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### 1

#### Asking how the executive should be allowed to conduct war masks the fundamental question of whether war should be allowed at all – ensures a military mentality

Cady 10 (Duane L., prof of phil @ hamline university, From Warism to Pacifism: A Moral Continuum, pp. 22-23)

The widespread, unquestioning acceptance of warism and the corresponding reluctance to consider pacifism as a legitimate option make it difficult to propose a genuine consideration of pacifist alternatives. Warism may be held implicitly or explicitly. Held in its implicit form, it does not occur to the warist to challenge the view that war is morally justified; war is taken to be natural and normal. No other way of understanding large-scale human conflict even comes to mind. In this sense warism is like racism, sexism, and homophobia: a prejudicial bias built into conceptions and judgments without the awareness of those assuming it. In its explicit form, warism is openly accepted, articulated, and deliberately chosen as a value judgment on nations in conflict. War may be defended as essential for justice, needed for national security, as “the only thing the enemy understands,” and so on. In both forms warism misguides judgments and institutions by reinforcing the necessity and inevitability of war and precluding alternatives. Whether held implicitly or explicitly, warism obstructs questioning the conceptual framework of the culture. If we assume (without realizing it) that war itself is morally justifiable, our moral considerations of war will be focused on whether a particular war is justified or whether particular acts within a given war are morally acceptable. These are important concerns, but addressing them does not get at the fundamental issue raised by the pacifist: the morality of war as such. In Just and Unjust Wars Michael Walzer explains that “war is always judged twice, first with reference to the reasons states have for fighting, secondly with reference to the means they adopt.”8 The pacifist suggestion is that there is a third judgment of war that must be made prior to the other two: might war, by its very nature, be morally wrong? This issue is considered by Walzer only as an afterthought in an appendix, where it is dismissed as naïve. Perhaps Walzer should not be faulted for this omission, since he defines his task as describing the conventional morality of war and, as has been argued above, conventional morality does take warism for granted. To this extent Walzer is correct. And this is just the point: our warist conceptual frameworks— our warist normative lenses— blind us to the root question. The concern of pacifists is to expose the hidden warist bias and not merely describe cultural values. Pacifists seek to examine cultural values and recommend what they ought to be. This is why the pacifist insists on judging war in itself, a judgment more fundamental than the more limited assessments of the morality of a given war or the morality of specific acts within a particular war.

#### this mindset is important – our consciousness of war guarantees endless violence that ensures planetary destruction and structural violence

Lawrence 9 (Grant, “Military Industrial "War" Consciousness Responsible for Economic and Social Collapse,” OEN—OpEdNews, March 27)

As a presidential candidate, [Barack Obama](http://obama.senate.gov/) called [Afghanistan](http://en.wikipedia.org/wiki/War_in_Afghanistan_%282001%E2%80%93present%29) ''the war we must win.'' He was absolutely right. Now it is time to win it... Senators [John McCain](http://www.imdb.com/name/nm0564587/) and Joseph Lieberman [calling](http://www.miamiherald.com/opinion/inbox/story/960269.html) for an expanded war in Afghanistan "How true it is that war can destroy everything of value." Pope Benedict XVI [decrying](http://www.google.com/hostednews/afp/article/ALeqM5iuue8kE-e0lYZVFpt4RlbX4M_IEw) the suffering of Africa Where troops have been quartered, brambles and thorns spring up. In the track of great armies there must follow lean years. Lao Tzu on [War](http://www.sacred-texts.com/tao/salt/salt09.htm) As Americans we are raised on the utility of war to conquer every problem. We have a drug problem so we wage war on it. We have a cancer problem so we wage war on it. We have a crime problem so we wage war on it. Poverty cannot be dealt with but it has to be warred against. Terror is another problem that must be warred against. In the [United States](http://maps.google.com/maps?ll=38.8833333333,-77.0166666667&spn=10.0,10.0&q=38.8833333333,-77.0166666667%20%28United%20States%29&t=h), solutions can only be found in terms of wars. In a society that functions to support a massive military industrial war machine and empire, it is important that the terms promoted support the conditioning of its citizens. We are conditioned to see war as the solution to major social ills and major political disagreements. That way when we see so much of our resources devoted to war then we don't question the utility of it. The term "war" excites mind and body and creates a fear mentality that looks at life in terms of attack. In war, there has to be an attack and a must win attitude to carry us to victory. But is this war mentality working for us? In an age when nearly half of our tax money goes to support the war machine and a good deal of the rest is going to support the elite that control the war machine, we can see that our present war mentality is not working. Our values have been so perverted by our war mentality that we see sex as sinful but killing as entertainment. Our society is dripping violence. The violence is fed by poverty, social injustice, the break down of family and community that also arises from economic injustice, and by the managed media. The cycle of violence that exists in our society exists because it is useful to those that control society. It is easier to sell the war machine when your population is conditioned to violence. Our military industrial consciousness may not be working for nearly all of the life of the planet but it does work for the very few that are the master manipulators of our values and our consciousness. Rupert Murdoch, the media monopoly man that runs the "Fair and Balanced" [Fox Network](http://www.fox.com/), Sky Television, and [News Corp](http://www.newscorp.com/) just to name a few, [had](http://en.wikipedia.org/wiki/Rupert_Murdoch) all of his 175 newspapers editorialize in favor of the [Iraq war](http://en.wikipedia.org/wiki/Iraq_War). Murdoch snickers when [he says](http://www.newscorpse.com/ncWP/?p=341) "we tried" to manipulate public opinion." The Iraq war was a good war to Murdoch [because,](http://www.americanprogress.org/issues/2004/07/b122948.html) "The death toll, certainly of Americans there, by the terms of any previous war are quite minute." But, to the media manipulators, the phony politicos, the military industrial elite, a million dead Iraqis are not to be considered. War is big business and it is supported by a war consciousness that allows it to prosper. That is why more war in Afghanistan, the war on Palestinians, and the other wars around the planet in which the [military industrial complex](http://en.wikipedia.org/wiki/Military-industrial_complex) builds massive wealth and power will continue. The military industrial war mentality is not only killing, maiming, and destroying but it is also contributing to the present social and economic collapse. As mentioned previously, the massive wealth transfer that occurs when the American people give half of their money to support death and destruction is money that could have gone to support a just society. It is no accident that after years of war and preparing for war, our society is crumbling. Science and technological resources along with economic and natural resources have been squandered in the never-ending pursuit of enemies. All of that energy could have been utilized for the good of humanity, ¶ instead of maintaining the power positions of the very few super wealthy. So the suffering that we give is ultimately the suffering we get. Humans want to believe that they can escape the consciousness that they live in. But that consciousness determines what we experience and how we live. As long as we choose to live in "War" in our minds then we will continue to get "War" in our lives. When humanity chooses to wage peace on the world then there will be a flowering of life. But until then we will be forced to live the life our present war consciousness is creating.

#### The alternative must begin in our minds – we need to free ourselves of the presumption towards war and advocate for peace and social justice to stop the flow of militarism that threatens existence

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Where, then, does the future lie? Unilateralism, hegemonic political anarchy, mass immiseration, ecocide, and global violence—a Hobbesian bellum omnium contra omnes? Or international cooperation, social justice, and genuine collective—political and human—security? Down which path lies cowering, fragile hope?¶ Humanistic thinkers approach these problems from the perspective of their concern about the situation of individuals and the long-range interests of humanity. They examine in depth the root causes of these problems, warning about the consequences of escalation and, at the same time, indicating the prospect of their possible solutions through nonviolent means and a growing global consciousness. Today's world is in desperate need of realistic alternatives to violent conflict. Nonviolent action—properly planned and executed—is a powerful and effective force for political and social change. The ideas of peace and nonviolence, as expressed by Immanuel Kant, Leo Tolstoy, Mahatma Gandhi, Martin Luther King, and many contemporary philosophers—supported by peace and civil rights movements—counter the paralyzing fear with hope and offer a realistic alternative: a rational approach to the solutions to the problems, encouraging people to be the masters of their own destiny.¶ Fortunately, the memory of the tragedies of war and the growing realization of this new existential situation of humanity has awakened the global conscience and generated protest movements demanding necessary changes. During the four decades of the Cold War, which polarized the world, power politics was challenged by the common perspective of humanity, of the supreme value of human life, and the ethics of peace. Thus, in Europe, which suffered from both world wars and totalitarianism, spiritual-intellectual efforts to find solutions to these problems generated ideas of "new thinking," aiming for peace, freedom, and democracy. Today, philosophers, intellectuals, progressive political leaders, and peace-movement activists continue to promote a peaceful alternative. In the asymmetry of power, despite being frustrated by war-prone politics, peaceful projects emerge each time, like a phoenix arising from the ashes, as the only viable alternative for the survival of humanity. The new thinking in philosophy affirms the supreme value of human and nonhuman life, freedom, justice, and the future of human civilization. It asserts that the transcendental task of the survival of humankind and the rest of the biotic community must have an unquestionable primacy in comparison to particular interests of nations, social classes, and so forth. In applying these principles to the nuclear age, it considers a just and lasting peace as a categorical imperative for the survival of humankind, and thus proposes a world free from nuclear weapons and from war and organized violence.44 In tune with the Charter of the United Nations, it calls for the democratization of international relations and for dialogue and cooperation in order to secure peace, human rights, and solutions to global problems. It further calls for the transition toward a cosmopolitan order.¶ The escalating global problems are symptoms of what might be termed a contemporary civilizational disease, developed over the course of centuries, in which techno-economic progress is achieved at the cost of depersonalization and dehumanization. Therefore, the possibility of an effective "treatment" today depends on whether or not humankind will be able to regain its humanity, thus establishing new relations of the individual with himself or herself, with others, and with nature. Hence the need for a new philosophy of humanity and an ethics of nonviolence and planetary co-responsibility to help us make sense not only of our past historical events, but also of the extent, quality, and urgency of our present choices.

### 2

#### Judicial deference to executive war powers high now

McCormack 13, Professor of Law at Utah

(8/20, Wayne, U.S. Judicial Independence: Victim in the “War on Terror”, today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/

One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary. Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials.

#### **Judicial restriction of Presidential War Powers makes warfighting impossible**

Knott 13, Professor of National Security Affairs at the United States Naval War College

(8/22, Stephen F., War by Lawyer, www.libertylawsite.org/2013/08/22/war-by-lawyer/)

It is important to keep this in mind in light of the recent National Security Agency surveillance “scandal” which has led to calls for increased judicial oversight of the nation’s intelligence community. These calls, unfortunately, are not coming solely from the usual liberal suspects, but from conservatives who proclaim their devotion to the Constitution. This is an unfortunate turn of events, for if legislating from the bench is inappropriate in the domestic arena, it is completely unwarranted, and altogether dangerous, in the national security arena. This newfound appreciation for judicial activism from normally sober-minded conservatives can be seen in Senator Rand Paul’s (R-KY) and Representative Justin Amash’s (R-MI) proposal that class action lawsuits be filed against the National Security Agency in order to alter its practices. Paul recently announced that he would challenge “this [NSA surveillance] at the Supreme Court level. I’m going to be asking all the Internet providers and all of the phone companies, ask your customers to join me in a class-action lawsuit. If we get 10 million Americans saying ‘We don’t want our phone records looked at,’ then somebody will wake up and say things will change in Washington.” A program authorized by Congress, managed by the executive, and sanctioned by the FISA court will now be challenged by a class action lawsuit, mimicking the traditional liberal tactic of going to court when you cannot prevail in the political process. Additionally, Senator Patrick Leahy (D-VT), a longtime critic of the American intelligence community, has sponsored legislation with Senator Mike Lee (R-Utah) to “increase judicial review” of terrorist related surveillance requests. The FISA Accountability and Privacy Protection Act of 2013 would, as its sponsors put it, add more “meaningful judicial review” of requests by the government to intercept suspected terrorist communications. On top of this, President Obama has proposed that a “special advocate” be appointed to serve as an adversary to the government in FISA court proceedings. In other words, government officials will have to joust in front of a judge with a lawyer concerned about the civil rights of a suspected Al Qaeda sympathizer living in the United States. While it is not surprising that President Obama and Patrick Leahy would adopt these positions, it is surprising to see prominent Republicans, including potential 2016 GOP nominees, jumping on Pat Leahy’s bandwagon. Terrorist attacks directed from abroad are acts of war against the United States, requiring a response by the nation’s armed forces under the direction of the commander-in-chief. Unity in the executive is critical to the conduct of war, as Alexander Hamilton noted in The Federalist, and war by committee, especially a committee of lawyers, brings to armed conflict the very qualities that are the antithesis of Publius’s “decision, activity, secrecy, and dispatch.” The American military, with the assistance of the American intelligence community, fulfill the constitutional mandate to provide for the common defense. The nation’s defense establishment is not the Internal Revenue Service or the Department of Health and Human Services; if one dislikes the social welfare policies of the Obama administration or disagrees with President Obama for whatever reason, that is all well and good, but true conservatives should reject the principle that judicial review is applicable to the conduct of national defense. The founders understood that the decision to use force, the most important decision any government can make, were non-judicial in nature and were to be made by the elected representatives of the people. Nonetheless, for those weaned during an era when “privacy” was elevated to the be-all and end-all of the American experiment, the war power and related national security powers granted by the Constitution to the elected branches are trumped by modern notions of a limitless “right to privacy.” The civil liberties violations of the War on Terror are considered so egregious as to require the intervention of an appointed judiciary lacking any Constitutional mandate, and lacking the wherewithal, including information and staff, to handle sensitive national security matters. This is judicial activism at its worst and further evidence that the “political questions doctrine,” the idea of deferring to the elected branches of government on matters falling under their constitutional purview, is, for all practical purposes, dead (See the case of Totten vs. U.S., 1875, for an example of judicial deference to the elected branches on intelligence matters. This deference persisted until the late 20th century). Simply put, according to the Constitution and to almost 220 years of tradition, Congress and the President are constitutionally empowered, among other things, to set the rules regarding the measures deemed necessary to gather intelligence and conduct a war. One of the latest demands from advocates of increased judicial oversight is for a “targeted killing court.” In a similar vein, Senator Marco Rubio has called for the creation of a “Red Team” review of any executive targeting of American citizens, which would include a 15 day review process – “decision, activity, secrecy, and dispatch” be damned. A 15 day review process of targeting decisions would horrify Alexander Hamilton and all the framers of the Constitution. No doubt our 16th President would be horrified as well – imagine Abraham Lincoln applying for targeting permits on American citizens suspected of assisting the Confederacy. (“Today, we begin a 15 day review of case #633,721, that of Beauregard Birdwell of Paducah, Kentucky.”) War by lawyer might in the not too distant future include these types of targeting decisions, followed by endless appeals to unelected judges. All of this is a prescription for defeat. We are, sadly, almost at this point, for a new conception about war and national security has taken root in our increasingly legalistic society. We saw this during the Bush years when the Supreme Court for the first time in its history instructed the executive and legislative branches on the appropriate manner of treating captured enemy combatants. The Courts are now micromanaging the treatment of detainees at Guantanamo, to the point of reviewing standards for groin searches of captured Al Qaeda members. True conservatives understand the pitfalls of this legalism, especially of the ill-defined international variety. Conservatives should be especially alert to the dangers arising from elevating international law over the national interest as the standard by which to measure American conduct. The legalistic approach to the war on terror now being endorsed by prominent conservatives would cede presidential authority to executive branch lawyers and to their brethren in the judiciary who are playing a role they were never intended to play. Michael Scheuer, the former head of the CIA’s unit charged with tracking down Osama bin Laden, observed that “at the end of the day, the U.S. intelligence community is palsied by lawyers, and everything still depends on whether the lawyers approve it or not.” This is as far removed from conducting war, as Hamilton described it, with decision and dispatch, and with the “exercise of power by a single hand,” as one can get. War conducted by the courts is not only unconstitutional, it is, to borrow a phrase from author Philip K. Howard, part of the ongoing drift toward the death of common sense.

#### This is particularly true with the plan because drones are key to warfighting – they are the future of combat

Bruntstetter 12, Political Science Professor at UC Irvine

(Daniel, Drones: The Future of Warfare?, www.e-ir.info/2012/04/10/drones-the-future-of-warfare/)

Since President Obama took office, the use of and hype surrounding drones has greatly increased. Obama has conducted more than three times as many drone strikes per year compared to his predecessor in the White House. The increase use of drones points to a potential revolution in warfare, or at least a shift in the perspective of how wars will be fought in the future. As robotics expert P.W. Singer argues, “the introduction of unmanned systems to the battlefield doesn’t change simply how we fight, but for the first time changes who fights at the most fundamental level. It transforms the very agent of war, rather than just its capabilities.” The three major reasons drones are seen as the future of warfare are: they remove the risk to our soldiers, they make fewer mistakes than other weapons platforms, and technology will continue to improve such that drones become even more precise, efficient, and infallible in the future, thus rendering less precise, efficient and fallible human forms of war obsolete. Drones are thus seen as marking “a step forward in humanitarian technology,” and viewed as “a weapon of choice for future presidents, future administrations, in future conflicts and circumstances of self-defense and vital national security of the United States.” Yet, there has been much criticism of these assertions. Journalists challenge the claim that there are diminished civilian deaths from drone strikes, while just war scholars suggest that drones loosen the moral restraints on the use of force and legal scholars grapple with the relation between drones and international law. Notwithstanding these ethical and legal challenges, and despite what advocates say about their place in the future of armed combat, drones are, like any weapons platform, inherently limited in what they can do. In this brief article, I make three claims to contextualize the idea that drones are the future of war to shed light on the circumscribed role they might play in the foreseeable future. First, that drones are an improvement – in terms of providing surveillance capabilities and satisfying the rules of war – compared to previous technology. Their technical advantages (loitering capacity, removal of risk to pilots, and precision) make them an important addition to any military arsenal.

#### Loss of warfighting effectiveness ensures nuclear war in every hotspot

Kagan and O’Hanlon 07, resident scholar at AEI and senior fellow in foreign policy at Brookings

(Frederick and Michael, The Case for Larger Ground Forces, April, http://www.aei.org/files/2007/04/24/20070424\_Kagan20070424.pdf)

We live at a time when **wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is** tenuous. To view this as **a strategic military challenge for the U**nited **S**tates **is not to espouse a specific theory of America’s role in the world** or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that **overseas threats must be countered before they can directly threaten this country’s shores**, that the **basic stability of the international system is essential to American peace** and prosperity, **and that no country besides the U**nited **S**tates **is in a position to lead the way in countering major challenges to the global order**. Let us highlight the **threats and their consequences** with a few concrete examples, emphasizing those **that involve key strategic regions of the world such as the Persian Gulf and East Asia, or** key potential **threats to American security, such as the spread of nuclear weapons and** the strengthening of the global **Al Qaeda**/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North **Korea**, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time**.** Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan.

### 3

#### Immigration reform will pass – political capital is key

Matthews, 10/16 (Laura, 10/16/2013, “2013 Immigration Reform Bill: 'I'm Going To Push To Call A Vote,' Says Obama,” [http://www.ibtimes.com/2013-immigration-reform-bill-im-going-push-call-vote-says-obama-1429220)](http://www.ibtimes.com/2013-immigration-reform-bill-im-going-push-call-vote-says-obama-1429220%29))

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.”

#### **Congressional drone proposals causes massive fights.**

Munoz 13

(Carlo Munoz, National Security writer, “Turf battle builds quietly in Congress over control of armed drone program”, The Hill, 4/9/13, http://thehill.com/homenews/administration/292501-turf-battle-builds-quietly-over-control-of-armed-drone-program)

A turf war is quietly building between congressional defense and intelligence committees over who will oversee the Obama administration’s controversial armed drone program. ¶ Lawmakers are scrambling to make their case for or against a White House proposal that would hand control of the drones to the Pentagon. ¶ Gordon Adams, a senior defense analyst at the Stimson Center, called the looming battle a “turf fight in the [disguise] of a policy debate.”¶ The Pentagon and CIA operate their own armed drone programs, which are both geared toward eliminating senior al Qaeda leaders and other high-level terror targets around the world. Under the Obama administration’s proposal, the CIA would continue to supply intelligence on possible targets, but actual control over the drone strikes would fall to the Pentagon. ¶ Senate Intelligence Committee Chairwoman Dianne Feinstein (D-Calif.) publicly questioned whether the Defense Department (DOD) would be able to shoulder the program alone. ¶ “We’ve watched the intelligence aspect of the drone program, how they function, the quality of the intelligence, watching the agency exercise patience and discretion,” Feinstein told reporters in March. “The military [armed drone] program has not done that nearly as well.” ¶ Sen. John McCain and other defense lawmakers say the drone program would be better off being run by the Pentagon. ¶ “It’s not the job of the Central Intelligence Agency. ... It’s the military’s job,” the Arizona Republican said in March. ¶ The fight is a typical battle over who on Capitol Hill will retain power over the program, according to several analysts, who described it as predictable. ¶ “There is always going to be a turf battle” when dealing with congressional oversight, said Lawrence Korb, a former DOD official and defense analyst at the liberal-leaning Center for American Progress. ¶ But that battle could become particularly heated, given the high-profile nature of the drone program, which since the Sept. 11, 2001, attacks has become a huge factor in shaping counterterrorism policy, given its success, Korb said. ¶ For congressional panels, the fight over who will control the drone program will have a say in the relevancy of the two committees. ¶ Korb, for example, noted that national security spending on unmanned aircraft and special operations forces will likely increase, even as the budget for defense spending overall is expected to trend downward. ¶ Ironically, Pentagon officials pushed back against using armed drones in the late 1990s, fearing they would replace fighter jets as the weapon of choice in future wars, Korb said. ¶ That decision essentially handed control of the armed drone program to the CIA, he said. Early versions of the unmanned aircraft flown during the 2001 invasion of Afghanistan belonged to the agency, not the Defense Department, according to Korb. ¶ Taking that influence away from Langley and intelligence lawmakers was bound to spark a fight, he said.

#### The plan draws the executive into a political battle over presidential power issues

Knowles 9 --- Assistant Prof at NYU Law

[Spring, 2009, Robert, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

If nations are viewed as unitary entities in the international arena, there must be one governmental entity that can be held accountable for a nation's actions in foreign affairs, and for the U.S., that can only be the executive branch. Through this executive-exclusive lens, the American public and foreign governments either do not know how to, or simply cannot, hold the [\*133] courts accountable for their foreign affairs decisions. n285 Holding courts accountable is relatively difficult because the transaction costs are high. n286 While the President is one officer elected every four years, the federal judiciary comprises hundreds of individuals possessing lifetime tenure, and who can only be formally held accountable through impeachment. Deferentialists also argue that the public associates the executive branch with national security and foreign affairs, but associates the courts with protecting minority rights and resolving controversies among domestic parties. n287 The accountability justification generally overstates the degree to which courts are insulated from politics. n288 On the domestic front, Supreme Court appointments have become an increasingly prominent issue in presidential elections, at least since Roe v. Wade and the nominations of Robert Bork and Clarence Thomas. n289 Although foreign affairs have not played much of a role in these debates thus far, this is almost certainly due to the courts' generally deferential approach to foreign relations controversies. When the courts have been bolder, such as in the enemy combatant cases, they have captured the attention of policy-makers and the public, creating issues for presidential campaigns. n290 Moreover, accountability cuts both ways. It is a core purpose of the separation of powers. n291 The courts can serve an important information-forcing role that assists the People in holding the executive branch accountable for foreign affairs decisions, many of which are shrouded in secrecy. n292 Court cases require the government to clearly [\*134] articulate the rationales for its policies and the procedures through which those policies were enacted. Habeas corpus forces federal officers to justify their detention of individuals whose imprisonment would otherwise remain unscrutinized. n293 In any event, assuming that the courts are relatively less accountable than the political branches, this aspect of the constitutional regime is accepted in the domestic context. Why should foreign affairs require faster and easier accountability? Ultimately, the one-voice arguments for special deference - for uniformity, accountability, and avoiding embarrassment - must be grounded in assumptions about the peculiar requirements of managing a great power's foreign policy in an anarchic world. These are considerations of realpolitik, which I discuss in the next subpart.

#### Obama’s push and leverage key to secure immigration reform --- has upper hand now

Roth, 10/16 (Zachary, 10/16/2013, “Obama’s next move,” [http://www.msnbc.com/msnbc/what-the-deal-means-obamas-presidency)](http://www.msnbc.com/msnbc/what-the-deal-means-obamas-presidency%29))

President Barack Obama stood his ground, forced Republicans into submission and overcame liberals’ worst fear–that he’d cave and head into the final three years of his second term weakened.

But is he any stronger for it?

Obama proved he can stop Republicans from getting their way, but it’s less clear if he is in a better position to get his own.

To get the next deals that he wants–like an ambitious immigration package or even a farm bill–don’t need a roadblock. They need a push.

So while the shutdown deal is a clear victory for the White House, the challenge of turning that win into momentum for his agenda is a reminder that this is still an era of bitterly divided government.

Case in point: Obama’s first words after the Senate approved the bill were a call for bipartisanship, but they were met with resentment from the House GOP.

“We could get all these things done, even this year, if everyone comes together in the spirit of how are we going to move this country forward,” Obama said.

Immediately, House Republicans balked at the comments, accusing the president of disrespecting them for speaking before their late night vote.

The morning after signing the bill to end the shutdown and lift the debt ceiling, Obama chided the “spectacle” of the showdown, insisting it had done “unnecessary damage” to the U.S.

“There are no winners here,” he said Thursday.

Still, some of the president’s supporters say he’s given himself more room to maneuver in the future.

“I think that it will strengthen his hand in terms of moving forward with the Congress in a way that is helpful, given his lame-duck status,” Anita Dunn, who served as communications director in the Obama White House, told MSNBC. “Because they’ll know there’s only so far they can push him.”

Obama’s determination not to reward GOP hostage-taking by making policy concessions surprised many Republicans, who said for weeks they expected him to cave—and based their strategy on that assumption.

The final deal looks like a clear vindication of Obama’s position. The plan funds the government through January 15 and extends the debt limit through February 7. It makes two relatively uncontroversial tweaks to Obamacare. Most important, it allows the White House to credibly claim it didn’t negotiate over raising the debt ceiling, avoiding setting what the administration considered a dangerous precedent.

Just as important as what’s in the deal may be how it was reached: It was hammered out by more establishment Republicans in the Senate, and passed through the House with mostly Democratic votes. Dunn said that dynamic, which sidelined House Tea Partiers, could tilt the balance of power within in the GOP—to Obama’s advantage.

“If those people, rather than being marginalized by their own political party, emerge in a stronger position, then that also helps set up the rest of the second term,” said Dunn, referring to Senate Republican dealmakers like Susan Collins and Lindsey Graham.

Dunn pointed to tax reform, infrastructure spending, and transportation as potential areas for progress.

#### Key to US competitiveness

Bush, et al, ’09 [7/21/09, Former Florida Gov. Jeb Bush and former White House Chief of Staff Thomas F. McLarty and Edward Alden, “Nation needs comprehensive, flexible immigration reform,” http://www.ajc.com/opinion/nation-needs-comprehensive-flexible-97393.html]

Our immigration system has been broken for too long, and the costs of that failure are growing. Getting immigration policy right is fundamental to our national interests — our economic vitality, our diplomacy and our national security. In the report of the bipartisan Council on Foreign Relations’ Independent Task Force on U.S. Immigration Policy, we lay out what is at stake for the United States. President Barack Obama has made it clear that reform is one of his top priorities, and that is an encouraging and welcome signal. Immigration has long been America’s secret weapon. The U.S. has attracted an inordinate share of talented and hardworking immigrants who are enticed here by the world’s best universities, the most innovative companies, a vibrant labor market and a welcoming culture. Many leaders in allied nations were educated in the U.S., a diplomatic asset that no other country can match. And the contributions of immigrants — 40 percent of the science and engineering Ph.D.s in the U.S. are foreign-born, for example — have helped maintain the scientific and technological leadership that is the foundation of our national security. But the U.S. has been making life much tougher for many immigrants. Long processing delays and arbitrary quota backlogs keep out many would-be immigrants, or leave them in an uncertain temporary status for years. Background and other security checks are taking far too long in many cases. Other countries are taking advantage of these mistakes, competing for immigrants by opening their universities to foreign students and providing a faster track to permanent residency and citizenship.

#### Great power war

Baru, ‘9 [March 2009, Sanjaya Barus is visiting Professor at the Lee Kuan Yew School of Public Policy in Singapore Geopolitical Implications of the Current Global Financial Crisis, Strategic Analysis, Volume 33, Issue 2 March 2009, pages 163 – 168]

Hence, economic policies and performance do have strategic consequences. In the modern era, the idea that strong economic performance is the foundation of power was argued most persuasively by historian Paul Kennedy. 'Victory (in war)', Kennedy claimed, 'has repeatedly gone to the side with more flourishing productive base'. Drawing attention to the interrelationships between economic wealth, technological innovation, and the ability of states to efficiently mobilize economic and technological resources for power projection and national defence, Kennedy argued that nations that were able to better combine military and economic strength scored over others. 'The fact remains', Kennedy argued, 'that all of the major shifts in the world's military-power balance have followed alterations in the productive balances; and further, that the rising and falling of the various empires and states in the international system has been confirmed by the outcomes of the major Great Power wars, where victory has always gone to the side with the greatest material resources'.4 In Kennedy's view, the geopolitical consequences of an economic crisis, or even decline, would be transmitted through a nation's inability to find adequate financial resources to simultaneously sustain economic growth and military power. The classic 'guns versus butter' dilemma. Apart from such fiscal disempowerment of the State, economic under-performance would also reduce a nation's attraction as a market, as a source of capital and technology, and as a 'knowledge power'. As power shifted from Europe to America, so did the knowledge base of the global economy. As China's power rises, so does its profile as a 'knowledge economy'. Impressed by such arguments, the China Academy of Social Sciences developed the concept of Comprehensive National Power (CNP) to get China's political and military leadership to focus more clearly on economic and technological performance than on military power alone in its quest for Great Power status.5 While China's impressive economic performance, and the consequent rise in China's global profile, has forced strategic analysts to acknowledge this link, the recovery of the US economy in the 1990s had reduced the appeal of the Kennedy thesis in Washington, DC. We must expect a revival of interest in Kennedy's arguments in the current context. A historian of power who took Kennedy seriously, Niall Ferguson, has helped keep the focus on the geopolitical implications of economic performance. In his masterly survey of the role of finance in the projection of state power, Ferguson defines the 'square of power' as the tax bureaucracy, the parliament, the national debt, and the central bank. These four institutions of 'fiscal empowerment' of the state enable nations to project power by mobilizing and deploying financial resources to that end.6 Ferguson shows how vital sound economic management is to strategic policy and national power. More recently, Ferguson has been drawing a parallel between the role of debt and financial crises in the decline of the Ottoman and Soviet Empires and that of the United States. In an early comment on the present financial crisis, Ferguson wrote: We are indeed living through a global shift in the balance of power very similar to that which occurred in the 1870s. This is the story of how an over-extended empire sought to cope with an external debt crisis by selling off revenue streams to foreign investors. The empire that suffered these setbacks in the 1870s was the Ottoman empire. Today it is the US. … It remains to be seen how quickly today's financial shift will be followed by a comparable geopolitical shift in favour of the new export and energy empires of the east. Suffice to say that the historical analogy does not bode well for America's quasi-imperial network of bases and allies across the Middle East and Asia. Debtor empires sooner or later have to do more than just sell shares to satisfy their creditors. … as in the 1870s the balance of financial power is shifting. Then, the move was from the ancient oriental empires (not only the Ottoman but also the Persian and Chinese) to western Europe. Today the shift is from the US - and other western financial centres - to the autocracies of the Middle East and East Asia. …7 An economic or financial crisis may not trigger the decline of an empire. It can certainly speed up a process already underway. In the case of the Soviet Union, the financial crunch caused by the Afghan War came on top of years of economic under-performance and the loss of political legitimacy of the Soviet State. In a democratic society like the United States, the political legitimacy of the state is constantly renewed through periodic elections. Thus, the election of Barack Obama may serve to renew the legitimacy of the state and by doing so enable the state to undertake measures that restore health to the economy. This the Soviet State was unable to do under Gorbachev even though he repudiated the Brezhnev legacy and distanced himself from it. Hence, one must not become an economic determinist, and historic parallels need not always be relevant. Politics can intervene and offer solutions. Political economy and politics, in the form of Keynesian economics and the 'New Deal' did intervene to influence the geopolitical implications of the Great Depression. Whether they will do so once again in today's America remains to be seen.

### 4

#### Text: The United States federal government should establish a drones Court with jurisdiction to apply a strict scrutiny standard to executive drone strike orders.

#### The affirmative plan text establishes a court for all targeted killing. This includes both drone strikes and Special ops. The counterplan is just drone strikes

#### Special forces conduct important targeted killings – turns case - key to Afghanistan stability and preventing terrorist attacks

Sascha-Dominik Bachmann 13, Reader in International Law (University of Lincoln), 2013, “Targeted Killings: Contemporary Challenges, Risks and Opportunities,” Journal of Conflict and Security Law, doi: 10.1093/jcsl/krt007

Targeted killing has also been used by the USA in theatres of actual combat operations, such as Afghanistan and Iraq, as well as outside these theatres of war and as part of CIA and US military run covert operations in Pakistan. The USA is using drone strikes and Special Forces there to conduct pre-emptive as well as defensive targeted killing operations against Al-Qaeda and the Taliban. The argument is brought forward that such operations are necessary to protect US forces and its allies in Afghanistan and to disrupt the existent terrorist infrastructure. The focus of such operations is on the so-called ‘Tribal Areas’ of Pakistan, Waziristan, where the Taliban have effectively established an autonomous sphere of influence to the exclusion of the central government in Peshawar.32 Other such covert operations have seen CIA operated drone strikes in Yemen, Somalia as well Sudan, where a lack of cooperation and/or relative capabilities of the respective governments have created areas which are outside effective state control.33

#### Judicial review disrupts special forces targeted killing

Hudson 99 – Major in US Army

(Walter, March, Racial Extremism in the Army, Military Law Review (159 Mil. L. Rev. 1)

Where Brennan’s argument may appear to be the most persuasive is where the potential “penalties” cut into the interests that the adjudicative process is best suited to protect–namely, constitutional protections. In dealing with constitutional protections, individual rights often trump majority concerns. Discerning whether individuals should be granted these protections may not be particularly complex, on the surface.234 When viewing the grant of constitutional protections in relation to the military’s goal–successful combat operations–this argument loses force. This is because “simplicity” as defined in civilian contexts often does not have the same meaning in the military context. Clausewitz, the Prussian general and author of the military classic, On War, once famously stated: “Everything in war is very simple, but the simplest thing is difficult.”235 Clausewitz terms all the uncertainties and problems that accompany wartime operations as “friction.”236 Friction can be defined as the “realm of uncertainty and chance, even more [is] it the realm of suffering, confusion, exhaustion, and fear”237 that accompanies military wartime operations. All these exist to a much higher degree in war, because, as Clausewitz points out, in war, not only is chance and uncertainty a constant, 238 but also one side is trying to impose its will on its opponent, which is an “animate object that reacts.”239 In other words, in war, you are seeking to overcome an opponent who is reacting to (and may be anticipating) your movements, who is trying not only to defeat but to destroy you, and who may not be constrained by your own laws, customs, and behavior. It is not thus simply the lack of judicial competence in military affairs, but the effects that the lack of competence may have that is an additional “friction” in the military environment. The problem in applying a standard of review similar to the kind used for civilian society is not just that the court may err, but the ramifications of such an error given the uncertainty of conflict.240 An error in military policy making could impede military effectiveness and thereby jeopardize national security.241 These judicial decisions put the courts squarely into the political arena. Judges unwittingly become “strategists”–unelected and ill-equipped officials deciding matters of potentially ultimate importance. Judicial deference, therefore, is generally appropriate to military decision-making, and in particular, a unit commander’s decision-making on extremism. Extremism’s disproportionate impact on the community where it occurs is an impact that can only be magnified in a military unit. The best way to appreciate that impact is to look at the gravest danger posed by racial extremists–the violent hate crime.

#### Special forces operations are key to counter-prolif---solves nuclear war

Jim Thomas 13, Vice President and Director of Studies at the Center for Strategic and Budgetary Assessments, and Chris Dougherty is a Research Fellow at the Center for Strategic and Budgetary Assessments, 2013, “BEYOND THE RAMPARTS THE FUTURE OF U.S. SPECIAL OPERATIONS FORCES,” http://www.csbaonline.org/wp-content/uploads/2013/05/SOF-Report-CSBA-Final.pdf

WMD do not represent new threats to U.S. security interests, but as nascent nuclear powers grow their arsenals and aspirants like Iran continue to pursue nuclear capabilities, the threat of nuclear proliferation, as well as the potential for the actual use of nuclear weapons, will increase. Upheaval in failing or outlaw states like Libya and Syria, which possess chemical weapons and a range of missiles, highlights the possibility that in future instances of state collapse or civil war, such weapons could be used by failing regimes in an act of desperation, fall into the hands of rebel forces, or be seized by parties hostile to the United States or its interests. SOF can contribute across the spectrum of counter-WMD efforts, from stopping the acquisition of WMD by hostile states or terrorist groups to preventing their use. The global CT network SOF have built over the last decade could be repurposed over the next decade to become a global counter-WMD network, applying the same logic that it takes a network to defeat a network. Increasing the reach and density of a global counter-WMD network will require expanding security cooperation activities focused on counter-proliferation. Finally, SOF may offer the most viable strategic option for deposing WMD-armed regimes through UW campaigns should the need arise.

### Prolif 1NC

#### Long timeframe – no one wants to invest in the near term

Zenko 2013 (Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, Council Special Report No. 65, January 2013, “U.S. Drone Strike Policies”, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎)

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

#### Drones deescalate conflict and are the only way to win the war on terrorism

Anderson 10, Professor of Law @ American University

(Kenneth, Visiting Fellow on the Hoover Task Force on National Security and Law and Professor of Law at American University, “Predators over Pakistan,” The Weekly Standard Vol. 15, No. 24, 3/8/10, accessed 6/25/10, <http://www.weeklystandard.com/print/articles/predators-over-pakistan>, SSD)

Targeting terrorists and militants with **Predator** drone strikes is one **campaign** promise **President** Obama has kept **to the letter.** Missiles fired from **remote-piloted “unmanned aerial vehicles” (**UAVs**)** at al Qaeda and Taliban leadership **steadily and sharply** increased over the course of 2009. Senior U.S. **military and intelligence** officials have called them one of the most effective tactics available to strike directly at al Qaeda and the Taliban. **Indeed,** CIA director **Leon** Panetta says that drones are “the only game **in town** in terms of confronting or trying to disrupt the al Qaeda leadership.” **There is every reason to believe him.¶** In January **2010 alone,** a dozen strikes were launched **just** in the Pakistani tribal region **of** Waziristan. **With the beginning of the promised offensive against the Taliban in Afghanistan,** Predator attacks have **likewise** surged against targets in Pakistan, concurrent with moves by Pakistani intelligence to detain Taliban leaders, and also concurrent with the **extensive** use of UAVs on the battlefield in the Afghan offensive **(primarily as an urban surveillance tool but also for missile strikes).** Obama promised that his administration would go after al Qaeda and Taliban in their refuges in Pakistan**​—​**with or without the permission of the Pakistani government**, he pointedly said—and so he has done.¶ The aggressive** expansion of the Predator targeted killing program is the Obama administration’s one unambiguous innovation in the war against terrorists. **The adaptation of UAV surveillance craft into missile platforms took place as an improvisation in 2002 under the Bush administration—but** its embrace as the centerpiece of U.S. counterterrorism operations belongs to Obama. **It is not the whole of it—**the **Obama** administration **has expanded joint operations with Pakistan and Yemen, and launched commando operations in Somalia against terrorists. But of all the ways it has undertaken to strike directly against terrorists, this administration** owns the Predator drone strategy. It argued for it, expanded it, and used it**, in the words of the president’s State of the Union address,** to “take the fight to al Qaeda.”**¶** As al Qaeda**, its affiliates,** and other transnational jihadists seek shelter **in lightly governed places such as Yemen or Somalia,** the Obama administration says the U**nited** S**tates** will follow them and deny them safe haven. **Speaking at West Point, the president obliquely referred to so-called targeted killings—we will have to be “nimble and precise” in the use of military power, he said, adding that “high-ranking al Qaeda and Taliban leaders have been killed, and we have stepped up the pressure on al Qaeda worldwide.”¶** The **Predator** drone strategy is **a rare example of** something that has gone **really, really** well for the Obama administration.Counterterrorism “on offense” has done better, ironically, under an administration that hoped it could just play counterterrorism on defense—wind down wars, wish away the threat as a bad dream **from the Bush years, hope the whole business would fade away so it could focus on health care. Yet for all that, the** Obama **administration, through Predator strikes,** is taking the fight to the enemy**.¶ And, let’s face it,** in dealing with terrorist groups in ungoverned places in the world, we have few good options besides UAVs. Drones permit the U**nited** S**tates to go directly after terrorists, rather than having to fight through whole countries to reach them. Maybe that’s not enough to win. Maybe “light-footprint” counterterrorism via drones turns out to be just the latest chimera in the perennial effort to find a way to win a war through strategic airpower. Yet** even in a serious counterinsurgency on the ground, drones will still be important as a means of attacking terrorists while clearing and holding territory. **The upshot?** As long as we engage in counterterrorism, drones will be a critical part of our offense.

#### Courts fail - legal issues can’t be solved quickly enough

Groves 13, Senior Research Fellow @ Heritage Foundation

(Steven Groves, Senior Research Fellow in the Margaret Thatcher Center for Freedom @ Heritage Foundation, J.D. from Ohio Northern University, BA in History, “Drone Strikes: The Legality of U.S. Targeting Terrorists Abroad”, The Heritage Foundation, 4/10/13, http://www.heritage.org/research/reports/2013/04/drone-strikes-the-legality-of-us-targeting-terrorists-abroad)

Certain former Obama Administration officials, the editorial board of The New York Times, and at least one U.S. Senator have called for the establishment of a special oversight panel or court to review the Administration’s targeting determinations, particularly in instances in which a U.S. citizen is targeted.[49] Essentially, such a court would scrutinize the Administration’s targeting decisions, presumably including its decisions to place individuals on the “disposition matrix.” The court would apparently have the authority to overrule and nullify targeting decisions. The creation of such a court is ill advised and of doubtful constitutionality.¶ The proponents of a drone court apparently do not appreciate the potential unintended consequences of establishing such an authority. The idea is wrongheaded and raises more questions than it answers. For instance, could the drone court decide as a matter of law that a targeted strike is not justified because the United States is not engaged in an armed conflict with al-Qaeda? Could the drone court rule that members of a force associated with al-Qaeda (e.g., AQAP) may not be targeted because AQAP was not directly involved in the September 11 attacks and therefore the strike is not authorized under the AUMF? The proposed drone court cannot avoid these fundamental questions since the justification for the targeted strikes is dependent on the answers to these questions.¶ Even if the proposed drone court attempts to eschew intervention into foundational questions such as the existence of an armed conflict, it still would not be in a position to rule on the “easy” questions involved in each and every drone strike. Does the target constitute an “imminent threat” to the United States? When civilian casualties may occur as a result of the strike, does the drone court have the authority to overrule the targeting decision as a violation of the principle of proportionality? Is the target an innocent civilian or a civilian “directly participating in hostilities”? Should U.S. forces attempt to capture the target before resorting to a drone strike? Is capture feasible? Any drone court, even if constituted with former military and intelligence officials, is ill suited to weigh all of the competing factors that go into a decision to target an al-Qaeda operative and make a timely decision, particularly when there is often only a short window of time to order a strike.¶ Regardless, creating a judicial or quasi-judicial review process will not ameliorate, much less resolve, objections to U.S. targeted killing practices. Critics will continue to demand more judicial process, including appeals from the proposed drone court, and additional transparency no matter what kind of forum is established to oversee targeting decisions.

#### Drone court is just a rubber stamp

Bergen and Rowland 2013 - Director of the National Security Studies Program at the New America Foundation (Summer, Peter and Jennifer, “Drone Wars,” The Washington Quarterly • 36:3 pp. 7-26 <https://csis.org/files/publication/TWQ_13Summer_Bergen-Rowland.pdf>)

Another proposed fix to the drone program that has also received a good deal of attention is the proposal to set up some kind of ‘‘drone court.’’ It would be analogous in some respects to the Foreign Intelligence Surveillance court (or FISA court, taking its acronym from the Foreign Intelligence Surveillance Act) that considers U.S. government requests to allow surveillance measures in the United States for those suspected of terrorism or espionage. The FISA court, however, is hardly much of check on the power of the executive. For example, the Wall Street Journal reports that the FISA court has turned down only 11 of the some 33,900 surveillance requests that were made by the government during the past three decades, which is a near-zero rejection rate.58There is little reason to believe that a drone court would be any less of a rubber stamp on government decisions about who it can kill with a drone.

#### Drones are key to Pakistani stability – status quo solves

Curtis 2013 (7/16, Lisa, Senior Researcher, Heritage Foundation, “Pakistan Makes Drones Necessary,” <http://www.heritage.org/research/commentary/2013/7/pakistan-makes-drones-necessary>)

One of the central campaign platforms of newly elected Pakistani prime minister Nawaz Sharif was a promise to curb the use of U.S. drones on Pakistani territory. Indeed there has been a sharp reduction in the number of drone attacks conducted in Pakistan this year compared to the last three.

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

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

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

How to Reduce the Need for Drones

#### Their evidence is an oversimplification – no threat to Pakistani drone usage

Fair 2010 - Assistant Professor, Georgetown (August 2, C. Christine, “Drones Over Pakistan -- Menace or Best Viable Option?” <http://www.huffingtonpost.com/c-christine-fair/drones-over-pakistan----m_b_666721.html>)

While American opponents of the policy cling to empirically specious claims about the drones and their purported "civilian casualties," within Pakistan itself the debate is far more sophisticated. Since April 2009, many changes have occurred across the Pakistani social landscape albeit with variation across the expanse of its territory. First, the Pakistani Taliban (Tehreek-e-Taliban-e-Pakistan, TTP) made an enormous strategic blunder. Throughout the early months of 2009, the provincial officials of Khyber Pakhtoonkhwa as well as the central government were negotiating a so-called peace deal with the militants associated with the TTP operating in the settled area of Swat. By most accounts, Pakistanis as well as Swatis themselves embraced this as a viable option to diminish the violence and restore peace to this territory that had been riven by TTP violence. As the ink on the deal was drying, the TTP breached the agreement in April 2009 and overran the town of Buner, sitting to the immediate west of the Indus River. This had two effects. First, it persuaded those in Swat and elsewhere, who had previously supported the Taliban's self-proclaimed campaign to restore good governance and provide access to justice, that the Taliban were not interested in peaceful coexistence and were in fact committed to violence and expansion of power. Second, the onslaught against Buner had a powerful impact upon Pakistani opinion about the intentions of the TTP militant. Pakistanis have long viewed the Indus as an important barrier dividing the Pakistani heartland, comprised primarily of the Punjab and which lies to the east of the Indus, and the "uncontrollable" land of the Pashtuns lying to the east of the Indus. For Pakistanis the unruliness of this area increases as you move from the so-called "settled" Pashtun areas of Khyber-Pakhtoonkhwa towards the west where the "unsettled" tribal belt abuts Afghanistan. When the TTP militants came to the border of the Indus, many Pakistanis who were confident that the TTP only wanted the "Pashtun areas," came to believed the TTP militants want of all of Pakistan. These apprehensions were confirmed and even intensified when Sufi Mohammad -- a local leader of the TTP in Swat -- convened a congregation in the Swat city of Mingora and denounced the Pakistani constitution, declaring that Islam cannot accommodate democracy and that western democracy in particular was a system of infidels that has divided Pakistani society. Robust military operations began thereafter, this time with the significant degree of support of the public and diminished opposition to the same. Some four million persons were displaced from Swat once the operation began. (The army encouraged this displacement to permit it freedom of action against the militants; although the exodus was ill-planned with only a few days notice.) During my recent two trips to Swat, the Swatis I met from the Mingora area are generally pleased with the army's operation and are -- for now -- glad the army is in place. These Swatis see the army as the one organization that gets things done in contrast to the civil administration which has yet to re-establish itself after the militants drove out civil authorities. Amidst allegations that the army was indiscriminate in its use of force, some Pakistanis began arguing that Pakistan should have its own drones to allow Pakistani forces to have the same accuracy as US forces. Increasingly Pakistani officials are requesting that the United States provide drones or at least let them have a role in pulling the trigger. Advocates of Pakistani drones or increased command and control over U.S. drones note that armed drones have neither displaced millions of Pakistanis nor resulted in the destruction of homes on a large scale. Killing Whose Enemies? Killing Our Enemies The August 2009 killing of Baitullah Mehsud catalyzed another shift in the Pakistani discourse. This was the first drone strike that killed a Pakistani militant who was exclusively an enemy of Pakistan. As Baitullah Mehsud had no operational import for the U.S. mission in Afghanistan, Pakistan understood that the United States was finally employing its use of force to contend with Pakistan's own internal foes. This shift in the drone debate is an important shift that few American interlocutors appreciate as they sustain a baseless narrative that is deaf to the realities across Pakistan. Drones went from being universally dismissed among Pakistanis as a horrific menace to an instrument of significantly and comparatively humane lethality relative to other options. American analysts would be better served by appreciating the developing nuances in the drone debate in Pakistan before seeking to undermine the best program that the United States and Pakistan have in their mutual war on terror. Both American and Pakistani governments can help foster a more constructive debate by owning the program and disclosing Pakistan's ever-increasing cooperation to shape the debate by providing empirical data about the drones' victims and their operational significance. Few Pakistanis in the FATA, Khyber Pakhtoonkhwa or elsewhere in Pakistan would disagree that the world is a better place without Baitullah Mehsud in it.

#### US troop withdraw from Afghanistan alt cause Kashmir tensions

Declan Walsh, August 16, 2013 “U.S. Troop Pullout Affects India-Pakistan Rivalry” http://www.nytimes.com/2013/08/17/world/asia/us-moves-affect-india-pakistan-rivalry.html?pagewanted=all&\_r=0

LONDON — A weary familiarity hangs over the latest clashes between India and Pakistan, whose armies have traded artillery and accusations in recent days, jeopardizing new efforts to normalize relations between the two countries. Still, though the escalation and excoriation may fit an old pattern, analysts believe something important has changed this time. The military exchanges have been more serious, and they point to a new brittleness in the rivalry: one that is being exacerbated by the impending American troop withdrawal in Afghanistan, analysts say. It started in the disputed territory of Kashmir, with the deadliest episode of the past decade. On Aug. 6, the Indian Army accused Pakistan of orchestrating a cross-border ambush in which five Indian soldiers were killed. Pakistan angrily rejected that claim, then accused India of killing two civilians during a bout of tit-for-tat cross-border shellfire. Politicians issued heated warnings, the Parliaments in both countries passed condemnatory resolutions, and speculation grew that a meeting between the leaders of the two countries, set to take place at a United Nations summit meeting in New York next month, would be canceled. The military exchanges continued on Friday. Each side claimed the other had fired first. In some ways, this is nothing new. The two nuclear-armed countries have fought over the mountainous territory of Kashmir — which both claim in its entirety — since Pakistan was carved from British India in 1947. Border flare-ups have occurred many times before, and once tempers have calmed, diplomats on both sides resume the sputtering effort to normalize relations. But the latest violence comes after an unrivaled stretch of eased tensions over Kashmir, mostly thanks to a 2003 cease-fire that has suited both sides. Pakistan’s military has been preoccupied with the war in Afghanistan and, more recently, the threat from Taliban insurgents in the northwest. India, meanwhile, learned the limits of armed confrontation after the last major standoff, in 2002, and has concentrated on building its economy. But hard-liners in both countries remain firmly entrenched. And few doubt that the departure of American combat troops from Afghanistan by the end of 2014 will change the strategic calculus of circling hawks. Some Indians fear that, as the Americans leave Afghanistan, Pakistan’s military will use the moment to draw international attention back onto Kashmir, either by bargaining with the United States or by diverting jihadi fighters to the territory, as it did for much of the 1990s. “The Pakistanis will put up a price to assist with the transition in Afghanistan in 2014,” said Srinath Raghavan, a senior fellow at the Center for Policy Research in New Delhi. “Part of that price might be to mount pressure on India over Kashmir.” Pakistani officials, worried about the possibility of a wider Afghan conflict spilling over their borders, retort that they cannot afford new hostilities with India. As for Islamist collusion, they say Pakistan is already under threat from Taliban fighters, who recently mounted a major jailbreak in the northwest of the country. Moreover, Prime Minister Nawaz Sharif had made a point of pledging to improve relations with India before he took office in June. He has a history of making overtures of peace to New Delhi, dating back to his last stint in power in the 1990s. He is under pressure from the business lobby in his native Punjab Province, which borders India, to bolster trade levels that, according to some estimates, could increase to $11 billion from $2 billion a year. The question is whether Pakistan’s generals will permit Mr. Sharif to deliver on his promises. The security establishments of both countries have become “a mirror image of each other,” said Talat Masood, a retired Pakistani general who has participated in back-channel peace efforts. “Neither wants peace. Whenever any movement takes place, they create bottlenecks and problems.” One ominous possibility, experts say, is that as American troops withdraw from Afghanistan next year, India and Pakistan will conduct their rivalry through proxy groups, a worry that was heightened by a suicide attack on an Indian consulate in eastern Afghanistan on Aug. 3. “I think that Afghanistan will be a major theater for them,” said Stephen P. Cohen, a senior fellow at the Brookings Institution. For now, the most visible point of contention is in Kashmir. A top Indian general told reporters on Friday that India had killed 28 “terrorists” in the disputed territory since June 24, an unusually high number of casualties. As usual, it was difficult to confirm that assertion. Both armies tightly limit access to the disputed border, known as the Line of Control. And it can be harder still to circle the logic behind the bloodshed. After decades of strife, the cross-border exchanges of fire appear to have emotional rather than strategic value. Neither side realistically expects to gain ground, or to force the other to the negotiating table. One problem is that governments on both sides are relatively weak right now. Mr. Sharif is struggling to calibrate his relationship with the powerful Pakistani military, while in New Delhi, Prime Minister Manmohan Singh’s Indian National Congress Party faces an election next year. Another is that Pakistan has refused to bend to Indian demands to rein in Hafiz Muhammad Saeed, the leader of the jihadist group Lashkar-e-Taiba, and the country’s most prominent anti-India preacher. In February, Mr. Saeed, who lives in open sight in Lahore despite a $10 million United States bounty for information leading to his capture, warned that “just as America had to run away, then India, you will leave Kashmir.” This week, he led prayers outside Qaddafi Stadium, one of Pakistan’s largest cricket grounds. For the United States, increased hostility between Pakistan and India spells trouble, whether conducted in Kashmir or Afghanistan. American officials helped de-escalate the last major border showdown, in 2002, when one million Indian soldiers massed on the Pakistani border. That confrontation, and one three years earlier in which President Bill Clinton intervened, brought global concern about the possibility of a nuclear exchange. While no one is saying such a disaster is imminent, the episodes are present reminders of the risks involved in any tension between India and Pakistan. America’s other problem is its fragmented approach to the region. Even as the United States continues to pursue stronger economic ties with India, it depends on Pakistan to cooperate in Afghanistan and to crack down on militants sheltering in the northwestern tribal belt. Many analysts say that American attempts to walk that policy tightrope have often come across as incoherent. Mr. Cohen, the author, said he feared the Pakistan-India conflict could stretch on for decades longer. One hope, he said, is that the troop reduction in Afghanistan in 2014 will give Washington a chance to formulate a more holistic regional approach. “It’s like a kid who falls into a pile of manure and says, ‘Hey, there’s a pony around here somewhere,’ ” he said. But, Mr. Cohen added, that is unlikely to happen. “I’m not confident we’re going to do that,” he said. “It’s going to be a case of cut and run.”

### Legitimacy 1NC

#### **Drones meet all legal criteria of international law.**

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(Laurie R. Blank, Emory University School of Law, “After ‘Top Gun’: How Drone Strikes Impact the Law of War”, University of Pennsylvania Journal of International Law, Spring ’12)

Drones are Lawful Weapons¶ ¶ As the United Nations Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions stated in his recent report on targeted killings, "a missile fired from a drone is no different from any other commonly used weapon, including a gun fired by a soldier or a helicopter or gunship that fires missiles. The critical legal question is the same for each weapon: whether its specific use complies with IHL." n34 The first question, addressed in this Section, is whether a particular weapon is prohibited due to its inherent characteristics. Section 2 below will examine whether armed drones are used in accordance with international law principles of distinction, proportionality, and precautions.¶ International law prohibits two categories of weapons in armed conflict: indiscriminate weapons and weapons that cause unnecessary suffering. The first prohibition appears in Article 51(4) of Additional Protocol I, which defines indiscriminate attacks as (1) attacks "not directed at a specific military objective," (2) attacks "which employ a method or means of combat which cannot be directed at a military objective," or (3) attacks "which employ a method or means of combat the effects of which cannot be limited as required by this Protocol." n35 Means of combat generally refers to weapons or weapons systems. Thus, as the International Court of Justice declared in its advisory opinion in the Legality of the [\*684] Threat or Use of Nuclear Weapons, parties to a conflict may not "use weapons that are incapable of distinguishing between civilian and military targets." n36 There is little doubt that any weapon can be used in an indiscriminate way during conflict, such as spraying machine gun fire into a crowd with no regard for the presence of civilians or others who are hors de combat. Such illegal use does not make the machine gun an unlawful weapon, however. One example of inherently indiscriminate weapons is the rockets that Hamas and Hezbollah have fired into Israel for many years. n37¶ The ban on indiscriminate weapons focuses on those weapons that are, by design or other shortcoming, "incapable of being targeted at a military objective only, even if collateral harm occurs." n38 The ban on indiscriminate effects encompasses both these types of indiscriminate weapons and the use of otherwise lawful weapons in an indiscriminate manner. For example, the use of cluster munitions is highly disputed for this reason. n39 As the International Committee of the Red Cross has stated,¶ ¶ "these characteristics [of cluster munitions] raise serious questions as to whether such weapons can be used in populated areas in accordance with the rule of distinction and the prohibition of indiscriminate attacks. The wide area effects of these weapons and the large number of unguided submunitions released would appear to make it [\*685] difficult, if not impossible, to distinguish between military objectives and civilians in a populated target area." n40¶ ¶ Others argue that cluster munitions may well be a more discriminating weapon in certain circumstances because if they were banned, many more missions would be needed to achieve the same effect and cover the same amount of area. By increasing the number of missions, the attacking force consequently would expose more of its force and more civilians to a heightened risk. n41 Further, cluster munitions could reduce collateral damage because of their small detonating impact; otherwise, forces would have to use a more highly explosive weapon to accomplish the same military goal, thereby creating more damage. n42¶ Second, weapons that cause unnecessary suffering or superfluous injury are prohibited. The goal is to minimize harm that is not justified by military utility, either because of a lack of any utility at all or because the utility gained is considerably outweighed by the suffering caused. n43 The international community's first effort at regulating weapons was the St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight of December 11, 1868, which sought to outlaw "the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable." n44 Repeated in Article 23(e) of the Annex to the [\*686] 1907 Hague Convention IV, this prohibition is recognized as customary international law. n45 The International Court of Justice emphasized this norm as the second of two cardinal principles of international law, explaining that¶ ¶ it is prohibited to cause unnecessary suffering to combatants: it is accordingly prohibited to use weapons causing them such harm or uselessly aggravating their suffering. In application of that second principle, States do not have unlimited freedom of choice of means in the weapons they use. n46¶ ¶ The basic idea behind the prohibition on weapons that cause unnecessary suffering is that weapons that increase suffering - specifically that of combatants - without increasing military advantage in any way are unlawful. Expanding bullets and blinding lasers offer two examples. Certainly many weapons cause extensive - even horrible - suffering and injury, but that in and of itself is not the key issue. The analysis hinges on two primary factors: "(a) whether an alternative weapon is available, causing less injury or suffering; and ... (b) whether the effects produced by the alternative weapon are sufficiently effective in neutralizing enemy personnel." n47¶ By both measures - indiscriminate weapon or effects and unnecessary suffering - armed drones pass muster. Armed drones fire Hellfire missiles and other similar munitions, all of which are also carried by or are similar to the weapons carried by piloted [\*687] fighter aircraft. n48 These missiles are not banned by any international agreement and do not manifest any characteristics that cause superfluous injury as understood in international law. In fact, the precision-guided munitions that drones carry and their extensive surveillance capabilities make them particularly discriminate weapons. The ability to track a target for hours, even days, before launching an attack facilitates accurate targeting and enhances the protection of civilians by giving drone operators the ability to choose the time and place of attack with an eye towards minimizing civilian casualties or damage. Therefore, armed drones can easily be aimed at only military objectives and have effects that can be limited, as much as possible, to military objects, thus meeting the standards in Article 51(4) of Additional Protocol I. n49¶ The fact that armed drones could be used - and perhaps have been used - in indiscriminate attacks does not make them an inherently unlawful weapon or weapons system. Determinations of legality, such as those required in new weapons reviews under Article 36 of Additional Protocol I, n50 do not mean that states must anticipate any possible unlawful use of a weapon. Rather, as noted at the 1974-1977 Diplomatic Conference that produced the Additional Protocols, the question is "whether the employment of a weapon for its normal or expected use would be prohibited under some or all circumstances. A State is not required to foresee or analyze all possible misuses of a weapon, for almost any weapon can be misused in ways that would be prohibited." n51 The normal or expected use of armed drones falls clearly within the parameters of lawful weapons under international law.

#### Drones are inevitably unpopular

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Third, the United States and its allies should expect that the use of military drones will be unpopular, even when used under the most legitimate, limited, transparent, and ethical circumstances. Policies about the use of these drones need to clearly distinguish military drones from what will be the vast majority of unmanned aircraft systems that will also be used for more anodyne purposes even in the areas targeted for military operations.

# Block

### Credibility

#### There’s no correlation between hegemony and stability

Fettweis, ’10

[Christopher J. Fettweis, Assistant Professor of Political Science at Tulane University, “Threat and Anxiety in US Foreign Policy,” Survival, 52:2, 59-82, March 25th 2010, <http://dx.doi.org/10.1080/00396331003764603>]

One potential explanation for the growth of global peace can be dismissed fairly quickly: US actions do not seem to have contributed much. The limited evidence suggests that there is little reason to believe in the stabilising power of the US hegemon, and that there is no relation between the relative level of American activism and international stability. During the 1990s, the United States cut back on its defence spending fairly substantially. By 1998, the United States was spending $100 billion less on defence in real terms than it had in 1990, a 25% reduction.29 To internationalists, defence hawks and other believers in hegemonic stability, this irresponsible ‘peace dividend’ endangered both national and global security. ‘No serious analyst of American military capabilities’, argued neo-conservatives William Kristol and Robert Kagan in 1996, ‘doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace’.30 And yet the verdict from the 1990s is fairly plain: the world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable US military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums; no security dilemmas drove insecurity or arms races; no regional balancing occurred once the stabilising presence of the US military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in US military capabilities. Most of all, the United States was no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Bill Clinton, and kept declining as the George W. Bush administration ramped the spending back up. Complex statistical analysis is unnecessary to reach the conclusion that world peace and US military expenditure are unrelated.

#### Deterrence prevents their scenarios from happening

Sapolsky-Gholz & Press, PoliSci PhD from MIT, ’97

[PhD’s @ MIT, Come Home America, International Security]

﻿The selective engagers' strategy is wrong for two reasons. First, selective engagers overstate the effect of U.S. military presence as a positive force for great power peace. In today's world, disengagement will not cause great power war, and continued engagement will not reliably prevent it. In some circumstances, engagement may actually increase the likelihood of conflict. Second, selective engagers overstate the costs of distant wars and seriously understate the costs and risks of their strategies. Overseas deployments require a large force structure. Even worse, selective engagement will ensure that when a future great power war erupts, the United States will be in the thick of things. Although distant great power wars are bad for America, the only sure path to ruin is to step in the middle of a faraway fight. Selective engagers overstate America's effect on the likelihood of future great power wars. There is little reason to believe that withdrawal from Europe or Asia would lead to deterrence failures. With or without a forward U.S. presence, America's major allies have sufficient military strength to deter any potential aggressors

### Warfighting DA

#### \*\*\*Here is the definitive evidence – Congress has neither the ability, incentive, or willingness to check presidential power – polarization makes it a non-starter

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(Neal, Williamette Law Review 45:395, Presidential Unilateralism and Political Polarization: Why Today's Congress Lacks the Will and the Way to Stop Presidential Initiatives)

Let me shift focus to the question that lies at the heart of this essay, namely, why party polarization prevents today's Congress from standing up for institutional prerogatives and checking the executive branch. Please note that I am not taking a position on whether President Bush's claims of presidential power were well founded. My concern is simply whether today's Congress is capable of embracing the types of legislative reforms that were enacted by the Watergate-era Congress. My analysis will proceed in two parts. First, I will discuss party polarization and how it has contributed to the resurgence of presidential unilateralism.37 Second, I will explain why the modern-day Congress has neither the will nor the way to check presidential unilateralism. In particular, Congress's uninterest in asserting institutional prerogatives to check the George W. Bush administration highlights dramatic differences between the modem day Congress and the Watergate-era Congress. With regard to party polarization, it is quite clear that the days of the Rockefeller Republican and Southern Democrat are behind us. Measures of ideology reveal that all or nearly all Republicans are more conservative than the most conservative Democrat.38 Correspondingly, there is no meaningful ideological range within either the Democratic or Republican Party. For example, with the demise of Rockefeller Republicans and Southern Democrats, the gap between Northern and Southern members of the two parties had largely disappeared by the 1990s. 39 Indeed, as Figure 1 on the following page makes abundantly clear, party polarization is more extreme today than ever before. This pattern will likely continue. With only one-half of eligible voters voting, there is greater emphasis on mobilizing the more partisan base. More than that, in the House of Representatives, computer-driven redistricting has resulted in the drawing of lines that essentially guarantee that Democrats will win certain districts and Republicans other districts. And while there are some toss-up districts, the vast majority of districts are noncompetitive. What this means is that-in the House-the party primary often controls who will win the election and, as such, candidates have incentive to appeal to the partisans who vote in the primaries (and not the median voter ithe general elections).The consequences of party polarization are profound. Party leaders, especially in the House, have capitalized on the fact that lawmakers are more apt to see themselves as members of a party, not as independent power brokers (willing to cross party lines in order to pursue favored policies). Correspondingly, party leaders are increasingly concerned with "message politics," that is, with using the legislative process to make a symbolic statement to voters and other constituents.43 Rather than allow decentralized committees to define Congress's agenda, Democrats and Republicans alike see the lawmaking process as a way to stand behind a unified party message and, in this way, to distinguish their party from the other. Relatedly, rather than seek middle ground bipa

rtisan solutions, each party looks to gain political advantage from the other. oversight.48 But when the President's opponents took over Congress, oversight became a top priority-with the President's party accusing the majority of using its powers "to harass and intimidate. 49 Finally and, for my purposes, most significant, party polarization contributes to the rise of presidential unilateralism. When the Congress is polarized, members of the President's party are not likely to break ranks and vote to limit presidential initiatives. When government is unified, this means that no bill will get through Congress to limit presidential initiatives. When Congress is divided, members of the President's party will resist any opposition party efforts to repudiate the President. More than that, since divided government is increasingly common (thirty of the past forty years), it is also increasingly difficult for Congress to enact significant legislation. As such, Presidents have even more incentive to act unilaterally-since they cannot get Congress to enact their legislative agenda.5 Consider, for example, Bill Clinton's health care reforms and George W. Bush's faith-based initiatives. In both instances, the President went to Congress seeking legislative authorization for his policy agenda. In both cases, Congress did not bite, leaving it to the President either to abandon his policy initiative or pursue his initiative through unilateral action. Clinton did so by issuing several directives that, among other things, "established a patient's bill of rights for federal employees . . . and set penalties for companies that deny health coverage to the poor and people with pre-existing medical conditions. The Clinton impeachment is a classic example of this phenomenon. Unlike the Nixon impeachment (where members of Congress "rose above partisanship"), "it is harder to identify such actors" in President Clinton's case.44 "The virtual party-line votes in the House and the Senate reinforce public perception of the intense partisanship underlying the proceedings. 45 Party polarization likewise contributes to partisanship in how Congress conducts hearings as well as Congress's willingness to hold the executive accountable through oversight.46 Today's lawmakers do not need hearings to sort out their views. With increasing polarization and appeals to the party base, members are both more ideological and less trusting of the other party. Correspondingly, majority and minority staff rarely work together-instead, each side will call witnesses who back up the predetermined views of the party that has enlisted them.47 When it comes to oversight, party identity is also key. When the President and Congress are from the same party, the majority in Congress will not use oversight to hold the President to task. And when the government is divided, Congress will make oversight a top priority. This pattern held true for both the Clinton and George W. Bush presidencies. When the President's party in Congress was in the majority, the opposition party bitterly complained of the majority's "lack[ing] backbone" and "abdicating" its responsibility for conditions." 51 Bush likewise acted unilaterally, establishing the White House Office of Faith Based Initiatives and ordering an audit of government agencies to make sure that their practices did not improperly discourage or forbid faith-based organizations.5 2 Political polarization, moreover, encourages Presidents to act unilaterally and take greater control of the administrative state. Specifically, with political polarization and divided government shifting the locus of government policymaking away from lawmaking and towards executive and administrative action, Presidents (beginning with Ronald Reagan) have used the Office of Management and Budget to review agency policymaking.53 Likewise, in an effort to ensure that agency policymaking conforms to the President's policy agenda, Presidents (again beginning with Ronald Reagan) have made use of signing statements and pre-regulatory directives.54 Finally, Presidents have used their appointments power to ensure agency loyalty to the President's agenda.55 More than any President before him, George W. Bush pushed the boundaries of presidential unilateralism. "What almost no one disputes," wrote Adam Liptak in The New York Times, "is that a central legacy of the Bush presidency will be its distinctively muscular vision of executive power." 56 The architect of this campaign was Vice President Dick Cheney. 7 A witness to Watergate and its aftermath, Cheney helped staff the "White House with conservative veterans of the 1970s and 1980s who believed that" the President should push his agenda "without having to compromise" and that Watergate-era reforms had wrongly "emasculated the presidency."'5 8 More to the point, just as the Nixon administration pushed the boundaries of executive power, the Bush administration extended the efforts of Ronald Reagan and Bill Clinton to assert broad inherent power over national security, to make use of executive orders to unilaterally advance policy objectives, and to centralize presidential control of the administrative state. To cite a few well known examples: the assertion of the power to indefinitely detain so-called enemy combatants, the establishment of a military tribunal system without formal congressional approval, the warrantless wiretapping of U.S. citizens, the robust use of executive privilege, and the expansive use of presidential signing statements to direct agency policymaking-including agency non-enforcement of laws that the President deems unconstitutional. No doubt, just as Nixon's strong view of the presidency did not sit well with the Supreme Court or the American people, the Bush White House has also suffered defeats both before the Supreme Court and the court of public opinion. 59 Unlike the Watergate era, however, the Bush-era Congress did not enact legislation limiting the reach of presidential unilateralism. Political polarization, for reasons already detailed, is an important part of this story. But it is not the only part of the story. Not only did Congress lack a way to restrict presidential power, Congress also lacked the will to check the President. Members, as I will soon explain, saw no political advantage in defending Congress's institutional turf. Before explaining why lawmakers lacked the incentives to rein in the President, a bit of a recap. At the start of this essay, I quoted Justices Jackson and Ginsburg to make-what I consider-a fairly obvious point. Congress has the power to check the President. But if it does not use that power, the President has incentive to fill the void. That does not mean that the President can do whatever he wants. As was true in the war on terror cases, the Supreme Court can place some limits on presidential power. But without a Congress willing to assert its institutional prerogatives, defeats in court are not likely to stick to the President. Richard Nixon lost several significant cases in court. But that is not the reason the presidency was hampered after Nixon left office. The reason was tied to the Watergate-era Congress's willingness to assert itself through numerous legislative enactments and through beefed up oversight. Remember: Dick Cheney's complaint about an imperiled presidency had nothing to do with Supreme Court decision-making and everything to do with congressionally imposed constraints that cut against presidential power. Today, Congress has neither the will nor the way to pursue the type of bipartisan reforms that characterized the Watergate-era Congress. Democrats and Republicans in Congress are more interested in strengthening their position vis-a-vis the other party than in strengthening Congress as an institution. Members of the President's party are loyal to their party, not Congress as an institution, and therefore, will not join forces with the opposition party to assert Congress's institutional prerogatives. Equally telling, members of Congress see little personal gain in advancing a legislative agenda that shifts power from the President to Congress. Unlike during the Watergate era, the American people are not seeking a diminution of presidential power, and especially not on national security matters. Disapproval of President Bush was tied to how he exercised his authority-not to the amount of power the President possesses. Indeed, today's Democratically controlled Congress supported President Bush on national security measures notwithstanding the President's low job approval rating and Democratic complaints about administration overreaching. In July 2008, for example, Democrats in Congress-rather than open themselves up to election-year charges of being soft on national security-revamped an important Watergate-era statute, the Foreign Intelligence Surveillance Act. Bowing to Bush administration demands, Democrats and Republicans joined together to immunize phone companies from liability when wiretapping the international calls of U.S. citizens. The practices of the current Congress are to be expected. Members of Congress hardly ever gain personal political advantage by embracing structural checks of presidential power. Just as Congress has incentive to delegate to the executive (rather than absorb the costs of making a decision that disfavors identifiable participants in the political process), Congress is more interested in responding to executive branch initiatives than in foreclosing particular types of initiatives.63 Sometimes, as was true with the 1974 budget act, structural reforms serve the personal interests of members of Congress. In that case, members had a personal political interest to protect their authority to enact budget bills that reward constituents. Most of the time, however, Congress would rather respond to presidential initiatives than place restrictions on presidential authority-restrictions that shift the locus of decision making power to Congress (so that Congress bears the cost of decision). For this very reason, lawmakers rarely advance their personal political interests by structurally constraining the President in ways that shift the decision back to Congress. Indeed, the War Powers Resolution while ostensibly placing limits on the President-gave the President significant authority to launch unilateral military strikes. Congress's assent was not required until 60 days after the President's initiative (and only if the President triggered the clock by making a formal report to Congress).64 As such, Congress-while insisting it had a role to play-was content to play a reactive role. Long story short: Not only does political polarization stand as a roadblock to the modern Congress standing up for its institutional prerogatives, but lawmakers typically do not gain personal political advantage by placing structural limits on presidential power. On Tuesday November 4, 2008, Barack Obama was elected President. While the Obama administration will undoubtedly pursue a different set of policy initiatives than did the Bush administration, it is to be expected that President Obama will issue executive orders, pre-enforcement directives, review proposed agency regulations, and otherwise take unilateral action to advance his policy initiatives. And it is also to be expected that Congress will not check such presidential unilateralism. Today's polarized Congress lacks both the will and the way to check the presidency. 65 For those who embrace a constitutional design in which (as James Madison put it) "ambition must be made to counteract ambition,"66 today's system of checks and balances is an abject failure.

#### Courts are massively deferring to executive war powers now

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(Jonathan, War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations, Case Western Reserve Journal of International Law, Vol 45)

Although these procedural and jurisdictional barriers to judicial review can be overcome, those who seek to limit what they regard as executive excess in military and foreign affairs should not count on the judiciary to serve as a consistent ally. The Supreme Court has shown substantial deference to the president in national security cases. Even when the Court has rejected the executive’s position, it generally has done so on relatively narrow grounds. Consider the Espionage Act cases that arose during World War I. Schenck v. United States,63 which is best known for Justice Holmes’s announcement of the clear and present danger test, upheld a conviction for obstructing military recruitment based on the defendant’s having mailed a leaflet criticizing the military draft although there was no evidence that anyone had refused to submit to induction as a result. Justice Holmes almost offhandedly observed that “the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out.”64 The circumstances in which the speech took place affected the scope of First Amendment protection: “When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.”65 A week later, without mentioning the clear and present danger test, the Court upheld the conviction of the publisher of a German-language newspaper for undermining the war effort66 and of Eugene Debs for a speech denouncing the war.67 Early in the following term, Justice Holmes refined his thinking about clear and present danger while introducing the marketplace theory of the First Amendment in Abrams v. United States,68 but only Justice Brandeis agreed with his position.69 The majority, however, summarily rejected the First Amendment defense on the basis of Holmes’s opinions for the Court in the earlier cases.70 Similarly, the Supreme Court rejected challenges to the government’s war programs during World War II. For example, the Court rebuffed a challenge to the use of military commissions to try German saboteurs.71 Congress had authorized the use of military tribunals in such cases, and the president had relied on that authorization in directing that the defendants be kept out of civilian courts.72 In addition, the Court upheld the validity of the Japanese internment program.73 Of course, the Court did limit the scope of the program by holding that it did not apply to “concededly loyal” citizens.74 But it took four decades for the judiciary to conclude that some of the convictions that the Supreme Court had upheld during wartime should be vacated.75 Congress eventually passed legislation apologizing for the treatment of Japanese Americans and authorizing belated compensation to internees.76 The Court never directly addressed the legality of the Vietnam War. The Pentagon Papers case, for example, did not address how the nation became militarily involved in Southeast Asia, only whether the government could prevent the publication of a Defense Department study of U.S. engagement in that region.77 The lawfulness of orders to train military personnel bound for Vietnam gave rise to Parker v. Levy,78 but the central issue in that case was the constitutionality of the provisions of the Uniform Code of Military Justice that were the basis of the court-martial of the Army physician who refused to train medics who would be sent to the war zone.79 The few lower courts that addressed the merits of challenges to the legality of the Vietnam War consistently rejected those challenges.80 The picture in the post-2001 era is less clear. In three different cases the Supreme Court has rejected the executive branch’s position, but all of those rulings were narrow in scope. For example, Hamdi v. Rumsfeld81 held that a U.S. citizen held as an enemy combatant must be given a meaningful opportunity to have a neutral decision-maker determine the factual basis for his detention. There was no majority opinion, however, so the implications of the ruling were ambiguous to say the least. Justice O’Connor’s plurality opinion for four members of the Court concluded that Congress had authorized the president to detain enemy combatants by passing the Authorization for Use of Military Force82 and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. citizens.83 Justice Souter, joined by Justice Ginsburg, thought that the AUMF had not in fact authorized the detention of American citizens as required by the statute,84 which suggested that Hamdi should be released. But the Court would have been deadlocked as to the remedy had he adhered to his view of how to proceed. This was because Justices Scalia and Stevens also believed that Hamdi’s detention was unlawful and that he should be released on habeas corpus,85 whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief.86 This alignment left four justices in favor of a remand for more formal proceedings, four other justices in favor of releasing Hamdi, and one justice supporting the government’s detention of Hamdi with no need for a more elaborate hearing. To avoid a deadlock, therefore, Justice Souter reluctantly joined the plurality’s remand order.87 Hamdi was atypical because that case involved a U.S. citizen who was detained. The vast majority of detainees have been foreign nationals. In Hamdan v. Rumsfeld,88 the Supreme Court ruled that the military commissions that the executive branch had established in the wake of the September 11 attacks had not been authorized by Congress and therefore could not be used to try detainees.89 A concurring opinion made clear that the president could seek authorization from Congress to use the type of military commissions that had been established unilaterally in this case.90 Congress responded to that suggestion by enacting the Military Commissions Act of 2006,91 which sought to endorse the executive’s detainee policies and to restrict judicial review of detainee cases. In Boumediene v. Bush,92 the Supreme Court again rejected the government’s position. First, the statute did not suspend the writ of habeas corpus.93 Second, the statutory procedures for hearing cases involving detainees were constitutionally inadequate.94 At the same time, the Court emphasized that the judiciary should afford some deference to the executive branch in dealing with the dangers of terrorism95 and should respect the congressional decision to consolidate judicial review of detainee cases in the District of Columbia Circuit.96 Detainees who have litigated in the lower federal courts in the District of Columbia have not found a sympathetic forum. The U.S. Court of Appeals for the D.C. Circuit has not upheld a single district court ruling that granted any sort of relief to detainees, and the Supreme Court has denied certiorari in every post-Boumediene detainee case in which review was sought.97 In only one case involving a detainee has the D.C. Circuit granted relief, and that case came up from a military commission following procedural changes adopted in the wake of Boumediene.98 About a month after this symposium took place, in Hamdan v. United States99 the court overturned a conviction for providing material support for terrorism. The defendant was the same person who successfully challenged the original military commissions in Hamdan v. Rumsfeld.100 This very recent ruling emphasized that the statute under which he was prosecuted did not apply to offenses committed before its enactment.101 It remains to be seen how broadly the decision will apply. Meanwhile, other challenges to post-2001 terrorism policies also have failed, and the Supreme Court has declined to review those rulings as well. For example, the lower courts have rebuffed claims asserted by foreign nationals who were subject to extraordinary rendition. In Arar v. Ashcroft,102 the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of constitutional and statutory challenges brought by a plaintiff holding dual citizenship in Canada and the United States.103 And in Mohamed v. Jeppesen Dataplan, Inc.,104 the U.S. Court of Appeals for the Ninth Circuit held that the state-secrets privilege barred a separate challenge to extraordinary rendition brought by citizens of Egypt, Morocco, Ethiopia, Iraq, and Yemen.105 Unlike Arar, in which the defendants were federal officials,106 this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture.107 Although at least four judges on the en banc courts dissented from both rulings,108 the Supreme Court declined to review either case.109

#### Flexibility – deference gives the president the freedom needed to successfully wage war

Yoo 3 – prof of law @ UC Berkeley

(John, December, George Washington Law Review, “Judicial Review and the War on Terrorism,” 72 Geo. Wash. L. Rev. 427)

Nonetheless, courts continue to play a role in war by hearing cases involving the domestic ramifications of a decision that the United States is in a state of war. Yet, as we have seen with cases involving the surveillance and detention of terrorists, courts have adopted a deferential standard of scrutiny that provides the political branches with the flexibility to conduct war successfully. By doing so, the exercise of judicial review is playing more than its usual role as a check and balance on the actions of the other branches. Rather, judicial review presents the President and Congress with new weapons with which to fight the war on terrorism. In the case of FISA surveillance, for example, deferential judicial review allows the executive branch to intercept terrorist communications under a standard similar to that which applies to military surveillance, all the while preserving the possibility of the use of the evidence in a federal prosecution. With its deferential review toward the detention of enemy combatants, federal courts not only provide the executive with a different way of holding terrorists, but they also present the option, perhaps, of later moving the detainees into the federal court system for prosecution. In both cases, the more deferential standard of scrutiny allows the political branches to undertake immediate wartime actions under the more flexible rules of the laws of war, without forsaking later use of the federal criminal justice system as means of sanctioning and incapacitating members of al Qaeda. By presenting more options to the war fighting branches of government, the courts act not merely as a traditional check on government, but as a potential weapon that can assist the United States’ war on terrorism.

#### Readiness – only deference lets the military successfully prepare for warfighting

McDaniel 85 – JD @ Harvard Law School

(Judge Advocate General's Corps, United States Army; B.S., United States Military Academy, 1976, Captain John B. McDaniel, Spring 1985, Military Law Review, “The Availability And Scope Of Judicial Review Of Discretionary Military Administrative Decisions,” pg. 89, lexis)

Such judicial deference where military readiness is concerned is altogether proper. Not only is it true that peacetime readiness generally determines the price of wartime victory and, indeed, may be the difference between victory and defeat. Accordingly, in appropriate [\*124] cases, the military imperatives of discipline and combat readiness demand a judicial deference unlike that due other governmental agencies. As the Supreme Court so aptly and recently stated in Chappell: [C]onduct in combat inevitably reflects the training that precedes combat; for that reason, centuries of experience has developed a hierarchical structure of discipline and obedience to command, unique in its application to the military establishment and wholly different from civilian patterns. Civilian courts must, at the very least, hesitate long before entertaining a suit which asks the court to tamper with the established relationship between military personnel and their superior officers; that relationship is at the heart of the necessarily unique structure of the military establishment. 181

#### Morale – lack of deference kills it – makes warfighting impossible

Wilkinson 96 – Chief Judge @ 4th Circuit Court of Appeals

(James, 4/5, Thomasson v. Perry, 80 F.3d 915, p. http://www.ncgala.org/cases/thomasson.htm, p. lexis)

The need for deference also derives from the military's experience with the particular exigencies of military life. Among these is the attainment of unit cohesion--"the subordination of personal preferences and identities in favor of the overall group mission" and "the habit of immediate compliance with military procedures and orders." Goldman, supra. Should the judiciary interfere with the intricate mix of morale and discipline that fosters unit cohesion, it is simply impossible to estimate the damage that a particular change could inflict upon national security--"there is no way to determine and correct the mistake until it has produced the substantial and sometimes irreparable cost of [military] failure." Hirschhorn, supra.

### Prolif

Drones secure Pakistani stability by checking back terrorist efforts. This makes the use of drones by Pakistan much less likely so they won’t be used to escalate tensions along the Kashmir border.

#### US troop withdraw from Afghanistan alt cause Kashmir tensions

Declan Walsh, August 16, 2013 “U.S. Troop Pullout Affects India-Pakistan Rivalry” http://www.nytimes.com/2013/08/17/world/asia/us-moves-affect-india-pakistan-rivalry.html?pagewanted=all&\_r=0

LONDON — A weary familiarity hangs over the latest clashes between India and Pakistan, whose armies have traded artillery and accusations in recent days, jeopardizing new efforts to normalize relations between the two countries. Still, though the escalation and excoriation may fit an old pattern, analysts believe something important has changed this time. The military exchanges have been more serious, and they point to a new brittleness in the rivalry: one that is being exacerbated by the impending American troop withdrawal in Afghanistan, analysts say. It started in the disputed territory of Kashmir, with the deadliest episode of the past decade. On Aug. 6, the Indian Army accused Pakistan of orchestrating a cross-border ambush in which five Indian soldiers were killed. Pakistan angrily rejected that claim, then accused India of killing two civilians during a bout of tit-for-tat cross-border shellfire. Politicians issued heated warnings, the Parliaments in both countries passed condemnatory resolutions, and speculation grew that a meeting between the leaders of the two countries, set to take place at a United Nations summit meeting in New York next month, would be canceled. The military exchanges continued on Friday. Each side claimed the other had fired first. In some ways, this is nothing new. The two nuclear-armed countries have fought over the mountainous territory of Kashmir — which both claim in its entirety — since Pakistan was carved from British India in 1947. Border flare-ups have occurred many times before, and once tempers have calmed, diplomats on both sides resume the sputtering effort to normalize relations. But the latest violence comes after an unrivaled stretch of eased tensions over Kashmir, mostly thanks to a 2003 cease-fire that has suited both sides. Pakistan’s military has been preoccupied with the war in Afghanistan and, more recently, the threat from Taliban insurgents in the northwest. India, meanwhile, learned the limits of armed confrontation after the last major standoff, in 2002, and has concentrated on building its economy. But hard-liners in both countries remain firmly entrenched. And few doubt that the departure of American combat troops from Afghanistan by the end of 2014 will change the strategic calculus of circling hawks. Some Indians fear that, as the Americans leave Afghanistan, Pakistan’s military will use the moment to draw international attention back onto Kashmir, either by bargaining with the United States or by diverting jihadi fighters to the territory, as it did for much of the 1990s. “The Pakistanis will put up a price to assist with the transition in Afghanistan in 2014,” said Srinath Raghavan, a senior fellow at the Center for Policy Research in New Delhi. “Part of that price might be to mount pressure on India over Kashmir.” Pakistani officials, worried about the possibility of a wider Afghan conflict spilling over their borders, retort that they cannot afford new hostilities with India. As for Islamist collusion, they say Pakistan is already under threat from Taliban fighters, who recently mounted a major jailbreak in the northwest of the country. Moreover, Prime Minister Nawaz Sharif had made a point of pledging to improve relations with India before he took office in June. He has a history of making overtures of peace to New Delhi, dating back to his last stint in power in the 1990s. He is under pressure from the business lobby in his native Punjab Province, which borders India, to bolster trade levels that, according to some estimates, could increase to $11 billion from $2 billion a year. The question is whether Pakistan’s generals will permit Mr. Sharif to deliver on his promises. The security establishments of both countries have become “a mirror image of each other,” said Talat Masood, a retired Pakistani general who has participated in back-channel peace efforts. “Neither wants peace. Whenever any movement takes place, they create bottlenecks and problems.” One ominous possibility, experts say, is that as American troops withdraw from Afghanistan next year, India and Pakistan will conduct their rivalry through proxy groups, a worry that was heightened by a suicide attack on an Indian consulate in eastern Afghanistan on Aug. 3. “I think that Afghanistan will be a major theater for them,” said Stephen P. Cohen, a senior fellow at the Brookings Institution. For now, the most visible point of contention is in Kashmir. A top Indian general told reporters on Friday that India had killed 28 “terrorists” in the disputed territory since June 24, an unusually high number of casualties. As usual, it was difficult to confirm that assertion. Both armies tightly limit access to the disputed border, known as the Line of Control. And it can be harder still to circle the logic behind the bloodshed. After decades of strife, the cross-border exchanges of fire appear to have emotional rather than strategic value. Neither side realistically expects to gain ground, or to force the other to the negotiating table. One problem is that governments on both sides are relatively weak right now. Mr. Sharif is struggling to calibrate his relationship with the powerful Pakistani military, while in New Delhi, Prime Minister Manmohan Singh’s Indian National Congress Party faces an election next year. Another is that Pakistan has refused to bend to Indian demands to rein in Hafiz Muhammad Saeed, the leader of the jihadist group Lashkar-e-Taiba, and the country’s most prominent anti-India preacher. In February, Mr. Saeed, who lives in open sight in Lahore despite a $10 million United States bounty for information leading to his capture, warned that “just as America had to run away, then India, you will leave Kashmir.” This week, he led prayers outside Qaddafi Stadium, one of Pakistan’s largest cricket grounds. For the United States, increased hostility between Pakistan and India spells trouble, whether conducted in Kashmir or Afghanistan. American officials helped de-escalate the last major border showdown, in 2002, when one million Indian soldiers massed on the Pakistani border. That confrontation, and one three years earlier in which President Bill Clinton intervened, brought global concern about the possibility of a nuclear exchange. While no one is saying such a disaster is imminent, the episodes are present reminders of the risks involved in any tension between India and Pakistan. America’s other problem is its fragmented approach to the region. Even as the United States continues to pursue stronger economic ties with India, it depends on Pakistan to cooperate in Afghanistan and to crack down on militants sheltering in the northwestern tribal belt. Many analysts say that American attempts to walk that policy tightrope have often come across as incoherent. Mr. Cohen, the author, said he feared the Pakistan-India conflict could stretch on for decades longer. One hope, he said, is that the troop reduction in Afghanistan in 2014 will give Washington a chance to formulate a more holistic regional approach. “It’s like a kid who falls into a pile of manure and says, ‘Hey, there’s a pony around here somewhere,’ ” he said. But, Mr. Cohen added, that is unlikely to happen. “I’m not confident we’re going to do that,” he said. “It’s going to be a case of cut and run.”

### PTX

#### Immigration reform can pass now --- GOP likely to be more cooperative. ’95 post shutdown environment proves.

Talev & Dorning, 10/17 (Margaret Talev & Mike Dorning, “Obama’s Fiscal Fight Win Won’t Secure Success for Agenda,” [http://www.bloomberg.com/news/2013-10-17/obama-s-fiscal-fight-win-won-t-secure-success-for-agenda.html)](http://www.bloomberg.com/news/2013-10-17/obama-s-fiscal-fight-win-won-t-secure-success-for-agenda.html%29))

**\*\*\*Note --- David Plouffe is a former senior adviser to Obama**

Next Round

The biggest victory for the president was in cutting off the Republican attempt to scuttle the health-care law, Plouffe said. By the time the next round of fiscal negotiations occurs in January, coverage will have begun for Americans who signed up through the health insurance exchanges. That means Republicans who attack the law in the next budget fight would have to try to take away existing coverage from constituents.

Whether Obama gets from Congress a new immigration law or changes he’s seeking in taxes and entitlement programs depends on how Republicans read the outcome of this fight, Plouffe said.

He recalled that following their political loss in the 1996 shutdown, House Republicans under Gingrich reached deals with Clinton on welfare reform and the minimum wage.

“There was a strategic necessity for them post-shutdown to show they could govern,” Plouffe said. Immigration law “would be the natural place” for Republicans to act, he said.

“I don’t think we know the answer yet,” he said. “They may say, ‘We don’t feel the need to do what Gingrich did.’”

#### More evidence

Foley, 10/17 (Elise, 10/17/2013, “Obama To House On Immigration: If You Have Ideas, 'Let's Hear Them'” [http://www.huffingtonpost.com/2013/10/17/obama-house-immigration\_n\_4115818.html)](http://www.huffingtonpost.com/2013/10/17/obama-house-immigration_n_4115818.html%29))

Obama told Univision affiliate 34 KMEX on Tuesday that immigration reform would be a top priority after the government reopened and a debt catastrophe was averted.

"Once that’s done, you know, the day after I’m going to be pushing to say, call a vote on immigration reform," Obama said. "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."

#### Despite Democratic opposition, attempts to control targeted killing will undermine Obama’s agenda

Hughes, 13 (2/6/2013, Brian, “Obama's base increasingly wary of drone program,” <http://washingtonexaminer.com/obamas-base-increasingly-wary-of-drone-program/article/2520787>)

The heightened focus on President Obama's targeted killings of American terror suspects overseas has rattled members of his progressive base who have stayed mostly silent during an unprecedented use of secret drone strikes in recent years.¶ During the presidency of George W. Bush, Democrats, including then-Sen. Obama, hammered the administration for employing enhanced interrogation techniques, which critics labeled torture.¶ Liberals have hardly championed the president's drone campaign but have done little to force changes in the practice, even as the White House touts the growing number al Qaeda casualties in the covert war.¶ The issue grates on some Democrats who backed Obama over Hillary Clinton because of her vote in favor of the war in Iraq, only to see the president ignore a campaign promise to close the detainee holding camp in Guantanamo, Cuba, and mount a troop surge in Afghanistan.¶ Sign Up for the Politics Today newsletter!¶ With the confirmation hearing Thursday for John Brennan, Obama's nominee for CIA director -- and the architect of the drone program -- Democrats will have a high-profile opportunity to air their concerns over the controversial killings.¶ "You watch and see -- the left wing of the party will start targeting Obama over this," said Larry Sabato, a political scientist at the University of Virginia. "It's inevitable. The drumbeat will increase as time goes on, especially with each passing drone strike."¶ Obama late Wednesday decided to share with Congress' intelligence committees the government's legal reasoning for conducting drones strikes against suspected American terrorists abroad, the Associated Press reported. Lawmakers have long demanded to see the full document, accusing the Obama administration of stonewalling oversight efforts.¶ Earlier in the day, one Democrat even hinted at a possible filibuster of Brennan if given unsatisfactory answers about the drone program.¶ "I am going to pull out all the stops to get the actual legal analysis, because with out it, in effect, the administration is practicing secret law," said Sen. Ron Wyden, D-Ore., a member of the Senate Select Intelligence Committee. "This position is no different [than] that the Bush administration adhered to in this area, which is largely 'Trust us, we'll make the right judgments.' "¶ In a Justice Department memo released this week, the administration argued it could order the killing of a suspected American terrorist even with no imminent threat to the homeland.¶ White House press secretary Jay Carney insisted on Wednesday that the administration had provided an "unprecedented level of information to the public" about the drone operations. Yet, questions remain about who exactly orders the killings, or even how many operations have been conducted.¶ "There's been more noise from senators expressing increased discomfort [with the drone program]," said Joshua Foust, a fellow at the American Security Project. "For Brennan, there's going to be more opposition from Democrats than Republicans. It's not just drones but the issue of torture."¶ Facing concerns from liberals, Brennan had to withdraw his name from the running for the top CIA post in 2008 over his connections to waterboarding during the Bush administration.¶ Since becoming president, Obama has championed and expanded most of the Bush-era terror practices that he decried while running for the White House in 2008.¶ It's estimated that roughly 2,500 people have died in drone strikes conducted by the Obama administration.¶ However, most voters have embraced the president's expanded use of drone strikes. A recent Pew survey found 62 percent of Americans approved of the U.S. government's drone campaign against extremist leaders. And some analysts doubted whether Democratic lawmakers would challenged Obama and risk undermining his second-term agenda.¶ "Democrats, they're going to want the president to succeed on domestic priorities and don't want to do anything to erode his political capital," said Christopher Preble, vice president for defense and foreign policy studies at the Cato Institute. "It's just so partisan right now. An awful lot of [lawmakers] think the president should be able to do whatever he wants."

#### The plan draws the executive into a political battle over presidential power issues

Knowles 9 --- Assistant Prof at NYU Law

[Spring, 2009, Robert, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

If nations are viewed as unitary entities in the international arena, there must be one governmental entity that can be held accountable for a nation's actions in foreign affairs, and for the U.S., that can only be the executive branch. Through this executive-exclusive lens, the American public and foreign governments either do not know how to, or simply cannot, hold the [\*133] courts accountable for their foreign affairs decisions. n285 Holding courts accountable is relatively difficult because the transaction costs are high. n286 While the President is one officer elected every four years, the federal judiciary comprises hundreds of individuals possessing lifetime tenure, and who can only be formally held accountable through impeachment. Deferentialists also argue that the public associates the executive branch with national security and foreign affairs, but associates the courts with protecting minority rights and resolving controversies among domestic parties. n287 The accountability justification generally overstates the degree to which courts are insulated from politics. n288 On the domestic front, Supreme Court appointments have become an increasingly prominent issue in presidential elections, at least since Roe v. Wade and the nominations of Robert Bork and Clarence Thomas. n289 Although foreign affairs have not played much of a role in these debates thus far, this is almost certainly due to the courts' generally deferential approach to foreign relations controversies. When the courts have been bolder, such as in the enemy combatant cases, they have captured the attention of policy-makers and the public, creating issues for presidential campaigns. n290 Moreover, accountability cuts both ways. It is a core purpose of the separation of powers. n291 The courts can serve an important information-forcing role that assists the People in holding the executive branch accountable for foreign affairs decisions, many of which are shrouded in secrecy. n292 Court cases require the government to clearly [\*134] articulate the rationales for its policies and the procedures through which those policies were enacted. Habeas corpus forces federal officers to justify their detention of individuals whose imprisonment would otherwise remain unscrutinized. n293 In any event, assuming that the courts are relatively less accountable than the political branches, this aspect of the constitutional regime is accepted in the domestic context. Why should foreign affairs require faster and easier accountability? Ultimately, the one-voice arguments for special deference - for uniformity, accountability, and avoiding embarrassment - must be grounded in assumptions about the peculiar requirements of managing a great power's foreign policy in an anarchic world. These are considerations of realpolitik, which I discuss in the next subpart.

#### **Changes in drone policy cause fights between Congress and the White House.**

Plain Dealer 13

(The Plain Dealer staff and wire reports, “Battle brewing over Obama administration's use of deadly drones”, 2/6/13, http://www.cleveland.com/nation/index.ssf/2013/02/battle\_brewing\_over\_obama\_admi.html)

As some in Congress are looking to limit America's authority to kill suspected terrorists, the White House and Justice Department on Tuesday adamantly defended the administration's authority to use unmanned drones following the release of a controversial memo on the program.¶ Fox News reports that President Obama's advisers are also trying to tamp down concerns about the targeted killings ahead of the confirmation hearing Thursday for CIA director nominee John Brennan -- the counterterrorism adviser and drone-program supporter who has come under criticism from Democrats.¶ The furor is heating up after a white paper, leaked on Monday night and dating from 2011, justifies the killing of United States citizens who hold senior positions in al-Qaida and pose an "imminent threat of violent attack" against America. ¶ The white paper provides some detail of the legal framework under United States and international law for the drones policy, including that the United States is at war with al-Qaida. But it has come under criticism from human rights groups for making too broad a case for killing, rather than capturing, suspected American and foreign terrorists. ¶ The report was shown to senators several weeks ago, but failed to allay their concerns. It was made public by NBC News

#### Competiveness key to economy and hegemony

Segal ‘4 [Adam Segal is a Senior Fellow in China Studies at the Council on Foreign Relations. “Is America Losing Its Edge?” http://www.foreignaffairs.org/20041101facomment83601/adam-segal/is-america-losing-its-edge.html]

The United States' global primacy depends in large part on its ability to develop new technologies and industries faster than anyone else. For the last five decades, U.S. scientific innovation and technological entrepreneurship have ensured the country's economic prosperity and military power. It was Americans who invented and commercialized the semiconductor, the personal computer, and the Internet; other countries merely followed the U.S. lead. Today, however, this technological edge-so long taken for granted-may be slipping, and the most serious challenge is coming from Asia. Through competitive tax policies, increased investment in research and development (R&D), and preferential policies for science and technology (S&T) personnel, Asian governments are improving the quality of their science and ensuring the exploitation of future innovations. The percentage of patents issued to and science journal articles published by scientists in China, Singapore, South Korea, and Taiwan is rising. Indian companies are quickly becoming the second-largest producers of application services in the world, developing, supplying, and managing database and other types of software for clients around the world. South Korea has rapidly eaten away at the U.S. advantage in the manufacture of computer chips and telecommunications software. And even China has made impressive gains in advanced technologies such as lasers, biotechnology, and advanced materials used in semiconductors, aerospace, and many other types of manufacturing. Although the United States' technical dominance remains solid, the globalization of research and development is exerting considerable pressures on the American system. Indeed, as the United States is learning, globalization cuts both ways: it is both a potent catalyst of U.S. technological innovation and a significant threat to it. The United States will never be able to prevent rivals from developing new technologies; it can remain dominant only by continuing to innovate faster than everyone else. But this won't be easy; to keep its privileged position in the world, the United States must get better at fostering technological entrepreneurship at home.

### Peace K

#### Militaristic war may be a central value of modern Western culture, but it can be changed through analysis – multiple empirical examples prove

Cady 10 (Duane L., prof of phil @ hamline university, From Warism to Pacifism: A Moral Continuum, pp. 23-24)

The slow but persistent rise in awareness of racial, ethnic, gender, sexual- orientation, and class oppression in our time and the beginning efforts of liberation from within oppressed groups offer hope that even the most deeply held and least explicitly challenged predispositions of culture might be examined. Such examinations can lead to changes in the lives of the oppressed. Perhaps even those oppressed by warism will one day free themselves from accepting war as an inevitable condition of nature. Two hundred years ago slavery was a common and well- established social institution in the United States. It had been an ordinary feature of many societies dating to ancient and perhaps prehistoric times. Slavery was taken for granted as a natural condition for beings thought to be inferior to members of the dominant group. And slavery was considered an essential feature of our nation’s economy. Within the past two centuries, attitudes toward slavery have changed dramatically. With these fundamental shifts in normative lenses came fundamental shifts in the practice and legality of slavery. These changes have been as difficult as they have been dramatic, for former slaves, for former slave- holders, and for culture at large. While deep racial prejudices persist to this day, slavery is no longer tolerated in modern societies. Slavery- like conditions of severe economic exploitation of labor have become embarrassments to dominant groups in part because slavery is universally condemned. The point is that the most central values of cultures— thought to be essential to the very survival of the society and allegedly grounded in the natural conditions of creation—can change in fundamental ways in relatively short periods of time with profound implications for individuals and societies. John Dewey beautifully links this point to the consideration of warism: “War is as much a social pattern [for us] as was the domestic slavery which the ancients thought to be immutable fact.”9 The civil rights movement has helped us see that human worth is not determined by a racial hierarchy. Feminism has helped us realize again that dominant attitudes about people are more likely values we choose rather than innate and determined features of human nature. It is historically true that men have been more actively violent and have received more training and encouragement in violence than have women.10 Dominant attitudes of culture have explained this by reference to what is “natural” for males and “natural” for females. By questioning the traditional role models for men and women, all of us be- come more free to choose and create the selves we are to be; we need not be defined by hidden presumptions of gender roles. Parallel to racial and gender liberation movements, pacifism questions taking warism for granted. Pacifists seek an examination of our unquestioned assumption of warism to expose it as racism and sexism have been examined and exposed. Just as opponents of racism and sex- ism consider the oppression of nonwhites and women, respectively, to be wrong, and thus to require fundamental changes in society, so opponents of warism— pacifists of various sorts— consider war to be wrong, and thus to require fundamental changes in society.

#### We control the root cause – extreme authorizations of executive power result from an outdated, inaccurate conception of what war is – changing the frame of wartime analysis solves the aff

Levine 12 (David, Law Clerk, Honorable Michael S. Kanne, United States Court of Appeals for the Seventh Circuit; J.D., May 2012, University of Michigan Law School, Michigan Law Review, Vol 111:1195, A Time for Presidential Power? War Time and the Constrained Executive)

As with the Cold War, the legal status of the War on Terror is deeply confusing and ambiguous; as Dudziak observes, “[T]he words ‘terrorism’ and ‘war’ had not been conflated” previously (p. 100). But, she argues, President Bush harnessed familiarity during highly uncertain times by using traditional terminology: in the immediate aftermath of September 11, he declared the conflict a war, albeit “a new kind of war” (pp. 100–01; internal quotation marks omitted). Dudziak notes too President Bush’s very early recognition that traditional temporal boundaries would not apply to this new war.16 The effect of this recognition was “a lack of fit between the conceptual categories of wartime and peacetime” (p. 113).¶ The traditional wartime gloss President Bush put on the War on Terror led to a slackening of legal constraints, despite the war’s lack of temporal boundaries. The result was a virtually unbound executive. Vice President Cheney asked the government, in Dudziak’s words, to operate on “the dark side” (p. 104; internal quotation marks omitted). John Yoo invoked wartime as a rationale for allowing President Bush to approve coercive, perhaps torturous, interrogations (p. 106). President Bush claimed the power to hold foreign nationals, without charge, for an indefinite period of time at Guantanamo Bay. Because “the basic temporal structure (normal times, ruptured by non-normal times) largely remained in place in legal thought” (p. 114), these invocations of wartime served both legal and normative arguments. Wartime detention is not punishment, and so constraints we might normally put on criminal incarcerations do not apply, for instance. And because war- time is so extraordinary and the stakes are so high, the public should not want the constraints to apply.¶ Not even the Supreme Court was immune from this logic, Dudziak argues. In the first major case to test post–September 11 limits on executive power—Hamdi v. Rumsfeld—a plurality of the Court held that the president could detain individuals determined to be “enemy combatants.”17 He had this power, the Court reasoned, precisely because of the wartime framework, which the Court considered appropriate (p. 121). The Court’s understanding of the wartime at issue was a manifestly conventional one: these were exceptional circumstances that would undoubtedly pass.18¶ When the circumstances had not passed four years later, the Court seemingly reconsidered the wisdom of an unbound commander-in-chief. In Boumediene v. Bush, the Court seemed intensely skeptical of executive power and gave the Guantanamo detainees access to habeas corpus proceedings in U.S. courts.19 Justice Kennedy’s majority opinion for a divided Court took particular notice of the lack of temporal constraints, reasoning that habeas was necessary because of the potentially dire consequences for individuals detained “for the duration of [the] conflict.”20¶ Dudziak concludes her brief survey of the Court’s War on Terror jurisprudence by analyzing the return of deference to the executive. In Holder v. Humanitarian Law Project, the Court upheld a statute criminalizing material support to groups categorized as “terrorist.”21 And though Dudziak notes that “the term ‘war on terror’ does not appear in the opinions” (p. 125), concerns over national security and wartime objectives certainly animated the decision.22 Indeed, she suggests, the Court looked past the concept of “war- time” altogether and recognized war or conflict (necessitating broader powers) as a now-permanent feature of modern life (p. 127).¶ Dudziak’s arguments crystalize in her conclusion. She identifies “war-time” as a rhetorical device useful for those who would impose extreme measures, rather than an objective description of the world (p. 136). And she prescribes “a citizenry attentive to the exercise of military power” in order to “[k]eep[] the war powers in check” (p. 136).¶ Implicit in that prescription is the notion that the American polity has so far failed at that task—that, by and large, the president is currently unrestrained in his exercise of war powers. Indeed, in a recent New York Times op-ed, Dudziak says almost exactly that: “[President Obama’s] expansive definition of war leaves in place the executive power to detain without charges, and to exercise war powers in any region where Al Qaeda has a presence.”23 The remainder of this Notice explores that charge: whether the modern president is unconstrained in his exercise of war powers, and whether the outmoded, conventional understanding of “wartime” is to blame.

#### The concern with regulating war sees it as an isolatable event that can be defined and managed – this approach makes it impossible to deal with the pervasive effects of everyday militarism

Cuomo 96 (Chris, prof of women’s studies @ UGA, War is Not Just an Event: Reflections on the Significance of Everyday Violence, *Hypatia* 11:4, Women and Violence, Autumn, pp. 30-45)

Philosophical attention to war has typically appeared in the form of justifications for entering into war, and over appropriate activities within war. The spatial metaphors used to refer to war as a separate, bounded sphere indicate assumptions that war is a realm of human activity vastly removed from normal life, or a sort of happening that is appropriately conceived apart from everyday events in peaceful times. Not surprisingly, most discussions of the political and ethical dimensions of war discuss war solely as an event-an occurrence, or collection of occurrences, having clear beginnings and endings that are typically marked by formal, institutional declarations. As happenings, wars and military activities can be seen as motivated by identifiable, if complex, intentions, and directly enacted by individual and collective decision-makers and agents of states. But many of the questions about war that are of interest to feminists-including how large-scale, state-sponsored violence affects women and members of other oppressed groups; how military violence shapes gendered, raced, and nationalistic political realities and moral imaginations; what such violence consists of and why it persists; how it is related to other oppressive and violent institutions and hegemonies-cannot be adequately pursued by focusing on events. These issues are not merely a matter of good or bad intentions and identifiable decisions. In "Gender and 'Postmodern' War," Robin Schott introduces some of the ways in which war is currently best seen not as an event but as a presence (Schott 1995). Schott argues that postmodern understandings of persons, states, and politics, as well as the high-tech nature of much contemporary warfare and the preponderance of civil and nationalist wars, render an event- based conception of war inadequate, especially insofar as gender is taken into account. In this essay, I will expand upon her argument by showing that accounts of war that only focus on events are impoverished in a number of ways, and therefore feminist consideration of the political, ethical, and onto- logical dimensions of war and the possibilities for resistance demand a much more complicated approach. I take Schott's characterization of war as presence as a point of departure, though I am not committed to the idea that the constancy of militarism, the fact of its omnipresence in human experience, and the paucity of an event-based account of war are exclusive to contemporary postmodern or postcolonial circumstances.1 Theory that does not investigate or even notice the omnipresence of militarism cannot represent or address the depth and specificity of the every- day effects of militarism on women, on people living in occupied territories, on members of military institutions, and on the environment. These effects are relevant to feminists in a number of ways because military practices and institutions help construct gendered and national identity, and because they justify the destruction of natural nonhuman entities and communities during peacetime. Lack of attention to these aspects of the business of making or preventing military violence in an extremely technologized world results in theory that cannot accommodate the connections among the constant presence of militarism, declared wars, and other closely related social phenomena, such as nationalistic glorifications of motherhood, media violence, and current ideological gravitations to military solutions for social problems. Ethical approaches that do not attend to the ways in which warfare and military practices are woven into the very fabric of life in twenty-first century technological states lead to crisis-based politics and analyses. For any feminism that aims to resist oppression and create alternative social and political options, crisis-based ethics and politics are problematic because they distract attention from the need for sustained resistance to the enmeshed, omnipresent systems of domination and oppression that so often function as givens in most people's lives. Neglecting the omnipresence of militarism allows the false belief that the absence of declared armed conflicts is peace, the polar opposite of war. It is particularly easy for those whose lives are shaped by the safety of privilege, and who do not regularly encounter the realities of militarism, to maintain this false belief. The belief that militarism is an ethical, political concern only regarding armed conflict, creates forms of resistance to militarism that are merely exercises in crisis control. Antiwar resistance is then mobilized when the "real" violence finally occurs, or when the stability of privilege is directly threatened, and at that point it is difficult not to respond in ways that make resisters drop all other political priorities. Crisis-driven attention to declarations of war might actually keep resisters complacent about and complicitous in the general presence of global militarism. Seeing war as necessarily embedded in constant military presence draws attention to the fact that horrific, state-sponsored violence is happening nearly all over, all of the time, and that it is perpetrated by military institutions and other militaristic agents of the state. Moving away from crisis-driven politics and ontologies concerning war and military violence also enables consideration of relationships among seemingly disparate phenomena, and therefore can shape more nuanced theoretical and practical forms of resistance. For example, investigating the ways in which war is part of a presence allows consideration of the relationships among the events of war and the following: how militarism is a foundational trope in the social and political imagination; how the pervasive presence and symbolism of soldiers/warriors/patriots shape meanings of gender; the ways in which threats of state-sponsored violence are a sometimes invisible/sometimes bold agent of racism, nationalism, and corporate interests; the fact that vast numbers of communities, cities, and nations are currently in the midst of excruciatingly violent circumstances. It also provides a lens for considering the relationships among the various kinds of violence that get labeled "war." Given current American obsessions with nationalism, guns, and militias, and growing hunger for the death penalty, prisons, and a more powerful police state, one cannot underestimate the need for philosophical and political attention to connections among phenomena like the "war on drugs," the "war on crime," and other state-funded militaristic campaigns. I propose that the constancy of militarism and its effects on social reality be reintroduced as a crucial locus of contemporary feminist attentions, and that feminists emphasize how wars are eruptions and manifestations of omnipresent militarism that is a product and tool of multiply oppressive, corporate, technocratic states.2 Feminists should be particularly interested in making this shift because it better allows consideration of the effects of war and militarism on women, subjugated peoples, and environments. While giving attention to the constancy of militarism in contemporary life we need not neglect the importance of addressing the specific qualities of direct, large-scale, declared military conflicts. But the dramatic nature of declared, large-scale conflicts should not obfuscate the ways in which military violence pervades most societies in increasingly technologically sophisticated ways and the significance of military institutions and everyday practices in shaping reality. Philosophical discussions that focus only on the ethics of declaring and fighting wars miss these connections, and also miss the ways in which even declared military conflicts are often experienced as omnipresent horrors. These approaches also leave unquestioned tendencies to suspend or distort moral judgment in the face of what appears to be the inevitability of war and militarism. Just-war theory is a prominent example of a philosophical approach that rests on the assumption that wars are isolated from everyday life and ethics. Such theory, as developed by St. Augustine, Thomas Aquinas, and Hugo Grotius, and as articulated in contemporary dialogues by many philosophers, including Michael Walzer (1977), Thomas Nagel (1974), and Sheldon Cohen (1989), take the primary question concerning the ethics of warfare to be about when to enter into military conflicts against other states. They therefore take as a given the notion that war is an isolated, definable event with clear boundaries. These boundaries are significant because they distinguish the circumstances in which standard moral rules and constraints, such as rules against murder and unprovoked violence, no longer apply. Just-war theory assumes that war is a separate sphere of human activity having its own ethical constraints and criteria and in doing so it begs the question of whether or not war is a special kind of event, or part of a pervasive presence in nearly all contemporary life. Because the application of just-war principles is a matter of proper decision- making on the part of agents of the state, before wars occur, and before military strikes are made, they assume that military initiatives are distinct events. In fact, declarations of war are generally over-determined escalations of preexisting conditions. Just-war criteria cannot help evaluate military and related institutions, including their peacetime practices and how these relate to wartime activities, so they cannot address the ways in which armed conflicts between and among states emerge from omnipresent, often violent, state militarism. The remarkable resemblances in some sectors between states of peace and states of war remain completely untouched by theories that are only able to discuss the ethics of starting and ending direct military conflicts between and among states. Applications of just-war criteria actually help create the illusion that the "problem of war" is being addressed when the only considerations are the ethics of declaring wars and of military violence within the boundaries of declarations of war and peace. Though just-war considerations might theoretically help decision-makers avoid specific gross eruptions of military violence, the aspects of war which require the underlying presence of militarism and the direct effects of the omnipresence of militarism remain untouched. There may be important decisions to be made about when and how to fight war, but these must be considered in terms of the many other aspects of contemporary war and militarism that are significant to nonmilitary personnel, including women and nonhumans.

#### 2. Quest for negative peace trades off with positive peace – can’t combine the aff and the alt

Pankhurst 3

(Donna-, May 1, Development in Practice, “The 'sex war' and other wars: towards a feminist approach to peace building”, Vol. 13 # 2&3, Infomaworld; Jacob)

Turning to the meanings of the term ‘peace’, Galtung’s (1985) conception of negative peace has come into widespread use, and is probably the most common meaning given to the word, i.e. the end or absence of widespread violent conflict associated with war. A ‘peaceful’ society in this sense may therefore include a society in which social violence (against women, for instance) and/or structural violence (in situations of extreme inequality, for example) are prevalent. Moreover, this limited ‘peace goal’, of an absence of specific forms of violence associated with war, can and often does lead to a strategy in which all other goals become secondary. The absence of analysis of the deeper (social) causes of violence also paves the way for peace agreements that leave major causes of violent conflict completely unresolved. Negative peace may therefore be achieved by accepting a worse state of affairs than that which motivated the outburst of violence in the first place, for the sake of (perhaps short-term) ending organised violence. Galtung’s alternative vision, that of positive peace, requires not only that all types of violence be minimal or non-existent, but also that the major potential causes of future conflict be removed. In other words, major conflicts of interest, as well as their violent manifestation, need to be resolved. Positive peace encompasses an ideal of how society should be, but the details of such a vision often remain implicit, and are rarely discussed. Some ideal characteristics of a society experiencing positive peace would include: an active and egalitarian civil society; inclusive democratic political structures and processes; and open and accountable government. Working towards these objectives opens up the field of peace building far more widely, to include the promotion and encouragement of new forms of citizenship and political participation to develop active democracies. It also opens up the fundamental question of how an economy is to be managed, with what kind of state intervention, and in whose interests. But more often than not discussion of these important issues tends to be closed off, for the sake of ‘ending the violence’, leaving major causes of violence and war unresolved—including not only economic inequalities, but also major social divisions and the social celebration of violent masculinities.

#### inevitable and they turn up those results – 47 counterexamples prove non-violent societies are possible

**Paige 2** - Professor of political science @ University of Hawaii [Glenn D., Nonkilling Global Political Science ]

Case studies of homicide presented by psychiatrist George F. Solomon (1970) make killing understandable and plausibly preventable in contrast to helpless reference to “human nature.” In one case, the socialization experience of a seemingly unemotional, random sniper-killer of women included: parental neglect by his gambling father, seduction by his alcoholic and promiscuous mother, fascination with guns, and drug use to block out “horrible images” of incestuous guilt. In another case, the background of a killer of his ex-wife’s new husband included: poverty, hatred of father for violence against his mother, convulsion after a paternal beating on the head, maternal ridicule, being beaten by his sisters, becoming a first sergeant in the Marine Corps, marriage to a prostitute met in a brothel, fathering two children by her, assault upon her and slashing his own wrists after discovering her infidelity while he was on duty overseas, being threatened by her with a .38 caliber handgun, and possession of his service pistol with which he killed—not her—but her new husband amidst a three-sided, living room quarrel about child support and visitation rights. Solomon concludes: As a psychiatrist I have a firm commitment to the idea that human behavior can be modified. Our failures in prevention and treatment have been based on ignorance, which can be ameliorated through further research; on lack of implementation of accepted principles; [and] on a reluctance to innovate; and on a vindictiveness toward social deviancy far more than any intrinsic “incurability” of the violence-prone person. The human’s capacity for growth and healing is great and, hopefully, his proclivity for violence can be halted (387). In anthropology, **new interest in understanding human capacities for nonviolence and peace as contrasted with customary emphasis upon violence and aggression is producing knowledge to question the assumption that a nonkilling society is impossible** (Sponsel and Gregor 1994b; Sponsel 1996). As Leslie E. Sponsel explains, “Nonviolent and peaceful societies appear to be rare—not because they are, in fact, rare but because **nonviolence and peace are too rarely considered in research**, the media, and other areas.” He adds, “It is as important to understand the characteristics, conditions, causes, functions, processes, and consequences of nonviolence and peace as it is to understand those of violence and war” (Sponsel 1994a: 18–9). Scientific questioning of the Hobbesian assumption of universal lethality among early humans has been advanced by Piero Giorgi (1999) and J.M.G. van der Dennen (1990; 1995). In a review of evidence for war and feuding for 50,000 “primitive” peoples recorded in the ethnographic literature over the past century, van der Dennen finds explicit confirmation for only 2,000 groups. Acknowledging that absence of information about “belligerence” for the remaining groups does not necessarily prove their peacefulness, van der Dennen cautions against dogmatic acceptance of the assumption of universal human bellicosity (1990: 257, 259, 264-9). He cites ethnographic evidence for 395 “highly unwarlike” peoples from Aboriginals to Zuni (1995: 595–619). Reviewing the anthropological literature, Bruce D. Bonta (1993) identifies forty-seven societies that demonstrate human capacities for “peacefulness.” Peacefulness . . . is defined as a condition whereby people live with a relatively high degree of interpersonal harmony; experience little physical violence among adults, between adults and children, and between the sexes; have developed workable strategies for resolving conflicts and averting violence; are committed to avoiding violence (such as warfare) with other peoples; raise their children to adopt peaceful ways; and have a strong consciousness of themselves as peaceful (4). Bonta finds evidence of peacefulness among the Amish, Anabaptists, Balinese, Batek, Birhor, Brethren, Buid, Chewong, Doukhobors, Fipa, Fore, G/wi, Hutterites, Ifaluk, Inuit, Jains, Kadar, !Kung, Ladakhis, Lepchas, Malapandaram, Mbuti, Mennonites, Montagnais-Naskapi, Moravians, Nayaka, Nubians, Onge, Orang Asli, Paliyan, Piaroa, Quakers, Rural Northern Irish, Rural Thai, San, Sanpoil, Salteaux, Semai, Tahitians, Tanka, Temiar, Toraja, Tristan Islanders, Waura, Yanadi, Zapotec, and Zuni. In a further study of conflict resolution among twenty-four of these peoples, Bonta (1996) concludes: Several common notions about conflict and conflict resolution that are asserted by Western scholars can be questioned in light of the success of these societies in peacefully resolving conflicts: namely, that violent conflict is inevitable in all societies; that punishment and armed force prevent internal and external violence; that political structures are necessary to prevent conflicts; and that conflict should be viewed as positive and necessary. The contrary evidence is that over half of the peaceful societies have no recorded violence; they rarely punish adults (except for the threat of ostracism); they handle conflicts with outside societies in the same peaceful ways that they approach internal conflicts; they do not look to outside governments when they have internal disputes; and they have a highly negative view of conflict (403).