Central and Latin America, and South East Asia and thus at least hoped to build a ‘new world order’ of international law and multilateralism. This is a left that was resolved, by the 1970s, not to repeat the error of blindly following a scientific discourse that promised to produce a utopia – whether this was ‘actually existing socialism’ or the purity of ‘blood and soil’. But now, a deadly politics, a thanatopolitics, is drawn out of a liberal horror and struggle against a monolithically drawn enemy called Islamic fundamentalism. What is new is that Islam has replaced communism/fascism as the new ‘peril’ against which the full spectrum of liberalism is mobilized. Islamist terrorism and suicide bombers, a clash between an apparently Islamic ‘cult of death’ versus modern secular rationality has come to be a central preoccupation of the liberal left. In the process, as Talal Asad has eloquently pointed out, horror about terrorism has come to be revealed as one way in which liberal subjectivity and its relation to political community can be interrogated and understood.9 Moreover, the potential for liberal principles to be deployed in the service of legitimating a doctrine of pre-emption as the ‘new internationalism’ is significant. The first and second Gulf Wars, according to the liberal left, are then not wars to secure control over the supply of oil, or regional and global hegemony, as others on the left might argue, but anti-fascist, anti-totalitarian wars of liberation fought in the name of ‘democracy’. Backing ‘progressive wars’ for ‘freedom and democracy’, those who self-identify as a left which is reasserting liberal democratic principles start by asking questions such as: “Are western freedoms only for westerners?”.10 In the process, freedom becomes ‘western’, and its enemy an amorphous legion behind an unidentifiable line between ‘west’ and the rest (the ‘Muslim world’). The ‘war for democracy’ waged against ‘Islamist terrorism’ and Muslim fundamentalism is the crucible on which the new alignment of the liberal left is forged.

#### The alt is to reject the aff in favor of building a culture of resilience

Vermeule and Posner 11 Adrian Vermeule, prof of Law at Harvard University Law School, Eric A Posner., prof of Law at the University of Chicago Law School, *Executive Unbound: After the Madisonian Republic*, Oxford University Press 2011

We do not yet live under a plebiscitary presidency. In such a system, the president has unchecked legal powers except for the obligation to submit to periodic elections. In our system, Congress retains the formal power to make law. It has subjected presidential lawmaking to complex procedures and bureaucratic checks,1 and it has created independent agencies over which the president in theory has limited control. The fed­eral courts can expect the executive to submit to their orders, and the Supreme Court retains certain quasi-lawmaking powers, which it exercises by striking down statutes and blocking executive actions. The federal system is still in place. State legal institutions retain considerable power over their populations. But these legal checks on executive authority (aside from the electoral constraint) have eroded considerably over the last two hundred years. Congress has delegated extensive powers to the executive. For new initia­tives, the executive leads and Congress follows. Congress can certainly slow down policymaking, and block bills proposed by the executive; but it cannot set the agenda. It is hard to quantify the extent of congressional control over regulatory agencies, but it is fair to say that congressional intervention is episodic and limited, while presidential control over both the executive and independent agencies is strong and growing stronger. The states increasingly exercise authority at the sufferance of the national government and hence the president. The federal courts have not tried to stop the erosion of congressional power and state power. Some commentators argue that the federal courts have taken over Con­gress’s role as an institutional check. It is true that the Supreme Court has shown little compunction about striking down statutes (although usually state statutes), and that it rejected some of the legal theories that the Bush administration used to justify its counterterrorism policies. However, the Court remains a marginal player. The Court ducked any legal rulings on counterterror policies until the 2004 Hamdi decision, and even after the Boumediene decision in 2008, no detainee has been released by final judicial order, from Guantanamo or elsewhere, except in cases where the government chose not to appeal the order of a district judge. The vast majority of detainees have received merely another round of legal process. Some speculate that judicial threats to release detainees have caused the administration to release them preemptively. Yet the judges would incur large political costs for actual orders to release suspected terrorists, and the government knows this, so it is unclear that the government sees the judi­cial threats as credible or takes them very seriously. The government, of course, has many administrative and political reasons to release detainees, quite apart from anything the courts do. So the executive submits to judi­cial orders in part because the courts are careful not to give orders that the executive will resist. In general, judicial opposition to the Bush administration’s counterter­rorism policies took the form of incremental rulings handed down at a gla­cial pace, none of which actually stopped any of the major counterterrorism tactics of that administration, including the application of military power against Al Qaeda, the indefinite detention of members of Al Qaeda, tar­geted assassinations, the immigration sweeps, even coercive interrogation. The (limited) modifications of those tactics that have occurred resulted not from legal interventions but from policy adjustments driven by changed circumstances and public opinion, and by electoral victory of the Obama administration. However, the Obama administration has mostly confirmed and in some areas even expanded the counterterrorism policies of the Bush administration. Strong executive government is bipartisan. The 9/11 attack provided a reminder of just how extensive the presi­dent’s power is. The executive claimed the constitutional authority to, in effect, use emergency powers. Because Congress provided redundant stat­utory authority, and the Supreme Court has steadfastly refused to address the ultimate merits of the executives constitutional claims, these claims were never tested in a legal or public forum. But it is worth trying to ima­gine what would have happened if Congress had refused to pass the Autho­rization for Use of Military Force and the Supreme Court had ordered the executive to release detainees in a contested case. We think that the execu­tive, backed up as it was by popular opinion, would have refused to obey. And, indeed, for just that reason, Congress would, never have refused its imprimatur and the Supreme Court would never have stood in the execu­tive’s way. The major check on the executives power to declare an emer­gency and to use emergency powers is—political. The financial crisis of 2008-2009 also revealed the extent of executive power. Acting together, the Fed, the Treasury, and other executive agencies spent hundreds of billions of dollars, virtually nationalizing parts of the financial system. Congress put up a fuss, but it could not make policy and indeed hardly even influenced policy. Congress initially refused to supply a blank check, then in world-record time changed its mind and gave the blank check, then watched helplessly as the administration adopted pol­icies different from those for which it said the legislation would be needed. Courts played no role in the crisis except to ratify executive actions in tension with the law.2 What, then, prevents the executive from declaring spurious emergencies and using the occasion to consolidate its power—or for that matter, consolidating its power during real emergencies so that it retains that power even after normal times return? In many countries, notably in Latin America, presidents have done just that. Citing an economic crisis, or a military threat, or congressional gridlock, executives have shut down independent media, replaced judges with their cronies, suppressed political opposition, and ruled by dictate. Could this happen in the United States? The answer is, very probably, no. The political check on the executive is real. Declarations of emergency not justified by publicly visible events would be met with skepticism. Actions said, to be justified by emergency would not be approved if the justification were not plausible. Separation of powers may be suffering through an enfeebled old age, but electoral democracy is alive and well. We have suggested that the historical developments that have under­mined separation of powers have strengthened democracy. Consider, for example, the communications revolution, which has culminated (so far) in the Internet Age. As communication costs decrease, the size of markets expand, and hence the scale of regulatory activity must increase. Localities and states lose their ability to regulate markets, and the national govern­ment takes over. Meanwhile, reduced communication costs increase the relative value of administration (monitoring firms and ordering them to change their behavior) and reduce the relative value of legislation (issuing broad-gauged rules), favoring the executive over Congress. At the same time, reduced communication costs make it easier for the public to mon­itor the executive. Today, whistleblowers can easily find an audience on the Internet,; people can put together groups that focus on a tiny aspect of the government s behavior; gigabytes of government data are uploaded onto the Internet and downloaded by researchers who can subject them to rigorous statistical analysis. It need not have worked out this way. Govern­ments can also use technology to monitor citizens for the purpose of suppressing political opposition. But this has not, so far, happened in the United States. Nixon fell in part because his monitoring of political enemies caused an overwhelming political backlash, and although the Bush administration monitored suspected terrorists, no reputable critic suggested that it targeted domestic political opponents. Our main argument has been methodological and programmatic: researchers should no longer view American political life through the Madisonian prism, while normative theorists should cease bemoaning the decline of Madisonianism and instead make their peace with the new political order. The center of gravity has shifted to the executive, which both makes policy and administers it, subject to weak constraints imposed by Congress, the judiciary, and the states. It is pointless to bewail these developments, and futile to argue that Madisonian structures should be reinvigorated. Instead, attention should shift to the political constraints on the president and the institutions through, which those political con­straints operate—chief among them elections, parties, bureaucracy, and the media. As long as the public informs itself and maintains a skeptical attitude toward the motivations of government officials, the executive can operate effectively only by proving over and over that it deserves the public s trust. The irony of the new political order is that the executive, freed from the bonds of law, inspires more distrust than in the past, and thus must enter ad hoc partnerships with political rivals in order to persuade people that it means well. But the new system is more fluid, allowing the executive to form those partnerships when they are needed to advance its goals, and not otherwise. Certain types of partnership have become recurrent pat­terns—for example, inviting a member of the opposite party to join the president’s cabinet. Others are likely in the future. In the place of the clockwork mechanism bequeathed to us by the Enlightenment thinking of the founders, there has emerged a more organic system of power sharing and power constraint that depends on shifting political alliances, currents of public opinion, and the particular exigencies that demand government action. It might seem that such a system requires more attention from the public than can reasonably be expected, but the old system of checks and balances always depended on public opinion as well. The centuries-old British parliamentary system, which operated in. just this way, should provide reason, for optimism. The British record on executive abuses, although hardly perfect, is no worse than the American record and arguably better, despite the lack of a Madisonian separation of legislative and executive powers

### CP

#### The Executive Branch of the United States should discontinue authorization of preemptive use of large-scale cyber-attacks, except in direct support of authorized United States military operations. The Executive Branch should create “executive v. executive” divisions as per our Katyal evidence to promote internal separation of powers via separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts.

#### Presidential veto power and executive deference mean external restraints fail – internal separation of powers constrains the president and leads to better decision making

Katyal ’6 Neal Katyal, Professor of Law @ Georgetown, The Yale Law Journal, “Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within” 115 Yale L.J. 2314, 2006

After all, Publius's view of separation of powers presumes three branches with equivalent ambitions of maximizing their powers, yet legislative abdication is the reigning modus operandi. It is often remarked that "9/11 changed everything"; 2 particularly so in the war on terror, in which Congress has been absent or content to pass vague, open-ended statutes. The result is an executive that subsumes much of the tripartite structure of government. Many commentators have bemoaned this state of affairs. This Essay will not pile on to those complaints. Rather, it begins where others have left off. If major decisions are going to be made by the President, then how might separation of powers be reflected within the executive branch? The first-best concept of "legislature v. executive" checks and balances must be updated to contemplate second-best "executive v. executive" divisions. And this Essay proposes doing so in perhaps the most controversial area: foreign policy. It is widely thought that the President's power is at its apogee in this arena. By explaining the virtues of internal divisions in the realm of foreign policy, this Essay sparks conversation on whether checks are necessary in other, domestic realms. That conversation desperately needs to center on how best to structure the ever-expanding modern executive branch. From 608,915 employees working in agencies in 1930, 3 to 2,649,319 individuals in 2004, 4 the growth of the executive has not generated a systematic focus on internal checks. We are all fond of analyzing checks on judicial activism in the post-Brown, post-Roe era. So too we think of checks on legislatures, from the filibuster to judicial review. But [\*2317] there is a paucity of thought regarding checks on the President beyond banal wishful thinking about congressional and judicial activity. This Essay aims to fill that gap. A critical mechanism to promote internal separation of powers is bureaucracy. Much maligned by both the political left and right, bureaucracy creates a civil service not beholden to any particular administration and a cadre of experts with a long-term institutional worldview. These benefits have been obscured by the now-dominant, caricatured view of agencies as simple anti-change agents. This Essay celebrates the potential of bureaucracy and explains how legal institutions can better tap its powers. A well-functioning bureaucracy contains agencies with differing missions and objectives that intentionally overlap to create friction. Just as the standard separation-of-powers paradigms (legislature v. courts, executive v. courts, legislature v. executive) overlap to produce friction, so too do their internal variants. When the State and Defense Departments have to convince each other of why their view is right, for example, better decision-making results. And when there is no neutral decision-maker within the government in cases of disagreement, the system risks breaking down. In short, the executive is the home of two different sorts of legitimacy: political (democratic will) and bureaucratic (expertise). A chief aim of this Essay's proposal is to allow each to function without undermining the other. This goal can be met without agency competition - overlapping jurisdiction is simply one catalyzing agent. Other ideas deserve consideration, alongside or independent of such competition, such as developing career protections for the civil service modeled more on the Foreign Service. Executives of all stripes offer the same rationale for forgoing bureaucracy-executive energy and dispatch. 5 Yet the Founders assumed that massive changes to the status quo required legislative enactments, not executive decrees. As that concept has broken down, the risks of unchecked executive power have grown to the point where dispatch has become a worn-out excuse for capricious activity. Such claims of executive power are not limited to the current administration, nor are they limited to politicians. Take, for example, Dean Elena Kagan's rich celebration of presidential administration. 6 Kagan, herself a former political appointee, lauded the President's ability to trump bureaucracy. Anticipating the claims of the current administration, Kagan argued that the [\*2318] President's ability to overrule bureaucrats "energizes regulatory policy" because only "the President has the ability to effect comprehensive, coherent change in administrative policymaking." 7 Yet it becomes clear that the Kagan thesis depends crucially on oversight by the coordinate legislative branch (typically controlled by a party in opposition to the President). Without that checking function, presidential administration can become an engine of concentrated power. This Essay therefore outlines a set of mechanisms that create checks and balances within the executive branch. The apparatuses are familiar - separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts. But these restraints have been informally laid down and inconsistently applied, and in the wake of September 11 they have been decimated. 8 A general framework statute is needed to codify a set of practices. In many ways, the status quo is the worst of all worlds because it creates the facade of external and internal checks when both have withered. I. THE NEED FOR INTERNAL SEPARATION OF POWERS The treacherous attacks of September 11 gave Congress and the President a unique opportunity to work together. Within a week, both houses of Congress passed an Authorization for Use of Military Force (AUMF); 10 two months later they enacted the USA PATRIOT Act to further expand intelligence and law enforcement powers. 11 But Congress did no more. It passed no laws authorizing or regulating detentions for U.S. citizens. It did not affirm or regulate President Bush's decision to use military commissions to try unlawful belligerents. 12 It stood silent when President Bush accepted thinly reasoned legal views of the Geneva Conventions. 13 The administration was content to rely on vague legislation, and Congress was content to enact little else. 14 There is much to be said about the violation of separation of powers engendered by these executive decisions, but for purposes of this Essay, I want [\*2320] to concede the executive's claim - that the AUMF gave the President the raw authority to make these decisions. A democratic deficit still exists; the values of divided government and popular accountability are not being preserved. Even if the President did have the power to carry out the above acts, it would surely have been wiser if Congress had specifically authorized them. Congress's imprimatur would have ensured that the people's representatives concurred, would have aided the government's defense of these actions in courts, and would have signaled to the world a broader American commitment to these decisions than one man's pen stroke. Of course, Congress has not passed legislation to denounce these presidential actions either. And here we come to a subtle change in the legal landscape with broad ramifications: the demise of the congressional checking function. The story begins with the collapse of the nondelegation doctrine in the 1930s, which enabled broad areas of policymaking authority to be given to the President and to agencies under his control. That collapse, however, was tempered by the legislative veto; in practical terms, when Congress did not approve of a particular agency action, it could correct the problem. But after INS v. Chadha, 15 which declared the legislative veto unconstitutional, that checking function, too, disappeared. In most instances today, the only way for Congress to disapprove of a presidential decree, even one chock full of rampant lawmaking, is to pass a bill with a solid enough majority to override a presidential veto. The veto power thus becomes a tool to entrench presidential decrees, rather than one that blocks congressional misadventures. And because Congress ex ante appreciates the supermajority-override rule, its members do not even bother to try to check the President, knowing that a small cadre of loyalists in either House can block a bill. 16 For example, when some of the Senate's most powerful Republicans (John McCain, Lindsay Graham, and John Warner) tried to regulate detentions and trials at Guantanamo Bay, they were told that the President would veto any attempt to modify the AUMF. 17 The result is that once a court [\*2321] interprets a congressional act, such as the AUMF, to give the President broad powers, Congress often cannot reverse the interpretation, even if Congress never intended to give the President those powers in the first place. Senator McCain might persuade every one of the other ninety-nine Senators to vote for his bill, but that is of no moment without a supermajority in the House of Representatives as well. 18 At the same time, the executive branch has gained power from deference doctrines that induce courts to leave much conduct untouched - particularly in foreign affairs. 19 The combination of deference and the veto is especially insidious - it means that a President can interpret a vague statute to give himself additional powers, receive deference in that interpretation from courts, and then lock that decision into place by brandishing the veto. This ratchet-and-lock scheme makes it almost impossible to rein in executive power. All legislative action is therefore dangerous. Any bill, like Senator McCain's torture bill, can be derailed through compromise. A rational legislator, fearing this cascading cycle, is likely to do nothing at all. This expansion of presidential power is reinforced by the party system. When the political branches are controlled by the same party, loyalty, discipline, and self-interest generally preclude interbranch checking. That reluctance is exacerbated by a paucity of weapons that check the President. Post-Chadha, Congress only has weapons that cause extensive collateral damage. The fear of that damage becomes yet another reason why Congress is plagued with inertia. And the filibuster, the last big check in periods of single-party government, is useless against the host of problems caused by Presidents who take expansive views of their powers under existing laws (such as the AUMF). Instead of preserving bicameralism, Chadha has led to its subversion and "no-cameralism." A Congress that conducts little oversight provides a veneer of legitimacy to an adventurist President. The President can appeal to the historic sense of checks and balances, even if those checks are entirely compromised by modern political dynamics. With this system in place, it is no surprise that recent calls [\*2322] for legislative revitalization have failed. No successful action-forcing mechanisms have been developed; instead we are still in John Hart Ely's world of giving a "halftime pep-talk imploring that body to pull up its socks and reclaim its rightful authority." 20 It is time to consider second-best solutions to bring separation of powers into the executive. Bureaucracy can be reformed and celebrated (instead of purged and maligned), and neutral conflict-decision mechanisms can be introduced. Design choices such as these can help bring our government back in line with the principles envisioned by our Founders. 21

#### Doesn’t link to politics

Metzger ‘9, Gillian E. Metzger, Professor of Law @ Columbia Law School, “The Interdependent Relationship Between Internal and External Separation of Powers” 59 Emory L.J. 423, Emory Law Journal, 2009

Several bases exist for thinking that internal separation of powers mechanisms may have a comparative advantage. First, internal mechanisms [\*440] operate ex ante, at the time when the Executive Branch is formulating and implementing policy, rather than ex post. As a result, they avoid the delay in application that can hamper both judicial and congressional oversight. 76 Second, internal mechanisms often operate continuously, rather than being limited to issues that generate congressional attention or arise in the form of a justiciable challenge. 77 Third, internal mechanisms operate not just at the points at which policy proposals originate and are implemented but also at higher managerial levels, thus addressing policy and administration in both a granular and systemic fashion. In addition, policy recommendations generated through internal checks may face less resistance than those offered externally because the latter frequently arise after executive officials have already decided upon a policy course and are more likely to take an adversarial form. 78 Internal mechanisms may also gain credibility with Executive Branch officials to the extent they are perceived as contributing to more fully informed and expertise-based decisionmaking. 79

### CIR DA

#### CIR will pass SOON Obama’s continued push is key

Matthews 10/16

Laura Matthews, MA Columbia, International Business Times “2013 Immigration Reform Bill: 'I'm Going To Push To Call A Vote,' Says Obama” October 16 2013 http://www.ibtimes.com/2013-immigration-reform-bill-im-going-push-call-vote-says-obama-1429220

When Congress finally passes a bipartisan bill that kicks the fiscal battles over to early next year, the spotlight could return to comprehensive immigration reform before 2013 ends.¶ At least that’s the hope of President Barack Obama and his fellow Chicagoan Rep. Luis Gutierrez, D-Ill., chairman of the Immigration Task Force of the Congressional Hispanic Caucus and one of the most vocal advocates for immigration reform in the House of Representatives.¶ “When we emerge from this crazy partisan eruption from the Republicans, there will be a huge incentive for sensible Republicans who want to repair some of the damage they have done to themselves,” Gutierrez said in a statement. “Immigration reform remains the one issue popular with both Democratic and Republican voters on which the two parties can work together to deliver real, substantive solutions in the Congress this year.”¶ Reforming the status quo has consistently been favored by a majority of Americans. Earlier this year, at least two-thirds of Americans supported several major steps to make the system work better, according to a Gallup poll. Those steps include implementing an E-verify system for employers to check electronically the immigration status of would-be employees (85 percent), a path to citizenship for undocumented immigrants, (72 percent), an entry-exit check system to make sure people who enter the country then leave it (71 percent), more high-skilled visas (71 percent) and increased border security (68 percent).¶ The Senate passed its version of a 2013 immigration reform bill in June that includes, but is not limited to, a pathway to citizenship for immigrants without documentation and doubling security on the southern border. But that measure has stalled in the House, where Republicans are adamant they will take a piecemeal approach.¶ The momentum that lawmakers showed for reform has been sapped by the stalemate that that has shut down the government for 16 days and brought the U.S. to the brink of default. The Senate has agreed on Wednesday to a bipartisan solution to break the gridlock.¶ When the shutdown and default threat is resolved (for a time), that’s when Obama will renew his push to get Congress to move on immigration reform. On Tuesday the president said reform will become his top priority.¶ “Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform,” Obama told Univision affiliate KMEX-TV in Los Angeles. “And if I have to join with other advocates and continue to speak out on that, and keep pushing, I’m going to do so because I think it’s really important for the country. And now is the time to do it.”¶ The president pointed the finger at House Speaker John Boehner, R-Ohio, for not allowing the bill to be brought to the floor for a vote. Boehner had promised that the Senate’s bill would not be voted on unless a majority of the majority in the House supports it -- the same principle he was holding out for on the government shutdown before he gave in.¶ “We had a very strong Democratic and Republican vote in the Senate,” Obama said. “The only thing right now that’s holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives. So we’re going to have to get through this crisis that was unnecessary, that was created because of the obsession of a small faction of the Republican Party on the Affordable Care Act.”¶ Republicans are opposing the Democratic view of immigration reform because of its inclusion of a 13-year path to citizenship for undocumented immigrants. They said this amounted to “amnesty.” Some Republicans prefer to give them legal resident status instead.¶ Immigration advocates have also been urging Obama to use his executive authority to halt the more than 1,000 deportations taking place daily. Like the activists, Gutierrez said the government shutdown didn’t do anything to slow the number of daily deportations.¶ Some Republicans who welcomed Sen. Ted Cruz’s filibuster over Obamacare because it shifted the focus from immigration.¶ “If Ted [didn’t] spin the filibuster, if we don’t make this the focus, we had already heard what was coming,” Rep. Louie Gohmert, R-Texas, told Fox News on Tuesday. “As soon as we got beyond this summer, we were going to have an amnesty bill come to the floor. That’s what we would have been talking about. And that’s where the pivot would have been if we had not focused America on Obamacare.”¶ Still, pro-immigration advocates are hopeful they can attain their goal soon. “With more prodding from the president and the American people,” Gutierrez said, “we can get immigration reform legislation passed in the House and signed into law.”

#### Plan tanks capital and derails the agenda – empirics prove

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

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

#### CIR solves multiple internal links to the economy

Beadle 12/10 Amanda Peterson, Reporter/Blogger at ThinkProgress.org. She received her B.A. in journalism and Spanish from the University of Alabama, where she was editor-in-chief of the campus newspaper The Crimson White and graduated with honors. Before joining ThinkProgress, she worked as a legislative aide in the Maryland House of Delegates. “Top 10 Reasons Why The U.S. Needs Comprehensive Immigration Reform” http://thinkprogress.org/justice/2012/12/10/1307561/top-10-reasons-why-the-us-needs-comprehensive-immigration-reform-that-includes-a-path-to-citizenship/

The nation needs a comprehensive immigration plan, and it is clear from a recent poll that most Americans support reforming the U.S.’s immigration system. In a new poll, nearly two-thirds of people surveyed are in favor of a measure that allows undocumented immigrants to earn citizenship over several years, while only 35 percent oppose such a plan. And President Obama is expected to “begin an all-out drive for comprehensive immigration reform, including seeking a path to citizenship” in January.¶ Several top Republicans have softened their views on immigration reform following November’s election, but in the first push for reform, House Republicans advanced a bill last month that would add visas for highly skilled workers while reducing legal immigration overall. Providing a road map to citizenship for the millions of undocumented immigrants living in the U.S. would have sweeping benefits for the nation, especially the economy.¶ Here are the top 10 reasons why the U.S. needs comprehensive immigration reform:¶ 1. Legalizing the 11 million undocumented immigrants in the United States would boost the nation’s economy. It would add a cumulative $1.5 trillion to the U.S. gross domestic product—the largest measure of economic growth—over 10 years. That’s because immigration reform that puts all workers on a level playing field would create a virtuous cycle in which legal status and labor rights exert upward pressure on the wages of both American and immigrant workers. Higher wages and even better jobs would translate into increased consumer purchasing power, which would benefit the U.S. economy as a whole.¶ 2. Tax revenues would increase. The federal government would accrue $4.5 billion to $5.4 billion in additional net tax revenue over just three years if the 11 million undocumented immigrants were legalized. And states would benefit. Texas, for example, would see a $4.1 billion gain in tax revenue and the creation of 193,000 new jobs if its approximately 1.6 million undocumented immigrants were legalized.¶ 3. Harmful state immigration laws are damaging state economies. States that have passed stringent immigration measures in an effort to curb the number of undocumented immigrants living in the state have hurt some of their key industries, which are held back due to inadequate access to qualified workers. A farmer in Alabama, where the state legislature passed the anti-immigration law HB 56 in 2011, for example, estimated that he lost up to $300,000 in produce in 2011 because the undocumented farmworkers who had skillfully picked tomatoes from his vines in years prior had been forced to flee the state.¶ 4. A path to citizenship would help families access health care. About a quarter of families where at least one parent is an undocumented immigrant are uninsured, but undocumented immigrants do not qualify for coverage under the Affordable Care Act, leaving them dependent on so-called safety net hospitals that will see their funding reduced as health care reforms are implemented. Without being able to apply for legal status and gain health care coverage, the health care options for undocumented immigrants and their families will shrink.¶ 5. U.S. employers need a legalized workforce. Nearly half of agricultural workers, 17 percent of construction workers, and 12 percent of food preparation workers nationwide lacking legal immigration status. But business owners—from farmers to hotel chain owners—benefit from reliable and skilled laborers, and a legalization program would ensure that they have them.¶ 6. In 2011, immigrant entrepreneurs were responsible for more than one in four new U.S. businesses. Additionally, immigrant businesses employ one in every 10 people working for private companies. Immigrants and their children founded 40 percent of Fortune 500 companies, which collectively generated $4.2 trillion in revenue in 2010—more than the GDP of every country in the world except the United States, China, and Japan. Reforms that enhance legal immigration channels for high-skilled immigrants and entrepreneurs while protecting American workers and placing all high-skilled workers on a level playing field will promote economic growth, innovation, and workforce stability in the United States.¶ 7. Letting undocumented immigrants gain legal status would keep families together. More than 5,100 children whose parents are undocumented immigrants are in the U.S. foster care system, according to a 2011 report, because their parents have either been detained by immigration officials or deported and unable to reunite with their children. If undocumented immigrants continue to be deported without a path to citizenship enabling them to remain in the U.S. with their families, up to 15,000 children could be in the foster care system by 2016 because their parents were deported, and most child welfare departments do not have the resources to handle this increase.¶ 8. Young undocumented immigrants would add billions to the economy if they gained legal status. Passing the DREAM Act—legislation that proposes to create a roadmap to citizenship for immigrants who came to the United States as children—would put 2.1 million young people on a pathway to legal status, adding $329 billion to the American economy over the next two decades.¶ 9. And DREAMers would boost employment and wages. Legal status and the pursuit of higher education would create an aggregate 19 percent increase in earnings for young undocumented immigrants who would benefit from the DREAM Act by 2030. The ripple effects of these increased wages would create $181 billion in induced economic impact, 1.4 million new jobs, and $10 billion in increased federal revenue.¶ 10. Significant reform of the high-skilled immigration system would benefit certain industries that require high-skilled workers. Immigrants make up 23 percent of the labor force in high-tech manufacturing and information technology industries, and immigrants more highly educated, on average, than the native-born Americans working in these industries. For every immigrant who earns an advanced degree in one of these fields at a U.S. university, 2.62 American jobs are created.

#### 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**.**

### Solvency

#### International cyber agreements are coming now, but could break down—now is the key time for transparency and confidence-building measures.

Baseley-Walker 11, (Ben Baseley-Walker, Programme Lead of the Emerging Security Threats Programme at the United Nations Institute for Disarmament Research (UNIDIR). He was previously Advisor on Security Policy and International Law for the Secure World Foundation (SWF), Transparency and confidence-building measures in cyberspace: towards norms of behaviour, Confronting cyberconflict, 2011, citizenlab.org/cybernorms2012/BaseleyWalker2011.pdf‎)

The international community is currently at a turning point in cybersecurity diplomacy. States have become aware of the threats and challenges they now face in an environment that is constantly evolving. Given that the initiatives discussed here are still at the early stages of development, the point has not yet been reached when states are politically chained to a particular initiative and thus are not prepared to consider alternatives. This should be taken advantage of. Currently, there is a window of opportunity to make real progress on definitions and operational TCBMs. While no state’s concerns should be disregarded, it is imperative to disassociate those measures that are beneficial to all parties at a foundational level from more conceptual questions regarding the balance between information warfare and freedom of expression.¶ Clarifying military and political doctrine on issues such as the protection of critical infrastructure and national positions on thresholds for a state to take offensive or defensive action in cyberspace provides plenty of substance for working towards near-term progress.¶ In terms of specific mechanisms for TCBMs, every option should be considered given that the goal is a cyber environment that is more stable, more predictable and less likely to result in miscommunication leading to conflict escalation. Bilateral understandings between advanced Cyber Powers, a multilateral accord or an international private–public agreement all are possible avenues for progress and deserve further investigation into their feasibility.¶ 2012 through 2014 will be crucial years for setting the future direction of the interaction of states on and in cyberspace. TCBMs developed during this period, it is hoped, will work to ensure that the interaction is as peaceful as possible.

#### The aff pushes cyber operations underground – undercuts cbms and turns case

**Lorber, 13** – (Eric, J.D. Candidate, University of Pennsylvania Law School, Ph.D Candidate, Duke University, “Executive Warmaking Authority And Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?”)

Stemming from similar tension noted in the constitutional division of war-making authority noted above, congressional oversight of covert actions beyond intelligence collection has often proved a point of contention between the executive and legislative branches. n195 Presidents have "inferred authority [to conduct covert actions] from such places as the Vesting Clause, the Commander-in-Chief Clause, the Treaty Clause, and from an implied executive privilege." n196¶ [\*993] Likewise, Congress attempted to rein in the President's ability to conduct covert operations without oversight by implementing a series of laws that required the President to get approval before undertaking such activities. n197 If the President did not provide such notification, Congress could decline to fund that particular covert activity. n198 Following the revelation that widespread, unreported covert actions were undertaken during the Vietnam War, Congress moved for stricter control of executive power, both by forcing the executive to account for the money it was spending as part of annual authorization bills n199 and by streamlining its own oversight capability by tasking two primary committees, the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, with oversight. n200¶ While Congress designed this legislation to rein in the President's power to conduct covert activities without oversight, events in the 1980s clearly showed that its efforts had been ineffective. n201 In particular, the Iran-Contra affair illustrated that Congress needed to substantially reform oversight legislation to ensure that it could properly monitor executive covert action. n202 As a result, in 1990, Congress began drafting a new oversight bill, [\*994] the Intelligence Authorization Act of 1991, which grants Congress oversight of covert activities. n203 Section 413b of the Intelligence Authorization Act provides,

#### the executive will just claim the power under other clauses of the constitution

Lorber, 13 **–** JD candidate at UPenn and PhD candidate at Duke (Eric, EXECUTIVE WARMAKING AUTHORITY AND OFFENSIVE CYBER OPERATIONS: CAN EXISTING LEGISLATION SUCCESSFULLY CONSTRAIN PRESIDENTIAL POWER?, www.law.upenn.edu/live/files/1773-lorber15upajconstl9612013)

THE INTELLIGENCE AUTHORIZATION ACT : COVERT ACTIONS AND THE TRADITIONAL MILITARY ACTIVITIES EXEMPTION Stemming from similar tension noted in the constitutional division of war-making authority noted above, congressional oversight of covert actions beyond intelligence collection has often proved a point of contention between the executive and legislative branches. 195 Presidents have “inferred authority [to conduct covert actions] from such places as the Vesting Clause, the Commander-in-Chief Clause, the Treaty Clause, and from an implied executive privilege

#### Already in cyber war with Iran – Stuxnet, Aramco, and DOS attacks

Tom Gjelten ‘13, Jan/Feb 2013, “First Strike: US Cyber Warriors Seize the Offensive,” World Affairs, <http://www.worldaffairsjournal.org/article/first-strike-us-cyber-warriors-seize-offensive>

In addition, there are policy questions raised by the escalating government investment in offensive cyber war capabilities. One fear is that each new offensive cyberweapon introduced into use will prompt the development of an even more lethal weapon by an adversary and trigger a fierce cyber arms race. A hint of such an escalatory cycle may be seen in the confrontation with Iran over its nuclear program. US officials suspect the Iranian government was responsible for the recent wave of cyber attacks directed against Aramco, the Saudi oil company, and may also have been behind a series of denial-of-service attacks on US financial institutions. Such attacks could be in retaliation for the Stuxnet worm.

#### No first use fails – China will say no.

Austin and Gady ‘12 (Greg (former Vice President for the Worldwide Security Initiative) and Franz-Stefan (fellow at the EastWest Institute, where he was a program associate and founding member of the Worldwide Cybersecurity Initiative), “CYBER Detente¶ BETWEEN THE UNITED¶ STATES AND CHINA:¶ SHAPING THE AGENDA”, EastWest Institute, 2012, RSR)

A CICIR participant raised the issue of a “nofirst-¶ use” agreement among major cyber¶ powers by referring to an American article on¶ the subject, but a Chinese military source asserted¶ later to the authors of this paper that¶ such a position is not something that China¶ would officially endorse. A CICIR participant¶ also raised the “idea of civilian sanctuaries,¶ and a prohibition of cyber attacks against¶ purely civilian targets.” In response, a CSIS¶ participant reverted to the view that the existing¶ laws of armed conflict, including the need¶ for proportionate response and discrimination¶ in targeting, already provided the necessary¶ framework for protecting civilians, even¶ though the “line between civilian and military¶ infrastructure is blurred.”

### Arms Race

#### OCOs key to deterrence and strengthen defensive capabilities – international agreements don’t solve – cheating states, non-state actors

NRC 9, National Research Council of the National Academies, Committee on Offensive Information Warfare, 2009 www.lawfareblog.com/wp-content/uploads/2013/01/NRC-Report.pdf

Recommendation 8: The United States should maintain and acquire effective cyberattack capabilities. Advances in capabilities should be continually factored into policy development, and a comprehensive budget accounting for research, development, testing, and evaluation relevant to cyberattack should be available to appropriate decision makers in the executive and legislative branches. The committee believes that it would be unwise policy to eschew cyberattack under all circumstances. For those instances in which the use of cyberattack is warranted, the United States should have at its disposal the most effective and flexible cyberattack technologies and supporting infrastructure possible—systems that can operate on the time scales required, with the necessary command and control (including selfdestruct when necessary and appropriate), guided by the best possible intelligence information, with a high probability of mission success and a low risk of collateral damage. Accordingly, in addition to a robust and significant effort for research, development, testing, and evaluation to strengthen U.S. cyber defensive capabilities, the committee believes that the United States should continue to invest in the development and acquisition of effective and highly flexible cyberattack capabilities. In addition to providing operational utility, such capabilities may strengthen deterrence against cyber adversaries. Lastly, increased knowledge of cyberattack technologies will contribute to the knowledge base supporting development of improved defensive capabilities, assuming that mechanisms can be found to promote crossfertilization among the researchers in the relevant areas. If and when new policy emerges that calls for a deemphasis of cyberattack capabilities, the U.S. investment can be scaled back at that time. The committee recognizes precedents from history in which the momentum built up by a large-scale development and procurement plan made changes in policy more difficult to accomplish. Nevertheless, it believes that acquiring many kinds of cyberattack weaponry is relatively inexpensive compared to traditional large-scale weapons acquisition efforts, and thus policy changes would be easier to effect. In addition, even if international agreements are made to restrict the use of cyberattack, nations must prepare for the possibility that non-signatories (e.g., non-state actors, or recalcitrant states) or “cheating” states will not abide by the provisions of any such agreement—and for the United States to not be prepared to compete successfully in such a world is unacceptable. Finally, it is important for the United States to have a comprehensive view of the effort among all of the relevant stakeholders to develop and acquire cyberattack capabilities. Some responsible party within the executive branch, perhaps an office within the Office of Management and Budget, should have a cross-agency view into overall amounts being spent on acquisition of cyberattack capabilities and the details of how individual agency budgets are being spent. Overall levels of spending and the relevant detail should be available, on a classified basis as necessary, to appropriate congressional decision makers. (Recommendation 8 is not a plea for centralized direction of the acquisition effort, but rather one for information to help policy makers understand the overall effort.)

#### Legal restraints are impossible to enforce – cyber weapons are hard to detect and attacks lack fingerprints

Libicki ’12, June 8, 2012 Martin Libicki, author of Cyberdeterrence and Cyberwar, is a senior management scientist at the RAND Corporation, a nonprofit, nonpartisan research institution. Author of 'Cyberdeterrence and Cyberwar' Setting International Norms on Cyberwar Might Beat a Treaty www.usnews.com/debate-club/should-there-be-an-international-treaty-on-cyberwarfare/setting-international-norms-on-cyberwar-might-beat-a-treaty

In 1975, NATO and the Warsaw Pact signed the Helsinki Accords, which among their many provisions pledged signatories to respect the freedom of speech. This provision was unenforceable, and the Warsaw Pact countries had no intention of honoring it. Yet the effort was not entirely wasted. Following the treaty's signing, citizens groups in several countries organized to insist that their governments follow what they signed—and their pressure hastened the end of communism in Eastern Europe. The case for international norms, rather than enforceable treaties, draws on such history. Norms would represent what countries say they want the global cyberspace environment to be. True, states may not necessarily themselves follow what they preach for others. But they have at least established to their own citizens, notably their own business community, some standards against which their conduct may be measured. The emphasis on the business community matters in light of U.S. complaints about the flagrant theft of intellectual property perpetrated in cyberspace by other states. The hope is that such norms may constitute standards of fair play which countries believe they must follow to gain global business confidence. [Read: NSA Built Stuxnet, But Real Trick Is Building Crew of Hackers] By contrast, an arms control treaty that bans or restricts the development of cyberweapons is simply unenforceable—and might even harm cybersecurity. It would be unenforceable because the production of cyberweapons is so hard to detect. It is an indoor activity that produces nothing that observers can monitor, particularly if the relevant test beds are isolated from the Internet (as common sense dictates they should be). Furthermore, given the difficulties of attribution—cyberattacks lack fingerprints and hackers lack powder residues—even those who test and wield such weapons on the outside have a good chance of avoiding being caught if they maintain their tradecraft. Furthermore, those developing such capabilities tend to work for state security agencies that take secrecy and operational security very seriously. Indeed, restricting cyberweapon development could even be harmful inasmuch as its core activity is the discovery of vulnerabilities in software—the very activity also required to bulletproof software against attacks from criminal hackers.

#### Cyber war doesn’t happen—their evidence is all hype

Gartzke 2012(Erik, University of California, San Diego, December 7, "The Myth of Cyberwar: Bringing War on the Internet Back Down to Earth", http://dss.ucsd.edu/~egartzke/papers/cyberwar\_12062012.pdf)

A blitz of media, punditry and public pronouncements inform interested observers and policy makers that the next war is likely to be won or lost on the internet. Indeed, events such as the coordinated cyber attacks on Estonia and the Stuxnet worm seem to indicate that cyberwar has already begun. The sense of urgency surrounding cyberwar appears to be tied to perceptions that internet conflict is the newest phase in the ongoing revolution in military affairs, only this time the threat is directed at the sophisticated technological civilizations of the West, rather than at poor developing states or the recipients of inferior second-world military hardware. 1 To believe a growing number of pundits and practitioners, cyberwar threatens to render existing military advantages impotent, exposing those nations most dependent on comprehensive information infrastructures to devastating and unpredictable attacks. If powerful states largely immune to terrestrial invasion can have their military might blunted and their factories and cities idled by foreign hackers, then perhaps this latest technological revolution really does presage a “Pearl Harbor" in which the United States and other great powers will be targets, rather than perpetrators, of shock and awe. There is a problem with the growing consensus of impending cyber apocalypse, however: it is far from clear that conflict over the internet can actually function as war. Discussions of cyberwar commit a common fallacy of arguing from opportunity to outcome, rather than considering whether something that could happen is at all likely, given the motives of those who are able to act. Cyber pessimism rests heavily on capabilities (means), with little thought to a companion logic of consequences (ends). Much that could happen in the world fails to occur, largely because those capable of initiating action discern no benefit from doing so. Put another way, advocates have yet to work out how cyberwar actually accomplishes the objectives that typically sponsor terrestrial military violence. Absent a logic of consequences, it is di cult to believe that cyberwar will prove as devastating for world affairs and for developed nations in particular as many seem to believe.

#### Cyber war is comparatively unlikely

Gartzke 2012(Erik, University of California, San Diego, December 7, "The Myth of Cyberwar: Bringing War on the Internet Back Down to Earth", http://dss.ucsd.edu/~egartzke/papers/cyberwar\_12062012.pdf)

Even the most successful forms of cyberwar (such as cyber espionage) do not presage much of a transformation. Just as innovations in artillery and small arms made closed formations untenable, militaries, governments and societies will adapt. It would be ludicrous to suggest to modern infantry that their res would be more concentrated if they stayed in formation while on the march. Contemporary field commanders have become comfortable with the idea that perimeters are partial or notional, that air-land battle (and naval warfare for a much longer time) necessarily involves not fronts, but mobility; not frontal assaults, but maneuver. Similar concepts will pervade discussions of cyberwar. Static security is insecurity. It does not follow, however, that being vulnerable means one will be attacked, or that there is much that can be done to prevent aggression if it is initiated. Security in a modern, integrated world—both in terrestrial and cyber—Is a function more of the motives of opponents than of the ability to attack. Nations or groups that strike through the internet in minor ways may be ubiquitous. Those that threaten critical national security goals will be rare if for no other reason than that cyberwar is not really war in grand strategic terms. In this regard, the next Pearl Harbor is much more likely to occur at Pearl Harbor than in cyberspace.

#### Traditional deterrence models check escalation

Gartzke 2012(Erik, University of California, San Diego, December 7, "The Myth of Cyberwar: Bringing War on the Internet Back Down to Earth", http://dss.ucsd.edu/~egartzke/papers/cyberwar\_12062012.pdf)

An open question exists in any crisis about how far competitors are willing to escalate, but an ability to counter cyber attack with other, more kinetic forms of military violence serves alternately to deter or to facilitate the use of cyber capabilities, giving those nations with terrestrial military power yet another option that, even if available to their opponents, may prove extraordinarily dangerous to practice. As we see today with U.S. drone attacks and special operations raids on foreign sovereign territory, the power to do much more ensures that an opponent maintains a level of discretion in its response to provocation. Few can doubt the reaction of the United States, for example, if Pakistan were to attempt to conduct a commando raid on U.S. territory. Nations that can physically punish others for transgressions in any domain, electronic or otherwise, are better able to operate in all domains. Once one distinguishes between simple vulnerability and actual threats, terrestrial capabilities become pivotal in determining who exercises cyber capabilities.

### Alliances

#### Asian wars not likely

Bitzinger and Desker, Rajaratnam School of International Studies, 8 (Richard A., sr. fellow @ the school of international studies @ Nanyang Technological University, and Barry, Dean of the [S Rajaratnam School of International Studies](http://en.wikipedia.org/wiki/S_Rajaratnam_School_of_International_Studies), Survival, Volume 50, Issue 6, December, Informaworld)

Yet despite all these potential crucibles of conflict, the Asia-Pacific, if not an area of serenity and calm, is certainly more stable than one might expect. To be sure, there are separatist movements and internal struggles, particularly with insurgencies, as in Thailand, the Philippines and Tibet. Since the resolution of the East Timor crisis, however, the region has been relatively free of open armed warfare. Separatism remains a challenge, but the break-up of states is unlikely. Terrorism is a nuisance, but its impact is contained. The North Korean nuclear issue, while not fully resolved, is at least moving toward a conclusion with the likely denuclearisation of the peninsula. Tensions between China and Taiwan, while always just beneath the surface, seem unlikely to erupt in open conflict any time soon, especially given recent Kuomintang Party victories in Taiwan and efforts by Taiwan and China to re-open informal channels of consultation as well as institutional relationships between organisations responsible for cross-strait relations. And while in Asia there is no strong supranational political entity like the European Union, there are many multilateral organisations and international initiatives dedicated to enhancing peace and stability, including the Asia-Pacific Economic Cooperation (APEC) forum, the Proliferation Security Initiative and the Shanghai Co-operation Organisation. In Southeast Asia, countries are united in a common geopolitical and economic organisation - the Association of Southeast Asian Nations (ASEAN) - which is dedicated to peaceful economic, social and cultural development, and to the promotion of regional peace and stability. ASEAN has played a key role in conceiving and establishing broader regional institutions such as the East Asian Summit, ASEAN+3 (China, Japan and South Korea) and the ASEAN Regional Forum. All this suggests that war in Asia - while not inconceivable - is unlikely.

#### No South China Sea dispute – China moderated

Fravel, Professor PolSci MIT, 3-22-’12 (Taylor- Member MIT Security Studies Program, “All Quiet in the South China Sea” Foreign Affairs)

In recent years, China became increasingly ready to assert and defend its territorial and maritime claims in the South China Sea, where six other nations have competing claims. Beijing publicly challenged the legality of foreign oil companies' investments in Vietnam's offshore energy industry, emphasized its own rights over islands and waters far from the Chinese mainland, detained hundreds of Vietnamese fishermen near the Chinese-held Paracel Islands, and harassed Vietnamese and Philippine vessels conducting seismic surveys in waters that Beijing claims. Many East Asian countries saw China's behavior as a sign of the country's new willingness to adopt a more unilateral and confrontational posture in the region. Little noticed, however, has been China's recent adoption of a new -- and much more moderate -- approach. The primary goals of the friendlier policy are to restore China's tarnished image in East Asia and to reduce the rationale for a more active U.S. role there. The first sign of China's new approach came last June, when Hanoi dispatched a special envoy to Beijing for talks about the countries' various maritime disputes. The visit paved the way for an agreement in July 2011 between China and the ten members of the Association of Southeast Asian Nations (ASEAN) to finally implement a declaration of a code of conduct they had originally drafted in 2002 after a series of incidents in the South China Sea. In that declaration, they agreed to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes." Since the summer, senior Chinese officials, especially top political leaders such as President Hu Jintao and Premier Wen Jiabao, have repeatedly reaffirmed the late Deng Xiaoping's guidelines for dealing with China's maritime conflicts to focus on economic cooperation while delaying the final resolution of the underlying claims. In August 2011, for example, Hu echoed Deng's approach by stating that "the countries concerned may put aside the disputes and actively explore forms of common development in the relevant sea areas." Authoritative Chinese-language media, too, has begun to underscore the importance of cooperation. Since August, the international department of People's Daily (under the pen name Zhong Sheng) has published several columns stressing the need to be less confrontational in the South China Sea. In January 2012, for example, Zhong Sheng discussed the importance of "pragmatic cooperation" to achieve "concrete results." Since the People's Daily is the official paper of the Central Committee of the Chinese Communist Party, such articles should be interpreted as the party's attempts to explain its new policy to domestic readers, especially those working lower down in party and state bureaucracies. In terms of actually setting aside disputes, China has made progress. In addition to the July consensus with ASEAN, in October China reached an agreement with Vietnam on "basic principles guiding the settlement of maritime issues." The accord stressed following international law, especially the UN Convention on the Law of the Sea. Since then, China and Vietnam have begun to implement the agreement by establishing a working group to demarcate and develop the southern portion of the Gulf of Tonkin near the disputed Paracel Islands. China has also initiated or participated in several working-level meetings to address regional concerns about Beijing's assertiveness. Just before the East Asian Summit last November, China announced that it would establish a three billion yuan ($476 million) fund for China-ASEAN maritime cooperation on scientific research, environmental protection, freedom of navigation, search and rescue, and combating transnational crimes at sea. The following month, China convened several workshops on oceanography and freedom of navigation in the South China Sea, and in January it hosted a meeting with senior ASEAN officials to discuss implementing the 2002 code of conduct declaration. The breadth of proposed cooperative activities indicates that China's new approach is probably more than just a mere stalling tactic. Beyond China's new efforts to demonstrate that it is ready to pursue a more cooperative approach, the country has also halted many of the more assertive behaviors that had attracted attention between 2009 and 2011. For example, patrol ships from the Bureau of Fisheries Administration have rarely detained and held any Vietnamese fishermen since 2010. (Between 2005 and 2010, China detained 63 fishing boats and their crews, many of which were not released until a hefty fine was paid.) And Vietnamese and Philippine vessels have been able to conduct hydrocarbon exploration without interference from China. (Just last May, Chinese patrol ships cut the towed sonar cable of a Vietnamese ship to prevent it from completing a seismic survey.) More generally, China has not obstructed any recent exploration-related activities, such as Exxon's drilling in October of an exploratory well in waters claimed by both Vietnam and China. Given that China retains the capability to interfere with such activities, its failure to do so suggests a conscious choice to be a friendlier neighbor. The question, of course, is why did the Chinese shift to a more moderate approach? More than anything, Beijing has come to realize that its assertiveness was harming its broader foreign policy interests. One principle of China's current grand strategy is to maintain good ties with great powers, its immediate neighbors, and the developing world. Through its actions in the South China Sea, China had undermined this principle and tarnished the cordial image in Southeast Asia that it had worked to cultivate in the preceding decade. It had created a shared interest among countries there in countering China -- and an incentive for them to seek support from Washington. In so doing, China's actions provided a strong rationale for greater U.S. involvement in the region and inserted the South China Sea disputes into the U.S.-Chinese relationship. By last summer, China had simply recognized that it had overreached. Now, Beijing wants to project a more benign image in the region to prevent the formation of a group of Asian states allied against China, reduce Southeast Asian states' desire to further improve ties with the United States, and weaken the rationale for a greater U.S. role in these disputes and in the region. So far, Beijing's new approach seems to be working, especially with Vietnam. China and Vietnam have deepened their political relationship through frequent high-level exchanges. Visits by the Vietnamese Communist Party general secretary, Nguyen Phu Trong, to Beijing in October 2011 and by the Chinese heir apparent, Xi Jinping, to Hanoi in December 2011 were designed to soothe spirits and protect the broader bilateral relationship from the unresolved disputes over territory in the South China Sea. In October, the two also agreed to a five-year plan to increase their bilateral trade to $60 billion by 2015. And just last month, foreign ministers from both countries agreed to set up working groups on functional issues such as maritime search and rescue and establish a hotline between the two foreign ministries, in addition to starting talks over the demarcation of the Gulf of Tonkin. Even if it is smooth sailing now, there could be choppy waters ahead. Months of poor weather have held back fishermen and oil companies throughout the South China Sea. But when fishing and hydrocarbon exploration activities resume in the spring, incidents could increase. In addition, China's new approach has raised expectations that it must now meet -- for example, by negotiating a binding code of conduct to replace the 2002 declaration and continuing to refrain from unilateral actions. Nevertheless, because the new approach reflects a strategic logic, it might endure, signaling a more significant Chinese foreign policy shift. As the 18th Party Congress draws near, Chinese leaders want a stable external environment, lest an international crisis upset the arrangements for this year's leadership turnover. And even after new party heads are selected, they will likely try to avoid international crises while consolidating their power and focusing on China's domestic challenges. China's more moderate approach in the South China Sea provides further evidence that China will seek to avoid the type of confrontational policies that it had adopted toward the United States in 2010. When coupled with Xi's visit to Washington last month, it also suggests that the United States need not fear Beijing's reaction to its strategic pivot to Asia, which entails enhancing U.S. security relationships throughout the region. Instead, China is more likely to rely on conventional diplomatic and economic tools of statecraft than attempt a direct military response. Beijing is also unlikely to be more assertive if that sustains Southeast Asian countries' desires to further deepen ties with the United States. Whether the new approach sticks in the long run, it at least demonstrates that China, when it wants to, can recalibrate its foreign policy. That is good news for stability in the region.

#### No big war over Taiwan – our economies are interdependent and the US/Taiwan would win in days

David Axe- August 5, 2009, Think Tank: China Beats U.S. in Simulated Taiwan Air War, Danger room (Wired), http://www.wired.com/dangerroom/2009/08/think-tank-china-beats-us-in-simulated-taiwan-air-war/

In light of how close the Chinese and Taiwanese economies have grown in the last decade, a Chinese invasion would amount to Beijing “shooting itself in the foot.” “China’s IT sector, in particular, could be devastated.” Never mind that the U.S. and Chinese economies are also irrevocably interdependent. What’s more, despite focusing on the air battle for most of the report’s 185 pages, RAND admits that dogfighting can’t conquer an island. “Ultimately, there is only one military course of action that guarantees China control of Taiwan: a successful invasion and occupation.” An amphibious assault across the 200-mile-wide Taiwan Strait would represent “by far the most challenging military operation ever undertaken” by the Chinese. The entire Chinese navy could only carry 31,000 troops in the first wave — a number RAND admits would “almost certainly not” suffice, “assuming that Taiwan’s government, military, and populace chose to put up a fight.” It would take just one successful attack by Taiwan’s missile boats, or one day’s sorties by the island’s attack choppers, to incapacitate the whole Chinese assault fleet. For that matter, RAND admits that successful attacks by just four U.S. B-1B bombers could also disable the invasion fleet. But let’s assume China does sweep the sky of U.S. and Taiwanese planes, bombers included — and even manages to take out Taiwan’s missile boats and choppers. The RAND study glosses over, in a single footnote, the force that would really play the biggest role in halting a Chinese invasion: the U.S. Navy’s huge, lethal fleet of nuclear submarines.

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#### Second is national security utilitarianism – the public has been subdued into believing the government’s means-end rationality logic that seeks to control and dominate around the world which is pushing us on the brink of extinction – Syria is the most recent example

Instead of engaging in diplomacy which would have been the better option we were on the brink of initiating a nuclear war in the region

Williams 8 \*Daniel R, Associate Professor of Law, Northeastern University School of Law.

Penn State Law Review, Summer, 113 Penn St. L. Rev. 55

B. The Underbelly of the Enlightenment Heritage - the Weberian Nightmare What has heretofore given a patina of acceptability to this modern-day Foucauldian "political dream of the plague" is the narrative idea of a wounded and vulnerable nation gripped in an existential crisis, seeking to protect itself against human "missiles of destruction." The descriptive (a threatened wounded nation) produces in this story the normative (the adjudicative assembly line for enemy combatants). The Foucauldian "political dream of the plague" is the Weberian nightmare. In Dialectic of the Enlightenment, Frankfurt School theorists Horkheimer and Adorno identify the Weberian nightmare of obsessive instrumental rationality as the dominant cognitive orientation in Western culture. 147 Whereas most Americans see as features of this means-ends orientation the awesome feats of science (the amazing technological prosthetics that drives humanity closer to becoming a God, as Freud observed), critical theorists like Horkheimer and Adorno saw what Weber saw 148 - a cognitive orientation that feeds into and fuels our obsessive drive to dominate and control all that surrounds us. 149 The salient point in the Dialectic of the Enlightenment, for our purposes, is that the instrumentalist orientation has been unleashed to devour the very idea of the "sacred" in life. 150 September 11th and the war on terror has only hastened a movement along an already existing trajectory. What we experience in our alienated, gadget-filled, but spiritually vacant existence - what Max Weber termed our "disenchantment with the world" 151 - is a reflection of what Horkheimer and Adorno diagnosed, and of how badly our capacity for reason has been corrupted by a fetish for means-ends rationality. 152 That corruption, which is on [\*91] full display in the overt means-ends reasoning of Hamdi itself, has led to what philosopher Albert Borgmann calls a "crucial debility" in our culture, characterized by the "expatriate quality of public life" where we "live in self-imposed exile from communal conversation and action." 153 There is, then, a certain blowback effect, where a mode of thinking that was supposed to lead to humanity's flourishing has been whipsawed back upon us as a powerful corrupting, even imprisoning, force. Whereas the Enlightenment, as exemplified by Rousseau, Voltaire, and Kant, promised freedom from irrationality and darkness, it has instead denuded the public sphere and bequeathed to us a technocratic language that debilitates the ability to conceptualize our way out of a disastrous course (ecologically and otherwise) on which our technocratic means-ends orientation has put us. 154 The quest for domination and control immanent within Enlightenment's fetish for means-ends reasoning, which supposedly promised a world of flourishing human rights (though pursued through the blood of ancient cultures, such as the native peoples in the Americas), drained modernity of the very vitality that modernist thinkers insisted [\*92] was distinctive about Enlightenment society. 155 It has instead taken us to the brink of annihilation in a world where the disparities of wealth are grossly appalling and human behavior slides so easily into barbarism and violence, usually in the service of preserving or further deepening those disparities. Whereas the Enlightenment broke the bondage of atrophied tradition, it has wrought a world where little is sacred, and what little remains is rapidly dwindling, where "what holds us all together is a cold and impersonal design." 156 We slaughtered cultures within our own country - Native American cultures that we still do not fully appreciate and comprehend - with the quintessential Enlightenment slogan, Manifest Destiny, only to bring about an ennui and despair that produces a nostalgic yearning for the sacred upon which those slaughtered cultures built their now-defunct way of life.

#### All of our solvency arguments are *net offense*---legalism creates the façade that the executive is being constrained while allowing the government to do as it pleases under the guise of constraint---this swells executive power and turns the case

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The examples cited in this section suggest not the formation of an utterly lawless regime, but, rather, within an order that continues to understand itself in terms of the categories provided by liberal contractarianism, the more insidious creation, multiplication, and institutionalization of what David Dyzenhaus calls "grey holes." Such holes are "spaces in which there are some legal constraints on executive action...but the constraints are so insubstantial that they pretty well permit government to do as it pleases."40 As such, they are more harmful to the rule of law than are outright dictatorial usurpations, first, because the provision of limited procedural protections masks the absence of any real constraint on executive power; and, second, because location of the authority to create such spaces within the Constitution implies that, in the last analysis, they bear ex ante authorization by the people. When created, in other words, they may receive but they do not require ratification, whether by Congress or by those whom its members are said to represent. What this means in effect is that the second Bush administration has dispensed with Jefferson's stipulation that extra-constitutional executive acts (or, rather, acts that Jefferson deemed to be outside those constitutionally permitted) require ex post facto ratification; and, in addition, that it has dispensed with Locke's contention that, however unlikely, at least in principle, specific exercises of extra-legal prerogative power (or, rather, acts that Locke deemed to be outside those legally permitted) are properly subject to revolutionary rejection. What one finds in the second Bush administration, then, is a denial of both models of accountability, combined with an aggressive commitment to the constitution of a security state that is liberal only in name. As it extends its reach, perfection of that state renders the prospect of popular repudiation of prerogative power ever more chimerical, and, indeed, renders recognition of the problematic character of its exercise ever less likely.

#### state is hijacked by elites who control the decision making that normalizes an authoritarian state that wages war on populations – the focus of debate should be how culture elements can create change to combat normalization of violence caused by the military-industrial-state

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In addition, as the state is hijacked by the financial-military-industrial complex, the “most crucial decisions regarding national policy are not made by representatives, but by the financial and military elites.”53 Such massive inequality and the suffering and political corruption it produces point to the need for critical analysis in which the separation of power and politics can be understood. This means developing terms that clarify how power becomes global even as politics continues to function largely at the national level, with the effect of reducing the state primarily to custodial, policing, and punishing functions—at least for those populations considered disposable. The state exercises its slavish role in the form of lowering taxes for the rich, deregulating corporations, funding wars for the benefit of the defense industries, and devising other welfare services for the ultra-rich. There is no escaping the global politics of finance capital and the global network of violence it has produced. Resistance must be mobilized globally and politics restored to a level where it can make a difference in fulfilling the promises of a global democracy. But such a challenge can only take place if the political is made more pedagogical and matters of education take center stage in the struggle for desires, subjectivities, and social relations that refuse the normalizing of violence as a source of gratification, entertainment, identity, and honor. War in its expanded incarnation works in tandem with a state organized around the production of widespread violence. Such a state is necessarily divorced from public values and the formative cultures that make a democracy possible. The result is a weakened civic culture that allows violence and punishment to circulate as part of a culture of commodification, entertainment, distraction, and exclusion. In opposing the emergence of the United States as both a warfare and a punishing state, I am not appealing to a form of left moralism meant simply to mobilize outrage and condemnation. These are not unimportant registers, but they do not constitute an adequate form of resistance .What is needed are modes of analysis that do the hard work of uncovering the effects of the merging of institutions of capital, wealth, and power, and how this merger has extended the reach of a military-industrial-carceral and academic complex, especially since the 1980s. This complex of ideological and institutional elements designed for the production of violence must be addressed by making visible its vast national and global interests and militarized networks, as indicated by the fact that the United States has over 1,000 military bases abroad.54 Equally important is the need to highlight how this military-industrial-carceral and academic complex uses punishment as a structuring force to shape national policy and everyday life. Challenging the warfare state also has an important educational component. C. Wright Mills was right in arguing that it is impossible to separate the violence of an authoritarian social order from the cultural apparatuses that nourish it. As Mills put it, the major cultural apparatuses not only “guide experience, they also expropriate the very chance to have an experience rightly called ‘our own.’”55 This narrowing of experience shorn of public values locks people into private interests and the hyper-individualized orbits in which they live. Experience itself is now privatized, instrumentalized, commodified, and increasingly militarized. Social responsibility gives way to organized infantilization and a flight from responsibility. Crucial here is the need to develop new cultural and political vocabularies that can foster an engaged mode of citizenship capable of naming the corporate and academic interests that support the warfare state and its apparatuses of violence, while simultaneously mobilizing social movements to challenge and dismantle its vast networks of power. One central pedagogical and political task in dismantling the warfare state is, therefore, the challenge of creating the cultural conditions and public spheres that would enable the U.S. public to move from being spectators of war and everyday violence to being informed and engaged citizens.Unfortunately, major cultural apparatuses like public and higher education, which have been historically responsible for educating the public, are becoming little more than market-driven and militarized knowledge factories. In this particularly insidious role, educational institutions deprive students of the capacities that would enable them not only to assume public responsibilities, but also to actively participate in the process of governing. Without the public spheres for creating a formative culture equipped to challenge the educational, military, market, and religious fundamentalisms that dominate U.S. society, it will be virtually impossible to resist the normalization of war as a matter of domestic and foreign policy. Any viable notion of resistance to the current authoritarian order must also address the issue of what it means pedagogically to imagine a more democratically oriented notion of knowledge, subjectivity, and agency and what it might mean to bring such notions into the public sphere. This is more than what Bernard Harcourt calls “a new grammar of political disobedience.”56 It is a reconfiguring of the nature and substance of the political so that matters of pedagogy become central to the very definition of what constitutes the political and the practices that make it meaningful. Critical understanding motivates transformative action, and the affective investments it demands can only be brought about by breaking into the hardwired forms of common sense that give war and state-supported violence their legitimacy. War does not have to be a permanent social relation, nor the primary organizing principle of everyday life, society, and foreign policy. The war of all-against-all and the social Darwinian imperative to respond positively only to one’s own self-interest represent the death of politics, civic responsibility, and ethics, and set the stage for a dysfunctional democracy, if not an emergent authoritarianism. The existing neoliberal social order produces individuals who have no commitment, except to profit, disdain social responsibility, and loosen all ties to any viable notion of the public good. This regime of punishment and privatization is organized around the structuring forces of violence and militarization, which produce a surplus of fear, insecurity, and a weakened culture of civic engagement—one in which there is little room for reasoned debate, critical dialogue, and informed intellectual exchange. Patricia Clough and Craig Willse are right in arguing that we live in a society “in which the production and circulation of death functions as political and economic recovery.”57 The United States understood as a warfare state prompts a new urgency for a collective politics and a social movement capable of negating the current regimes of political and economic power, while imagining a different and more democratic social order. Until the ideological and structural foundations of violence that are pushing U.S. society over the abyss are addressed, the current warfare state will be transformed into a full-blown authoritarian state that will shut down any vestige of democratic values, social relations, and public spheres. At the very least, the U.S. public owes it to its children and future generations, if not the future of democracy itself, to make visible and dismantle this machinery of violence while also reclaiming the spirit of a future that works for life rather than death—the future of the current authoritarianism, however dressed up they appear in the spectacles of consumerism and celebrity culture. It is time for educators, unions, young people, liberals, religious organizations, and other groups to connect the dots, educate themselves, and develop powerful social movements that can restructure the fundamental values and social relations of democracy while establishing the institutions and formative cultures that make it possible. Stanley Aronowitz is right in arguing that: the system survives on the eclipse of the radical imagination, the absence of a viable political opposition with roots in the general population, and the conformity of its intellectuals who, to a large extent, are subjugated by their secure berths in the academy [and though] we can take some solace in 2011, the year of the protester…it would be premature to predict that decades of retreat, defeat and silence can be reversed overnight without a commitment to what may be termed “a long march” through the institutions, the workplaces and the streets of the capitalist metropoles.58 The current protests among young people, workers, the unemployed, students, and others are making clear that this is not—indeed, cannot be—only a short-term project for reform, but must constitute a political and social movement of sustained growth, accompanied by the reclaiming of public spaces, the progressive use of digital technologies, the development of democratic public spheres, new modes of education, and the safeguarding of places where democratic expression, new identities, and collective hope can be nurtured and mobilized. Without broad political and social movements standing behind and uniting the call on the part of young people for democratic transformations, any attempt at radical change will more than likely be cosmetic.

#### Legalism is epistemologically flawed and violent.

Dossa ‘99 Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

Law's imperial reach, it massive authority, in liberal politics is a **brute**, recurring **fact**. In Law's Empire, Dworkin attests to its scope and power with candour: "We live in and by the law. It makes us what we are" (vii). But he fails to appreciate that law equally traduces others, it systematically unmakes them. For Dworkin, a militant liberal legalist, law is the insiders' domain: legal argument has to be understood internally from the "judge's point of view"; sociological or historical readings are irrelevant and "perverse".2 Praising the decencies of liberal law is necessary in this world: rule of law, judicial integrity, fairness, justice are integral facets of tolerable human life. Lawfulness is and ought to be part of any decent regime of politics. But law's rhetoric on its own behalf systematically scants law's violent, dark underside, it skillfully masks law's commerce with destruction and death**.** None of this is visible from the internalist standpoint, and Dworkin's liberal apologia serves to mystify the gross reality of law's empire. In liberal political science, law's presumed, Olympian impartiality, is thus not a contested notion. Liberals still presuppose as a matter of course the juristic community's impartiality and neutrality, despite empirical evidence to the contrary.3 One consequence of the assumed sanctity of the judicial torso within the body politic, has been that law's genealogy, law's chronological disposition towards political and cultural questions, have simply not been of interest or concern to most liberal scholars. A further result of this attitude is the political science community's nearly total ignorance of liberal law's complicity in western imperialism, and in shaping western attitudes to the lands and cultures of the conquered natives. Liberal jurisprudence's subterranean life, its invidious consciousness is, however, not an archaic, intermittent annoyance as sensitive liberals are inclined to think: indeed law is as potent now as it has been in last two centuries in articulating a dismissive image of the native Other.

#### alt key to come before the plan otherwise movements get sapped

Nagin 5 Tomiko Brown, Visiting Associate Professor, University of Virginia School of Law, “ELITES, SOCIAL MOVEMENTS, AND THE LAW: THE CASE OF AFFIRMATIVE ACTION,” Columbia Law Review, 105 Colum. L. Rev. 1436

Those seeking to have an impact on the political and legal orders should not root a mass movement in the courts;instead, affirmative litigation about constitutional rights should be anchored upon and preceded by a mass movement.Efforts to achieve fundamental change shouldbegin with the target constituency and be waged initially outside of the confines of institutionalized politics.Law should be understood as a tactic in an ongoing political struggle, where the struggle is the main event and favorable legal outcomes are its byproducts. There is a crucially important temporal component to this view. Legal claims can be tactically useful in a political strategy for achieving change - butonly after social movements lay the groundworkfor legal change. Social movements must first create political pressure that frames issues in a favorable manner, creates cultural norm shifts, and affects public opinion; these norm shifts then increase the likelihood that courts will reach outcomes favored by lawyers. [437](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n437) Again, my claims find support in the history of the mid-twentieth-century civil rights movement. This narrative posits an intimate relationship between the sociopolitical dynamics within black client communities and the success (or failure) of civil rights lawyers' litigation campaigns for rights. The postwar civil rights movement confirms that the moral suasion of participatory democratic groups of nonlawyers, and typically nonelites, was integral to law's movement from a Jim Crow regime to a [\*1523] constitutional order in which formal equality was the norm. During the past three decades, historians who have analyzed social change have discovered that small groups of inexpert individuals can be the leading edge of a social movement, especially when they work in coalition with those who traditionally wield influence in society. [438](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n438)Through their commitment to a social cause, ordinary people with no insider knowledge of the technical aspects of the broad issue on which they are mobilizing can create circumstances in which those with actual power (political, economic, and, ultimately, legal power) are persuaded to act in their favor.

#### they zero in on certain aspects of executive power which stop broader systemic criticisms and provides a cover to normalize the war on terror

Saas, 12 \*\*William O. Pf Department of Communication Arts and Sciences at the Pennsylvania State University. symploke > Volume 20, Numbers 1-2

How might one critique this massive network of violence that has become so enmeshed in our contemporary geo-socio-political reality? Is there any hope for reversing the expansion of executive violence in the current political climate, in which the President enjoys minimal resistance to his most egregious uses of violence? How does exceptional violence become routine? Answers to these broad and difficult questions, derived as they are from the disorientingly vast and hyper-accelerated retrenchment of our current political situation, are best won through the broad strokes of what Slavoj Žižek calls "systemic" critique. For Žižek, looking squarely at interpersonal or subjective violences (e.g., torture, drone strikes), drawn as we may be by their gruesome and immediate appeal, distorts the critic's broader field of vision. For a fuller picture, one must pull one's critical focus back several steps to reveal the deep, objective structures that undergird the spectacular manifestations of everyday, subjective violence (Žižek 2008, 1-2). Immediately, however, one confronts the limit question of Žižek's mandate: how does one productively draw the boundaries of a system without too severely dampening the force of objective critique? For practical purposes, this essay leaves off discussion of neoliberal economic domination, vital as it may be to a full accounting for the U.S.' latest and most desperate expressions of state solvency.

#### Bad for the left – as progressives stay focused on the law, conservatives chalk up more wins. Our incessant fidelity to the constitutional scholarship is WORSE than doing nothing

West 6, Pf Law @ Georgetown, (Robin, *Harvard Journal of Law & Gender*, Winter, lexis)

And law is indeed a strikingly conservative and conserving set of institutions and practices. I argued in the book that legal critics, feminist and otherwise, should elevate the concept of harm in our thinking about law. And when we do so, we should think much more than we currently do about the harms sustained by various subordinated groups, including women. All I want to add here in response to some of Halley's remarks is that harm- and law-focused inquiries with respect to gender or otherwise that come from such a focus are indeed reformist projects. They are projects about how law could do better, instrumentally, what it claims to do, and what it does do some of the time, what it does not do at all well most of the time, and often does not do at all, period. However, while it is important to get judge-made law to do better what it already does, it is even more important. I think, to put law in its place. Law--meaning here, adjudicative law--is (lo and behold) not politics. It cannot do what politics might be able to do. It has been a tragic mistake, I think, of liberals, radicals, identitarian theorists, critical legal scholars, and progressives of all stripes involved in law, legal theory, and legalism of the past half century, to assert, and so repetitively and confidently, the contrary. The domain of adjudicative law has its own ethics. It is for the most part deeply moored in conservative values. It has some redemptive potential and therefore some play for progressive gains, but really not much. More important, it has the potential, all in the name of justice, to further aggravate the harmsit manages to so successfully avoid. *Caring for Justice* was an attempt to expose the aggravation of harm done by law in the name of justice, exploit its redemptive potential, and argue that others should do this also. But completely aside from the arguments of that book, I think this is still a very important and very much under-examined question for progressive lawyers to ask: how much can be asked of adjudicative law? Again, my answer is "not much." Others disagree. My current retrospective on the place of Catharine MacKinnon's jurisprudence in our law and letters, for example, argues that a part of the brilliance of her labors over the last thirty years has been her quite conscious embrace of law and legalism, rather than the domain of politics, culture, or education, to achieve evolutionary changes in our understanding of both sexual injury and sexual justice. [97](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n97) She has been phenomenally successful in pushing law to become a **[\*48]** vehicle for that evolutionary change. By contrast, I think, the benighted attempt over the last half century of progressive constitutional lawyers and theorists to employ the stratagems and ethics of legalism so as to refigure our fundamental politics, to achieve substantive equality, expand liberty, and the like--and to do so by urging on courts the development of progressive interpretations of their constitutional corollaries--has been a pretty striking failure, and not only because of the current Republican staffing of the courts. Obviously, the arguments put forward by progressives, radicals, and liberals in their thousands upon thousands of pages of briefs--arguments about what equality should look like, about what freedoms we all should or should not have, about democracy, about speech, about reproduction, about race, about sex, and so on and so on and so on, as well as their constitutional corollaries, from *Brown* [98](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n98) to *Roe* [99](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n99) to *Casey* [100](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n100) to *Lawrence* [101-](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n101-)-are vital arguments with which to engage. The problem is that these arguments should be--and are not--the bread and butter of very ordinary politics, completely traditionally understood. The repeated insistence by liberal legalists over the last half-century that these arguments are, in fact, in law's domain has not secured progressive victories and has had the perverse effect instead of impoverishing our politics. [102](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n102) The repeated insistence by critical legal scholars over the last thirty years that, contra liberalism, there is no difference between law and politics--and that what follows is simply that all those legal arguments in all of those endless Supreme Court opinions pontificating over the meaning of liberty and equality are in fact political arguments--has not changed this dynamic one bit. It has not only underscored the total absence of any coherent progressive instrumentalism from left understandings of the potential of law. Of greater consequence, it has also even **further emasculated and eviscerated** our politics, worse than liberalism could have done if it had tried, and it did not. The critical insistence on the deconstruction of the differences between law and politics has only reinforced, rather than challenged in any meaningful way, the liberal legalist conceit that law, rather than politics ordinarily understood, is the domain of radical and liberal political thought. We have no political "left" in this country, in part, because those who would otherwise be inclined to make one have instead poured their thought, their passion, and their commitments into litigation [\*49] strategies or into the project of pointing out over and over the politics of those projects**.** The result of this has been an entrenched conservatism across the board**-**-the board, that is, of both law and politics. Progressives need to re-direct their political arguments, including the radical arguments, out of law and law reviews and into the domain of politics. We first have to get over the lazy assumption that there is no need to do so--either because law is much loftier than ordinary politics, such that ennobling political arguments *ought* to be made in judicial fora (liberalism); or because there's no difference between law and politics, so that pointing out that legal arguments are through and through political is the beginning and end of political thought (critical). There are alternatives to both, and we ought to start figuring out what they are.

### CP – Obama Controls

#### Obama can launch offensive strike without declaration of war

Sanger, Shanker 2013

(David Sanger, Sanger is chief Washington correspondent of The New York Times- twice he has been a member of Times reporting teams that won the Pulitzer Prize, “Broad Powers Seen for Obama in Cyberstrikes, <http://www.nytimes.com/2013/02/04/us/broad-powers-seen-for-obama-in-cyberstrikes.html?pagewanted=all>)

A secret legal review on the use of America’s growing arsenal of cyberweapons has concluded that President Obama has the broad power to order a pre-emptive strike if the United States detects credible evidence of a major digital attack looming from abroad, according to officials involved in the review. That decision is among several reached in recent months as the administration moves, in the next few weeks, to approve the nation’s first rules for how the military can defend, or retaliate, against a major cyberattack. New policies will also govern how the intelligence agencies can carry out searches of faraway computer networks for signs of potential attacks on the United States and, if the president approves, attack adversaries by injecting them with destructive code — even if there is no declared war.

#### Executive decides preemptive cyber attacks

Chamberlain 2013 (Jacob Chamberlain, a Associate Editor at Common Dreams he specializes in postcolonial culture and global policy, “Sweeping Power in ‘Secret’ Cyber-Wars”, February 2013, http://disinfo.com/02 [/2013/02/obama-granted-sweeping-power-in-secret-cyber-wars/](http://disinfo.com/2013/02/obama-granted-sweeping-power-in-secret-cyber-wars/))

What do we know, as the anonymous officials told the Times, is that under the new cyber-warfare rules, which utilize an increasingly loose interpretation of preemptive war, President Obama can initiative cyber-warfare on countries that we are not officially at war with—much like the highly controversial drone strikes, targeted assassinations, that Obama has approved in Pakistan, Yemen, and Somalia in recent years. “The rules will be highly classified, just as those governing drone strikes have been closely held,” The Times reports. “John O. Brennan, Mr. Obama’s chief counter-terrorism adviser and his nominee to run the Central Intelligence Agency, played a central role in developing the administration’s policies regarding both drones and cyber-warfare.” “There is no indication that any group of members in Congress or judicial body will have to approve of a preemptive strike before it is carried out,” writes Gosztola. “As has become typical, the president wants to be able to conduct war without needing authorization.”

### NB

#### Executive action avoids politics

Sovacool 9 Dr. Benjamin K. Sovacool 2009 is a Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization., Kelly E. Sovacool is a Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of SingaporeArticle: Preventing National Electricity-Water Crisis Areas in the United States, Columbia Journal of Environmental Law 2009 34 Colum. J. Envtl. L. 333,

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

### 2NC Title Switching

#### military intelligence gathering operations escape the scrutiny of congress

**Dycus, 10 –** (Stephen, Professor, Vermont Law School, 8/11/10, “Congress’s Role in Cyber Warfare,” <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf>)

In a report accompanying the FY 2010 Intelligence Authorization bill, the House Intelligence Committee complained that “clandestine military intelligence-gathering operations . . . often escape the scrutiny of the intelligence committees, and the congressional defense committees cannot be expected to exercise oversight outside of their jurisdiction.” H.R. Rep. No. 111-186 (2009).

### No Cyberattacks

#### no cyberattacks---cyber deterrence high now

**Belk and Noyes, 12 –** (Robert, Naval aviator and Politico - Military Fellow, studying international and global affairs at the Harvard Kennedy School, AND Matthew, studies inte rnational security policy and is a senior associate with the cybersecurity practice at Good Harbor Consulting, “On the Use of Offensive Cyber Capabilities,” belfercenter.ksg.harvard.edu/files/cybersecurity-pae-belk-noyes.pdf)

One final area worth clarifying is the difference between deterrence and defense. Substantial ambiguity and confusion exists in the current literature on the relationship between deterrence and defense. 31 It is essential that this distinction is clear in order to have a productive policy discussion. In this work, we follow the definition of deterrence found in JP 1 - 2 of “the prevention of action by the existence of a credible threat of unacceptable counteraction . ” This we term active deterrence. Defense protects systems, directly increasing the cost to conduct a successful attack. Deterre nce increases the cost should an attack succeed either through threatened retaliatory action or entanglement (passive deterrence) . Given the valuable information stored in cyberspace and the high cost of defending this information, we agree with the analys is of retired General Cartwright 32 that organizations which only defend and do not deter against cyber attacks are certain to be the victims of cyber attacks as long as they use information systems. All deterrence is inherently achieved through creating a s ystem where adversaries believe that a successful attack will imposes additional costs on them that exceed the benefits of an attack. This is generally achieved through 26 threatening external action or entanglement, respectfully described as active and passi ve deterrence. Active deterrence is often achieved through threatened legal or law enforcement activity, but for actors beyond the reach of law, active deterrence is achieved through threatened military or other state action. As a part of this work we will be exploring what sorts of external cyber action could and should be employed to achieve an active deterrent effect while following, where applicable, the principles of the law of armed conflict such as military necessity, proportionality, and distinction . Active deterrence strategies are most credible when officially declared in policy along with a clear demonstration of capability, but any declared policy will have a norm setting effect in the international community. As such we explore what sorts of cyb er deterrence policies, and use of offensive cyber action, that the U.S. should be willing to accept as a new norm for behavior in cyberspace

### No SCS

#### No SCS war – in no one’s rational interest

Ba, Professor IR Delaware, ’11 (Alice, December, “Staking Claims and Making Waves in the South China Sea: How Troubled Are the Waters?” Contemporary Southeast Asia: A Journal of International and Strategic Affairs, Vol 33 No 3, Project Muse)

Conclusion To varying degrees, authors in this issue generally agree that conflict can be avoided and that there are spaces for potential compromise. Fravel, for example, cites historical precedents where China has been willing to make territorial compromises in support of larger strategic and political objectives; he also sees opportunities in China’s exclusion of the Spratlys from its drawing of its baselines.52 Goldstein draws attention to the concern for moderation and compromise from China’s senior leadership, as well as key naval higher-ups; Thayer highlights the mechanisms and interests that exist to counter more emotional and violent reactions. Womack, along with Fravel and Thayer, sees China and ASEAN states’ 2011 agreement and attention to implementing the DoC as a significant recognition by states of the need to reduce tensions, especially as it involved critical and symbolic concessions, especially on the parts of China and Vietnam. Much like the original DoC, the 2011 agreement and [End Page 285] states’ ability to overcome their stalemate expressed a common interest to ratchet down the dispute from where it was in 2009 and 2010. While acknowledging the need for “bolder” measures, Womack sees the DoC as both “reasonable” and “promising” as a framework that moreover can provide the basis for “a more robust Spratly Management Authority”. Most of all, authors mostly see the prospects for major conflict being mitigated by an unfavourable cost-benefit calculus where the costs of conflict and militarization will be high and the benefits far from clear. Certainly, this is true of Southeast Asia’s weaker states, but it is also true of the major powers — China and the United States. For China, for example, Womack is strongest in seeing militarization of the dispute as contrary to China’s “quarter century of broad and peaceful development” and reform-era policies and diplomacy that have served it very well. A South China Sea conflict scenario would also likely have ripple effects along China’s periphery among other neighbouring and lesser states that are most vulnerable to Chinese power. Given the attention and priority that has been given to stabilizing China’s periphery these past two decades, it hardly seems in China’s interest to militarize the South China Sea in such a way that invites more active interventions from others in the seas around it, especially given its own reliance on those waters to get goods in and out. At minimum, militarization would divert resources and attention from both domestic and other global objectives, with active defence of claims requiring “diplomatic and military efforts of the utmost magnitude”.53 Womack is blunt in his argument that the Spratlys, in the larger scheme of Chinese objectives, is insignificant: “[T]here is no threshold of military superiority that would make it beneficial for China to establish its control over all the Spratlys at the cost of strategic hostility with Southeast Asia.” By one argument, China has the most to lose with the militarization of the South China Sea dispute. As for the United States, Goldstein is most direct in considering the risks and costs of US involvement. Much as is the case in his discussion on US assessments of China, Goldstein’s concern is that too much is assumed of US power and attraction, and too much weight has already been placed on a dispute that is not that important to US larger interests or global balance of power. As already noted, Washington’s diplomatic intervention has already been at cost to US-China relations in other areas. US-China tensions also [End Page 286] potentially push away Southeast Asian states who fear great power conflict more than they want the US to balance China.54 Most of all, Goldstein warns the United States against “competing for the sake of competing” and to guard against over-involving itself in a conflict that risks US credibility, if not lives (as it did forty years ago in Vietnam).

#### Won’t escalate – US won’t get involved

Logan, Director Foreign Policy at Cato, 2-20-’13 (Justin, “War over the Senkaku/Diaoyu Islands” China-US Focus, http://www.cato.org/publications/commentary/war-over-senkakudiaoyu-islands)

But would the United States really engage in a shooting war with China over the islands? There’s good reason to wonder. The biggest reason to doubt it is the stakes involved. Even if China acted aggressively, as it did when it apparently engaged a Japanese vessel and locked fire-control radar on it, the stakes are almost certainly lower than the costs of a war. America has littered the globe with a variety of security guarantees and promises, banking on the assumption that they will never be challenged but can depress security competition in peacetime. This reality can be seen in a 2007 statement from then-presidential candidate Hillary Clinton. In a conversation with a U.S. Asia scholar, Clinton remarked that it is absurd to think that Americans would support a war with China over Taiwan—a much more important strategic asset than the Senkakus/Diaoyus. (Apparently there was some miscommunication about who was on the record when, because the video containing the discussion was swiftly edited to remove the Taiwan comment.) Clinton’s remark about Taiwan points to a truth that is even greater in the case of the Senkaku/Diaoyu Islands: the game just isn’t worth the candle. Even if Washington dealt China a swift and decisive defeat, the consequences would be extremely costly in both economic terms and in terms of making a permanent enemy out of China without doing anything to moderate its future ambitions or capabilities.

## 1NR

### T Case

#### Economic collapse turns Chinese relations and war –

Mead 9(Walter Russell, Henry A. Kissinger Senior Fellow in U.S. Foreign Policy – Council on Foreign Relations, “Only Makes You Stronger”, The New Republic, 2-4, http://www.tnr.com/politics/story.html?id=571cbbb9-2887-4d81-8542-92e83915f5f8&p=2)

The greatest danger both to U.S.-China relations and to American power itself is probably not that China will rise too far, too fast; it is that the current crisis might end China's growth miracle. In the worst-case scenario, the turmoil in the international economy will plunge China into a major economic downturn. The Chinese financial system will implode as loans to both state and private enterprises go bad. Millions or even tens of millions of Chinese will be unemployed in a country without an effective social safety net. The collapse of asset bubbles in the stock and property markets will wipe out the savings of a generation of the Chinese middle class. The political consequences could include dangerous unrest--and a bitter climate of anti-foreign feeling that blames others for China's woes. (Think of Weimar Germany, when both Nazi and communist politicians blamed the West for Germany's economic travails.) Worse, instability could lead to a vicious cycle, as nervous investors moved their money out of the country, further slowing growth and, in turn, fomenting ever-greater bitterness. Thanks to a generation of rapid economic growth, China has so far been able to manage the stresses and conflicts of modernization and change; nobody knows what will happen if the growth stops. India's future is also a question. Support for global integration is a fairly recent development in India, and many serious Indians remain skeptical of it. While India's 60-year-old democratic system has resisted many shocks, a deep economic recession in a country where mass poverty and even hunger are still major concerns could undermine political order, long-term growth, and India's attitude toward the United States and global economic integration. The violent Naxalite insurrection plaguing a significant swath of the country could get worse; religious extremism among both Hindus and Muslims could further polarize Indian politics; and India's economic miracle could be nipped in the bud. If current market turmoil seriously damaged the performance and prospects of India and China, the current crisis could join the Great Depression in the list of economic events that changed history, even if the recessions in the West are relatively short and mild. The United States should stand ready to assist Chinese and Indian financial authorities on an emergency basis--and work very hard to help both countries escape or at least weather any economic downturn. It may test the political will of the Obama administration, but the United States must avoid a protectionist response to the economic slowdown. U.S. moves to limit market access for Chinese and Indian producers could poison relations for years. For billions of people in nuclear-armed countries to emerge from this crisis believing either that the United States was indifferent to their well-being or that it had profited from their distress could damage U.S. foreign policy far more severely than any mistake made by George W. Bush. It's not just the great powers whose trajectories have been affected by the crash. Lesser powers like Saudi Arabia and Iran also face new constraints. The crisis has strengthened the U.S. position in the Middle East as falling oil prices reduce Iranian influence and increase the dependence of the oil sheikdoms on U.S. protection. Success in Iraq--however late, however undeserved, however limited--had already improved the Obama administration's prospects for addressing regional crises. Now, the collapse in oil prices has put the Iranian regime on the defensive. The annual inflation rate rose above 29 percent last September, up from about 17 percent in 2007, according to Iran's Bank Markazi. Economists forecast that Iran's real GDP growth will drop markedly in the coming months as stagnating oil revenues and the continued global economic downturn force the government to rein in its expansionary fiscal policy. All this has weakened Ahmadinejad at home and Iran abroad. Iranian officials must balance the relative merits of support for allies like Hamas, Hezbollah, and Syria against domestic needs, while international sanctions and other diplomatic sticks have been made more painful and Western carrots (like trade opportunities) have become more attractive. Meanwhile, Saudi Arabia and other oil states have become more dependent on the United States for protection against Iran, and they have fewer resources to fund religious extremism as they use diminished oil revenues to support basic domestic spending and development goals. None of this makes the Middle East an easy target for U.S. diplomacy, but thanks in part to the economic crisis, the incoming administration has the chance to try some new ideas and to enter negotiations with Iran (and Syria) from a position of enhanced strength. Every crisis is different, but there seem to be reasons why, over time, financial crises on balance reinforce rather than undermine the world position of the leading capitalist countries. Since capitalism first emerged in early modern Europe, the ability to exploit the advantages of rapid economic development has been a key factor in international competition. Countries that can encourage--or at least allow and sustain--the change, dislocation, upheaval, and pain that capitalism often involves, while providing their tumultuous market societies with appropriate regulatory and legal frameworks, grow swiftly. They produce cutting-edge technologies that translate into military and economic power. They are able to invest in education, making their workforces ever more productive. They typically develop liberal political institutions and cultural norms that value, or at least tolerate, dissent and that allow people of different political and religious viewpoints to collaborate on a vast social project of modernization--and to maintain political stability in the face of accelerating social and economic change. The vast productive capacity of leading capitalist powers gives them the ability to project influence around the world and, to some degree, to remake the world to suit their own interests and preferences. This is what the United Kingdom and the United States have done in past centuries, and what other capitalist powers like France, Germany, and Japan have done to a lesser extent. In these countries, the social forces that support the idea of a competitive market economy within an appropriately liberal legal and political framework are relatively strong. But, in many other countries where capitalism rubs people the wrong way, this is not the case. On either side of the Atlantic, for example, the Latin world is often drawn to anti-capitalist movements and rulers on both the right and the left. Russia, too, has never really taken to capitalism and liberal society--whether during the time of the czars, the commissars, or the post-cold war leaders who so signally failed to build a stable, open system of liberal democratic capitalism even as many former Warsaw Pact nations were making rapid transitions. Partly as a result of these internal cultural pressures, and partly because, in much of the world, capitalism has appeared as an unwelcome interloper, imposed by foreign forces and shaped to fit foreign rather than domestic interests and preferences, many countries are only half-heartedly capitalist. When crisis strikes, they are quick to decide that capitalism is a failure and look for alternatives. So far, such half-hearted experiments not only have failed to work; they have left the societies that have tried them in a progressively worse position, farther behind the front-runners as time goes by. Argentina has lost ground to Chile; Russian development has fallen farther behind that of the Baltic states and Central Europe. Frequently, the crisis has weakened the power of the merchants, industrialists, financiers, and professionals who want to develop a liberal capitalist society integrated into the world. Crisis can also strengthen the hand of religious extremists, populist radicals, or authoritarian traditionalists who are determined to resist liberal capitalist society for a variety of reasons. Meanwhile, the companies and banks based in these societies are often less established and more vulnerable to the consequences of a financial crisis than more established firms in wealthier societies. As a result, developing countries and countries where capitalism has relatively recent and shallow roots tend to suffer greater economic and political damage when crisis strikes--as, inevitably, it does. And, consequently, financial crises often reinforce rather than challenge the global distribution of power and wealth. This may be happening yet again. None of which means that we can just sit back and enjoy the recession. History may suggest that financial crises actually help capitalist great powers maintain their leads--but it has other, less reassuring messages as well. If financial crises have been a normal part of life during the 300-year rise of the liberal capitalist system under the Anglophone powers, so has war. The wars of the League of Augsburg and the Spanish Succession; the Seven Years War; the American Revolution; the Napoleonic Wars; the two World Wars; the cold war: The list of wars is almost as long as the list of financial crises. Bad economic times can breed wars. Europe was a pretty peaceful place in 1928, but the Depression poisoned German public opinion and helped bring Adolf Hitler to power. If the current crisis turns into a depression, what rough beasts might start slouching toward Moscow, Karachi, Beijing, or New Delhi to be born? The United States may not, yet, decline, but, if we can't get the world economy back on track, we may still have to fight.

#### Collapses power projection – leads to nuclear war

Harris & Burrows 9 Mathew, PhD European History @ Cambridge, counselor of the U.S. National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” http://www.ciaonet.org/journals/twq/v32i2/f\_0016178\_13952.pdf

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the harmful effects on fledgling democracies and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which the potential for greater conflict could grow would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdownof U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an unintended escalation and broader conflict if clear red lines between those states involved are not well established. The close proximity of potential nuclear rivals combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on preemption rather than defense, potentially leading to escalating crises. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in interstate conflicts if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

#### Economic decline collapses soft power

Nye 6 Joseph Nye, dean of the Kennedy School of Government at Harvard University, ‘6, (“Think again: soft power”, <http://yaleglobal.yale.edu/display.article?id=7059>)

No. In a recent article on options for dealing with Iran, Peter Brookes of the Heritage Foundation refers to “soft power options such as economic sanctions.” But there is nothing soft about sanctions if you are on the receiving end. They are clearly intended to coerce and are thus a form of hard power. Economic strength can be converted into hard or soft power: You can coerce countries with sanctions or woo them with wealth. As Walter Russell Mead has argued, “economic power is sticky power; it seduces as much as it compels.” There’s no doubt that a successful economy is an important source of attraction. Sometimes in real-world situations, it is difficult to distinguish what part of an economic relationship is comprised of hard and soft power. European leaders describe other countries’ desire to accede to the European Union (EU) as a sign of Europe’s soft power. Turkey today is making changes in its human rights policies and domestic law to adjust to EU standards. How much of this change is driven by the economic inducement of market access, and how much by the attractiveness of Europe’s successful economic and political system? It’s clear that some Turks are replying more to the hard power of inducement, whereas others are attracted to the European model of human rights and economic freedom.

### UQ

#### GOP caucus in disarray – there are enough votes in house to secure passage

Martosko 10/16

DAVID MARTOSKO, U.S. POLITICAL EDITOR, Daily Mail

http://www.dailymail.co.uk/news/article-2463149/Senate-passes-debt-fix-Cruz-goes-swinging-McConnell-carves-2-billion-pet-project.html

Rep. Devin Nunes, a California Republican, said Wednesday that 'all of the Democrats and a big chunk of the Republicans' would vote to support the Reid–McConnell bill. Nunes has been critical of GOP advocates who pushed for a government shutdown in late September, calling them 'lemmings with suicide vests.'¶ A senior House Republican aide told MailOnline that while the GOP caucus is in disarray, more than enough Republicans will support the Senate-crafted bill to assure its passage in the House.¶ 'Frankly, we're all just tired of this problem and everyone – well, almost everyone – is ready to move on,' the House staffer said.¶ That comment was a dig at tea party-affiliated Republicans who have held up the process and given the White House endless opportunities to bash the GOP.

#### Will pass – Obama will reverse on cooperation post – debt ceiling

Miller 10/17

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President Barack Obama has a new message for congressional Republicans today: let’s talk.¶ “I will look for willing partners wherever I can to get important work done,” the president said Thursday morning, announcing he intends to work with Congress to pass an annual budget, comprehensive immigration reform, and a farm bill.¶ Fresh off his victory over House Republicans in twin fiscal crises, the president is preparing an about-face after weeks of swearing off any negotiations with the GOP to fund the government and raise the debt limit. Not only that, but he is also setting the stage to criticize the opposition if they decline to put everything on the table.¶ It’s the completion of a months-long White House strategy on the debt limit that whittled away at the president’s preferred public image as moderate dealmaker. After getting rolled in 2011, Obama swore to his staff that he wouldn’t again get held hostage over the debt limit. Earlier this year, Obama laid down that no-negotiation promise in a statement on the New Year’s fiscal cliff deal, and he stood by it. There were no serious talks. No secret back-channel negotiations. No Joe Biden. Aides on both sides of Pennsylvania Ave. described meetings with congressional leaders last week as more to please the media than a reflection of any attempt to make progress.¶ Aides admit they were wary of the impact of Obama’s hardline position during the shutdown, especially as Republicans passed piecemeal bills to reopen slices of the federal government last week. Business leaders called on the president to throw Republicans a lifeline. Senate Democrats instinctively rushed to cut rogue deals. They fretted the rebuke from the “David Gergen caucus” of beltway pundits. But more than anything, it posed a danger to the Obama brand. He ran for office in 2008 insisting that he was open to negotiating with Iran without preconditions. He had pledged to change the way business is done in Washington and bridge the partisan divides.¶ As the afterglow of an end to the shutdown quickly faded, Obama turned his focus to the next crisis in a morning address at the White House, taking a swing at the tea party and extending an olive branch to moderate Republicans.

#### Reform has momentum but House must act soon – GOP needs acome back

Aguilar 10/17

Julián Aguilar, Texas Tribune, “After Shutdown, Immigration Reform Push Picks Up” October 17, 2013 http://www.texastribune.org/2013/10/17/advocates-immigration-reform-continue-push/

With the federal government fully operational and the debt ceiling debate on hold until next year, proponents of immigration reform resumed their campaign blitz and called on leaders to address the issue before the year ends.¶ The push came after President Obama on Thursday reasserted his belief that Congress can tackle immigration reform after taking on the budget.¶ “There's already a broad coalition across America that’s behind this effort of comprehensive immigration reform — from business leaders to faith leaders to law enforcement,” Obama said, according to an emailed transcript of the president’s remarks. ¶ The House calendar indicates Congress must act quickly to make immigration reform happen this year. There are fewer than 25 working days left on the regular calendar, according to the agenda posted on the website for House Majority Leader Eric Cantor of Virginia. House Republicans have yet to indicate whether they expect to take up immigration reform before the end of the year.¶ The president reiterated that the Senate has already passed a measure that would beef up border security and “modernize our legal immigration system; make sure everyone plays by the same rules, makes sure that folks who came here illegally have to pay a fine, pay back taxes, meet their responsibilities.”¶ He added that if that bill became law, the country would see a 5 percent climb in the economy over 20 years.¶ Advocates said the issue could provide the stage for a comeback for the GOP, whose image took a hit after the 16-day standoff that furloughed thousands of federal employees and shut down various nonessential services.

#### Immigration reform is TOA and will pass – GOP vulnerable, advocates mobilized, and Obama aggressively pushing

Salamanca 10/16

Jean-Paul Salamanca Latino Post “Immigration Reform 2013 News: President Obama Looks to Push for Vote on Immigration Bill Post-Fiscal Crisis”Oct 16, 2013 http://www.latinospost.com/articles/29856/20131016/immigration-reform-2013-news-president-obama-looks-push-vote-bill.htm

Even with the nation still gripped in a fiscal crisis with Congress still arguing over the debt ceiling, President Obama told the nation Tuesday that he would push for a vote on immigration reform.¶ In a sit-down interview with Spanish-language network Univision, President Obama said that the stalled issue of immigration reform, which currently remains frozen in the Republican-controlled U.S. House of Representatives, would become a top priority for him once Congress can agree on a deal regarding the debt limit.¶ "Once that's done, you know, the day after, I'm going to be pushing to say, call a vote on immigration reform," he told Univision, as noted by Reuters.¶ As the current political climate indicates, President Obama faces an intimidating battle to successfully pass immigration reform. While the issue gathered support from Democrats and even several top Republicans--the GOP looking to rebound after suffering stinging defeats at the polls in the November 2013 presidential election--the bill has encountered resistance as it passed to the House.¶ The Democrat-controlled Senate passed a bill in June from the bipartisan "Gang of Eight" Senate panel that would have created a pathway to citizenship for millions of undocumented immigrants living in the U.S. However, Republicans in the House, some of which are denouncing the bill as offering "amnesty" to immigrants who came into the country without authorization, have stalled the bill on the floor, refusing to put it to a vote.¶ President Obama laid the blame at the feet of House Speaker John Boehner for the bill's delay.¶ "We had a very strong Democratic and Republican vote in the Senate," he said. "The only thing right now that's holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives."¶ Boehner has indicated that the House would not consider a dramatic immigration overhaul, and would pass immigration issues in smaller bills, including tighter border security measures. Immigration advocates, however, have opposed such a measure, as it means there would be little chance of legally giving undocumented immigrants a chance to become U.S. citizens via a "pathway," such as the one offered in the Senate proposal, which includes a decade-plus long waiting period along with the payment of back taxes and fines for time said immigrants have lived in the country unauthorized.¶ Several late year issues -- the crisis in Syria and now, the debt limit debacle -- have occupied much of Washington legislators' time. However, it appears the White House and Democrats on Capitol Hill may be ready to head back into the battle for immigration reform after the fiscal crisis is over.¶ Frank Sharry, executive director of the immigration reform group America's Voice, told Buzzfeed that with the GOP's public opinion numbers plummeting, it is possible that the Republicans could be open to discussing immigration reform more easily if Congress can work together to solve the fiscal crisis.¶ "It's at least possible with sinking poll numbers for the Republicans, with a [GOP] brand that is badly damaged as the party that can't govern responsibly and is reckless that they're going to say, 'Alright, what can we do that will be in our political interest and also do tough things?'" said Sharry. "That's where immigration could fill the bill."¶ A recent poll from the Public Religion Research Institute indicated that Hispanics in the U.S. are three times more likely to identify with Democrats than they would Republicans, with 50 percent of Latinos identifying with Democrats while only 15 percent of those Hispanics polled identify with the GOP.¶ Meanwhile, advocates for immigration reform appear to be gearing up for another fight on that front.¶ "We're talking about it. We want to be next up and we're going to position ourselves that way," Sharry said. "There are different people doing different things, and our movement will be increasingly confrontational with Republicans, including civil disobedience. A lot of people are going to say, 'we're not going to wait.'"

### XO

#### XO doesn’t solve and Obama won’t do it

Plumer 8-22

(Brad, “Can Obama legalize 11 million immigrants on his own?,” http://www.washingtonpost.com/blogs/wonkblog/wp/2013/08/22/marco-rubio-says-obama-could-legalize-11-million-immigrants-on-his-own-is-that-right/)

Say Congress fails to pass an immigration-reform bill. Could President Obama use his executive powers to effectively legalize the 11 million undocumented immigrants who are already in the United States?¶ Sen. Marco Rubio thinks so. He warned House Republicans that if they don't pass a bill, Obama will act: "I believe that this president will be tempted, if nothing happens in Congress," Rubio said, "to issue an executive order as he did for the Dream Act kids a year ago, where he basically legalizes 11 million people by the sign of a pen."¶ It's not just Rubio. Immigration reformers have been quietly discussing this possibility as a "Plan B" if the bill dies. (The White House, for its part, has shown no sign of contemplating any such move.)¶ So what could Obama actually do for illegal immigrants on his own? A bit, though not as much as Rubio suggests. In 2012, the administration was able to stop the deportation of hundreds of thousands of undocumented youths under a deferred-action program. And Obama could, in theory, expand that program somewhat, allowing even more current immigrants to work legally in the United States without fear of getting deported.¶ But, legal experts say, it would be extremely difficult to expand this program to cover all (or even most) of the country's 11 million undocumented immigrants. And Obama only has the power to defer deportation — he can't "legalize" immigrants on his own. That's a key distinction here.¶ What Obama did back in 2012: DACA¶ 150318943¶ Kevork Djansezian/Getty Images - People attend an orientation class as they file their application for Deferred Action for Childhood Arrivals program at Coalition for Humane Immigrant Rights of Los Angeles on Aug. 15, 2012.¶ In June of 2012, Obama signed a memo creating the Deferred Action for Childhood Arrivals (DACA) program. This is the program Rubio was referring to.¶ The DACA program applies to any undocumented immigrant aged 16 to 31 who was brought to the United States as a child, has either graduated from high school or is currently enrolled in school, and doesn't have a criminal record. The government basically promises not to deport these youths for two years and allows them to work legally in the United States. They don't get permanent residency or a path to U.S. citizenship, however — as they would have if Congress had passed the Dream Act.¶ As of June, the administration had received more than 550,000 applications for DACA and approved about 72 percent of them. There are another 350,000 or so youths in the country who likely qualify but either don't know about the program or can't pay the $465 application fee.¶ The Obama administration has defended DACA as a way of rationalizing its ongoing deportation policies. After all, there are 11 million undocumented immigrants currently in the United States, and Immigrations and Customs Enforcement has said it only has the resources to deport about 400,000 of them per year. Someone has to be at the bottom of the list. DACA was a way of formalizing those priorities. The "Dream Act kids" are officially at the bottom of the list.¶ But there are limits to how far Obama could expand deferred-action¶ No, Obama can't actually unite Mexico and the United States by executive order. (AP)¶ No, Obama can't actually unite Mexico and the United States by executive order. (AP)¶ The legal rationale for the DACA program was outlined in a letter (pdf) drafted last year by UCLA law professor Hiroshi Motomura and co-signed by nearly 100 top legal scholars around the country. In an interview, Motomura told me that Obama could conceivably expand that program, but there are limits to how far he can go.¶ "Here's how I think about it. If the president can make a list to prioritize who should be deported first, then I think it’s clear that he can give people at the bottom of that list a piece of paper saying you’re at the bottom," Motomura says. "That's how I think about DACA. It's clearly within his discretionary power. But if he did this for every single immigrant, he would no longer be exercising his discretion. That would be problematic."¶ That means — and again, this is all just in theory — Obama could extend promises of deferred deportation to some additional groups of illegal immigrants. He could try to extend it to domestic-violence victims, say. Or to workers who are bringing civil rights or labor-violation claims. Or to those with disabled children. It's possible that could cover another couple million undocumented immigrants. But he can't extend deferral to everyone.¶ "There's certainly room for adjustment, but not anything sweeping," says David A. Martin, a law professor at the University of Virginia and the principal deputy general counsel of the Department of Homeland Security in 2009 and 2010. "The justifications for DACA made clear that this is not a situation where the president can reduce overall enforcement of immigration laws. He can just redirect it in certain ways."¶ Granted, it might be difficult for anyone to sue to stop Obama if he did expand the deferred-action program. A case brought by Immigration and Customs Enforcement workers challenging DACA was recently dismissed in a federal district court in Dallas for jurisdictional reasons.¶ But Martin doesn't think this matters. "The administration has taken the position that you must make a good-faith effort to spend the enforcement resources that Congress has provided," he says.¶ Deferred-action is not legalization¶ Undocumented immigrants line up outside a Los Angeles Deferred Action Application Event. (The Washington Post)¶ There are also limits on what deferred-action can do. DACA doesn't give anyone permanent residency — the way the DREAM Act would have. It only gives them a two-year reprieve from deportation and the ability to work in the country during that time.¶ "It puts people in a kind of limbo," says Motomura. "The immigrants aren't on a path to permanence, their status could be revoked at any time, and they have few legal rights. If someone applies for DACA and gets rejected, there's nothing they can do. Whereas you do have legal rights if you qualify for a green card." That's one reason why many reformers would greatly prefer a bill from Congress that actually put undocumented immigrants on a path to citizenship.¶ Critics of DACA, however, argue that the program is actually more beneficial to immigrants than reformers think — and that the status it confers could end up being permanent. "As you might have guessed, no one has ever been sent home because his 'temporary' protected status expired," writes anti-immigration activist Mark Krikorian. "No one."¶ The politics of deferred action are also tricky¶ U.S. Customs personnel. (AP)¶ So far, we've just been talking about the legality of an expanded deferred-action program. Whether Obama would actually do this in practice is another question.¶ In a leaked 2010 memo (pdf) from the Department of Homeland Security, officials actually considered and rejected the idea. The memo noted that a massive deferred-action program would have an enormous number of downsides. For instance: "The Secretary would face criticism that she is abdicating her charge to enforce the immigration laws."¶ The memo also noted that Congress could just block the administration's actions: "Congress could also simply negate the grant of deferred action (which by its nature is temporary and revocable) to this population. If criticism of the legitimacy of the program gains traction, many supporters of legalization may find it hard to vote against this bill."

### Dickerson

#### Dickerson’s theory is denied – stimulus package proves

Politico ‘10 01-20-10 (“Obama’s first year: what went wrong,”) <http://www.politico.com/news/stories/0110/31749.html>

Obama believed that early success would be self-reinforcing, building a powerful momentum for bold government action. This belief was the essence of the White House’s theory of the “big bang” — that success in passing a big stimulus package would lead to success in [passing health care](http://www.politico.com/news/stories/0110/31731.html), which in turn would clear the way for major cap-and-trade environmental legislation and “re-regulation” of the financial services sector — all in the first year. This proved to be a radical misreading of the dynamics of power. The massive cost of the stimulus package and industry bailouts — combined with the inconvenient fact that unemployment went up after their passage — meant that Obama spent the year bleeding momentum rather than steadily increasing public confidence in his larger governing vision. That vision was further obscured for many Americans by the smoke from the bitter and seemingly endless legislative battle on Capitol Hill over health care.