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#### the very notion of presidential war powers carves time into pieces, creating a temporal binary between “wartime” and “peacetime” that obscures analysis of war and furthers unquestioned militarism

Dudziak 10 (Mary, Professor of Law, History and Political Science, University of Southern California, California Law Review 98:1669, Law, War, and the History of Time)

War is thought to break time into pieces. War often marks the beginning of an era, the end of another, as in antebellum, postbellum, and simply ―postwar‖ (meaning after World War II). War has its own time. During “wartime,” regular, normal time is thought to be suspended. Wartime is when time is out of order.¶ Ideas about the temporality of war are embedded in American legal¶ thought. A conception of time is assumed and not examined, as if time were a natural phenomenon with an essential nature, providing determined shape to human action and thought. This understanding of time is in tension with the experience of war in the twentieth century. The problem of time, in essence, clouds an understanding of the problem of war. Much attention has been paid in recent years to wartime as a state of exception,1 but not to wartime as a form of time. For philosopher Giorgio Agamben, a state of exception ―is a suspension of the juridical order itself,‖ marking law‘s boundaries.2 Viewing war as an exception to normal life, however, leads us to ignore the longstanding persistence of war. If wartime is actually normal time, as this Essay suggests, rather than a state of exception, then law during war can be seen as the form of law we in fact practice, rather than a suspension of an idealized understanding of law.¶ In scholarship on law and war, time is seen as linear and episodic. There are two different kinds of time: wartime and peacetime. Historical progression consists of moving from one kind of time to another (from wartime to peacetime to wartime, etc.). Law is thought to vary depending on what time it is. The relationship between citizen and state, the scope of rights, and the extent of government power depend on whether it is wartime or peacetime. A central metaphor is the swinging pendulum—swinging from strong protection of rights and weaker government power to weaker protection of rights and stronger government power.3 Moving from one kind of time to the next is thought to swing the pendulum in a new direction.¶ This conceptualization is embedded in scholarship in law and legal history,4 it is written into judicial opinions,5 it is part of popular culture.6 Even works that seek to be revisionist aim largely for a different way to configure the pendulum, leaving the basic conceptual structure in place.7 But the conception of time that has been embedded in thinking about law and war is in tension with the practice of war in the twentieth century. This understanding of time no longer fits experience, but it has continued to shape our thinking.8¶ There are three significant impacts of viewing wartime as exceptional, or viewing history as divided into different zones of time based on peace and war. First, there is a policy problem: war-related time zones cause us to think that war-related laws and policies are temporary. Second, there is a historiography problem: time zones can cause scholars to fail to look for war-related impacts on American law outside of the time zone of war. Finally, the model of the swinging pendulum does not lend itself to a broader analysis of the relationship between war and rights over time, or to the way rights are impacted by war-related state-building, which tends to endure.9 This Essay explores the role of wartime in legal thought. The starting point is an examination of time itself. Scholarship on time shows that ―time does not have an essential nature.10 Instead, as sociologist Emile Durkheim and others have argued, our understanding of time is a product of social life. This helps us to see that ―wartime,‖ like other kinds of time, does not have an essential character, but is historically contingent.¶ The Essay then turns to the way wartime is characterized in scholarship on law and war, arguing that a particular understanding of war and time is a feature of this literature. The idea of wartime found in twentieth-century legal thought is in tension with the American experience with war. To examine this dynamic, the Essay takes up an iconic twentieth-century war, World War II, finding that this war is harder to place in time than is generally assumed, in part because the different legal endings to the war span over a period of seven years.¶ Next, the Essay considers the way that scholarship on the history of rights during war attempts to periodize World War II, and finds that the fuzziness in the war‘s timing repeats itself in scholarship on law and war. Scholars who believe themselves to be writing about the same wartime are not always studying the same span of years.¶ The difficulty in confining World War II in time is an illustration of a broader feature of the twentieth century: wartimes bleed into each other, and it is hard to find peace on the twentieth-century American timeline. Meanwhile, although the Pearl Harbor attack was on the Territory of Hawaii, all twentieth- century military engagement occurred outside the borders of American states. Because of this, a feature of American military strategy has been to engage of the American people in a war at some times,11 and at other times to insulate them from war. Isolation from war in the late twentieth century, through the use of limited war and advanced technology, enabled the nation to participate in war without most citizens perceiving themselves to be in a wartime.12¶ The Essay closes with a discussion of the way the tension between war‘s seamlessness and our conception of temporally distinct wartimes surfaces in contemporary cases relating to Guantánamo detainees. In these cases, Supreme Court Justices first attempted to fit the post-September 11 era into the traditional and confined understanding of wartime. But ultimately, anxiety about war‘s temporality informed Justice Kennedy‘s argument for judicial review in Boumediene v. Bush.13¶ My aim in this Essay is to critique the way that the concept of wartime¶ affects thinking about war and rights, but not to argue that war itself has no impact. One reason that wartime has so much power as a way of framing history is that the outbreak of war is often experienced as ushering in a new era, particularly when war follows a dramatic event like Pearl Harbor.14 After that attack, for example, Supreme Court Justice Felix Frankfurter said to his law clerk: ―Everything has changed, and I am going to war.‖15 The onset of war is seen, however, not as a discrete event, but as the beginning of a particular era that has temporal boundaries on both sides. I do not wish to question the power of these catalytic moments, but rather to call attention to the way they bring into being a set of assumptions about their endings, because they are seen as the onset of a temporally confined war. Pearl Harbor, for example, was thought to launch the United States into an era—World War II—that would, by definition, come to an end. Unpacking war‘s temporality can be a path toward a more satisfactory understanding of the ongoing relationship between war and American law and politics.

#### The aff is a focus on attacking the tools of the military industrial complex that mystifies its true nature and cloaks why we choose militarist strategies in the future

Lichterman 3 (Andrew, Program Director of the Western States Legal Foundation, Missiles of Empire: America’s 21st Century Global Legions, WSLF Information Bulletin, Fall 2003, http://www.wslfweb.org/nukes.htm)

Criticizing the Hubcaps while the Juggernaut Rolls On The U.S. military-industrial complex today is so immense as to defy comprehension. Even those few paying attention tend to focus on one small piece at a time. One month it may be proposals for nuclear weapons with certain new capabilities. Then the attention may shift to missile defense– but there too, only a small part of the program attracts public debate, with immense programs like the airborne laser proceeding almost invisibly. Proposals for the intensive militarization of space like the Space Plane come to light for a day or two, attracting a brief flurry of interest; the continuing, broad development of military space technologies, from GPS-aided guidance to radiation hardened microchips to space power generation, draw even less scrutiny. There is so broad a consensus among political elites supporting the constant refinement of conventional armaments that new generations of strike aircraft, Navy ships, and armored vehicles attract little notice outside industry and professional circles, with only spectacular cost overruns or technical failures likely to draw the occasional headline. A few Congresspeople will challenge one or another particularly extreme new weapon (e.g. the “Robust Nuclear Earth Penetrator”), but usually on narrow pragmatic grounds: we can accomplish the same “mission” with less risky or cheaper weapons. But the question of “why,” seldom is asked, only “how,” or “how much does it cost?” Most of the programs that constitute the military machine glide silently onward undisturbed, like the body of a missile submarine invisible below the deceptively small surfaces that rise above the sea. The United States emerged after both World War II and the Cold War as the most powerful state on earth-- the one with the most choices. The first time, all of this was still new. We could perhaps understand our ever deeper engagement with the machinery of death as a series of tragic events, of the inevitable outcome of fallible humans grappling with the titanic forces they had only recently unleashed, in the context of a global confrontation layered in secrecy, ideology, and fear. But this time around, since the end of the Cold War, we must see the United States as truly choosing, with every new weapon and every new war, to lead the world into a renewed spiral towards catastrophe. The past is written, but our understanding of it changes from moment to moment. The United States began the nuclear age as the most powerful nation on earth, and proclaimed the character of the “American Century” with the bombings of Hiroshima and Nagasaki, a cryptic message written in the blood of innocents. Its meaning has come clear over fifty years of technocratic militarism, punctuated by the deaths of millions in neo-colonial warfare and underscored always by the willingness to end the world rather than share power with anyone. The path ahead still can be changed, but we must begin with an understanding of where we are, and how we got here. In the United States, there is a very long way to go before we have a debate about the uses of military force that addresses honestly the weapons we have and seek to develop, much less about the complex social forces which impel the United States to maintain its extraordinary levels of forces and armaments. Most Americans don’t know what their government is doing in their name, or why. Their government, regardless of the party in power, lies about both its means and its ends on a routine basis. And there is nothing the government lies about more than nuclear weapons, proclaiming to the world for the last decade that the United States was disassembling its nuclear facilities and leading the way to disarmament, while rebuilding its nuclear weapons plants and planning for another half century and more of nuclear dominance.74 It is clear by now that fighting violence with yet more violence, claiming to stop the spread of nuclear weapons by threatening the use of nuclear weapons, is a dead end. The very notion of “enforcement,” that some countries have the right to judge and punish others for seeking “weapons of mass destruction,” has become an excuse for war making, a cover and justification for the power and profit agenda of secretive and undemocratic elites. The only solution that will increase the security of ordinary people anywhere is for all of us, in our respective societies, to do everything we can to get the most violent elements in our cultures– whether in or out of uniform– under control. In the United States, this will require far more than changing a few faces in Washington. We will need a genuine peace movement, ready to make connections to movements for ecological balance, and for social and economic justice, and by doing so to address the causes of war. Before we can expect others to join us, it must be clear that we are leaving the path of violence.

#### militarism is a fundamentally unsustainable system that is the root cause of all extinction threats and ensures mass structural violence – non-violence is the only possible response

Kovel 2

(Joel, “The United States Military Machine”, http://www.joelkovel.org/americanmilitary.htm; Jacob)

I want to talk to you this evening about war - not the immediate threat of us war against Iraq, but about how this conflict is an instance of a larger tendency toward war-making endemic to our society. In other words, the phrase from the folksong, “I ain’t gonna study war no more,” should be rethought. I think we do have to study war. Not to make war but to understand more deeply how it is put together and about the awful choices that are now being thrust upon us. These remarks have been stimulated by recent events, which have ancient roots, but have taken on a new shape since the collapse of the Soviet Union, the rise of the second Bush administration, and the inception of the so-called “War on Terror.” The shape is that of permanent warfare- war-making that has no particular strategic goal except total us dominance over global society. Hence, a war without end and whose internal logic is to perpetuate itself. We are, in other words, well into World War III, which will go on whether or not any other state such as Iraq is involved. It is quite probable that this administration will go to war in Iraq, inasmuch as certain very powerful people crave it. But it is not necessarily the case, given the fact that the war against Iraq is such a lunatic proposal that many other people in high places are against it and too many people are marching against it. And while war against Iraq is a very serious matter that needs to be checked by massive popular resistance, equally serious are the structures now in place in the United States dictating that whether or not the war in Iraq takes place, there will be another war to replace it, and others after that, unless some very basic changes take place. America Has Become a War-Making Machine The United States has always been a bellicose and expansive country, built on violent conquest and expropriation of native peoples. Since the forming of the American republic, military interventions have occurred at the rate of about once a year. Consider the case of Nicaragua, a country utterly incapable of being any kind of a threat to its giant northern neighbor. Yet prior to the Sandinista revolution in 1979 (which was eventually crushed by us proxy forces a decade later), our country had invaded Nicaragua no fewer than 14 times in the pursuit of its imperial interests. A considerable number of contemporary states, such as Britain, South Africa, Russia, and Israel, have been formed in just such a way. But one of the special conditions of the formation of America, despite its aggressivity, was an inhibition against a military machine as such. If you remember, no less a figure than George Washington warned us against having a standing army, and indeed the great bulk of us interventions prior to World War II were done without very much in the way of fixed military institutions. However, after WWII a basic change set in. War-weary America longed for demobilization, yet after a brief beginning in this direction, the process was halted and the permanent warfare state started to take shape. In part, this was because policy planners knew quite well that massive wartime mobilization had been the one measure that finally lifted America out of the Great Depression of the 1930s. One of the lessons of that time was that propounded by the British economist John Maynard Keynes, to the effect that capitalist societies could ameliorate chronic [economic] crises by infusions of government spending. The Great War had certified this wisdom, and permanent military expenditure readily became the received wisdom. This was greatly reinforced by the drastic realignment of capitalist power as a result of the war. America was essentially the only capitalist power in 1945 that did not lay in ruins and/or have its empire shattered. The world had been realigned and the United States had assumed a global imperial role. Policy planners like George Kennan lucidly realized that this meant safeguarding extreme inequalities in wealth, which implied a permanent garrison to preserve the order of things. The notion was especially compelling given that one other state, the Soviet Union, had emerged a great power from the war and was the bellwether of those forces that sought to break down the prevailing distribution of wealth. The final foundation stone for the new military order was the emergence of frightful weapons of mass destruction, dominance over which became an essential element for world hegemony. The Iron Triangle These factors crystallized into the Cold War, the nuclear arms race, and, domestically, into those structures that gave institutional stability and permanence to the system: the military-industrial complex (mic). Previously the us had used militarism to secure economic advantage. Now, two developments greatly transformed our militarism: the exigencies of global hegemony and the fact that militarism became a direct source of economic advantage, through the triangular relations of the mic with the great armament industries comprising one leg, the military establishment another, and the state apparatus the third, profits, power, and personnel could flow through the system and from the system. Clearly, this arrangement had the potential to greatly undermine American democracy. It was a “national security state” within the state but also extended beyond it into the economy and society at large, virtually insulated from popular input, and had the power to direct events and generate threats. Another conservative war hero-become-president, Dwight Eisenhower, warned the nation in a speech in 1961 against the emerging permanent war machine, but this time, the admonitions were not heeded.\* The machine made a kind of war against the Soviet system for 35 years. Although actual guns were not fired between the two adversaries, as many as 10 million people died in its varied peripheral conflicts, from Korea to Vietnam, Angola, El Salvador, Nicaragua, and Guatemala. The Cold War divided the world into bipolar imperial camps, directed by gigantic superpowers that lived off each other’s hostility. It was a terrible war whose immense suffering took place largely outside the view of the American people, but it also brought about an uneasy kind of stability in the world order, in part through the standoff in nuclear weapons. During the Ford and Carter administrations, another great crisis seized the world capitalist economy. Having matured past the rebuilding that followed the world war, a period of stagnation set in, which still has the global economy in its grip despite episodic flashes of vigor. Predictably, a spate of militarism was central to the response. A “Second Cold War” took place under Reagan, featuring an accelerated nuclear arms race, which was deliberately waged so as to encourage Soviet countermeasures in the hope that this would cause breakdown in the much weaker, bloated, and corrupt Russian system. The plan worked splendidly: by 1989-91, the mighty Soviet empire collapsed, and the bipolar world order became unipolar, setting a stage for the current phase. The fall of the Soviet Union was widely expected to bring a ìpeace dividend.î This would have been the case according to the official us line, parroted throughout the media and academe, that our military apparatus was purely defensive (after all, we have no Department of War, only one of "Defense") and reactive to Soviet expansionism and military/nuclear threat. As this was no longer a factor, so the reasoning wentóindeed, as the us now stood bestride the world militarily as had no power since the Roman Empireóconventional logic predicted a general diminution in American militarism after 1991, with corresponding benefits to society. The last decade has at least settled this question, for the effect on us aggression, interventionism, and the militarization of society has been precisely the opposite. In other words, instead of braking, the machine accelerated. Removal of Soviet power did not diminish Americaís imperial appetite: it removed inhibitions on its internally driven expansiveness. As a result, enhanced war-making has replaced the peace dividend. The object of this machine has passed from dealing with Soviet Communism to a more complex and dispersed set of oil wars (Iraq I and now II), police actions against international miscreants (Kosovo), and now the ubiquitous War Against Terror, aimed variously at Islamic fundamentalists, Islam as a whole, or anybody irritated enough with the ruling order to take up some kind of arms against it. The comparison with the Roman Empire is here very exact. As the eminent economist and sociologist Joseph Schumpeter described Rome in 1919: “There was no corner of the known world where some interest was not alleged to be in danger or under actual attack. If the interests were not Roman, they were those of Rome’s allies. And if Rome had no allies existed, the allies would be invented. The fight was always invested with the order of legality. Rome was always being attacked by evil-minded neighbors.” The logic of constant threat meshes with that of ruthless expansion, which we see everywhere in this epoch of unipolar world dominion. Currently, the military budget of the us is 334 billion dollars. The budget for the next fiscal year is 379 billion dollars- an increase of more than 10 percent. By 2007, the projected military budget of the us is to be an astounding 451 billion dollars: almost half a trillion dollars, without the presence of anything resembling a conventional war. The present military budget is greater than the sum of all other military budgets. In fact, it is greater than the entire federal budget of Russia, once America's immortal adversary, and comprises more than half - 52 percent of all discretionary spending by the us government. (By comparison, education accounts for 8 percent of the federal budget.) A considerable portion of this is given over to "military Keynesianism," according to the well-established paths of the mic. Thus, although in the first years after the fall of the ussr certain firms like General Dynamics, which had played a large role in the nuclear arms race, suffered setbacks, that problem has been largely reversed for the entire class of firms fattening at the trough of militarism. It is fair to say, though, that the largesse is distributed over a wider scale, in accordance with the changing pattern of armaments. us Armies Taking Root Everywhere From having scarcely any standing army in 1940, American armies now stand everywhere. One feature of us military policy since WWII is to make war and then stay where war was made, rooting itself in foreign territory. Currently, the us has military bases in 113 countries, with 11 new ones formed since the beginning of the War Against Terror. The us now has bases in Kazakhstan, Uzbekistan, and Kurdistan, encircling China and creating new sources of military tension. On these bases, the us military has erected some 800,000 buildings. Imagine that: 800,000 buildings in foreign countries that are now occupied by us military establishments. And America still maintains large forces in Germany, Japan, and Korea, with tens of thousands of troops permanently on duty (and making mischief, as two us servicemen recently ran over and killed two Korean girls, provoking massive demonstrations). After the first Gulf War the us military became installed in Saudi Arabia and Kuwait, in which latter place it currently occupies one quarter of the country - 750 square miles devoted to military activity. This huge investment is no doubt determined by proximity to Iraq. Again, after going to war in Kosovo, the us left behind an enormous base in a place called Bondsteel. These self-expanding sites of militarism are permanent goads to terrorist organizations. Recall that one of Osama bin Laden's professed motivations for al-Qaeda's attacks on American facilities was the presence of us bases in his home country of Saudi Arabia. The bases are also permanent hazards to the environment - indeed, the us, with some 800,000 buildings on these military sites, is the world's largest polluter and the largest consumer of fossil fuels. With territorial expansion of the us military apparatus, there is a corresponding expansion of mission. For instance, in Colombia, where billions of us dollars are spent in the "War on Drugs," us troops are now being asked to take care of pipelines through which vital oil reserves are passing. In addition, the War on Drugs is now subsumed into the War Against Terror. The signifier of Terror has virtually unlimited elasticity, for once an apparatus reaches the size of the us military machine, threats can be seen anywhere. With the inauguration of the new hard-line president of Colombia, Alvaro Uribe, the us authorized the use of 1.7 billion dollars in military aid hitherto limited to anti-drug operations for direct attacks on deeply entrenched farc guerrillas. This redirection of aid came after Colombian officials and their American supporters in the Congress and Bush administration argued that the change was needed as part of the global campaign against terrorism. Within this overall picture, American armed forces are undergoing a qualitative shift of enormous proportion. In words read by President Bush: “Our forces in the next century must be agile, lethal, readily deployable, and must require a minimum of logistical support. We must be able to project our power over long distances in days or weeks rather than months. On land our heavy forces must be lighter, our light forces must be more lethal. All must be easier to deploy.” Crossing Weapons Boundaries - Both Nuclear and Conventional As a result, many boundaries and limits of the bipolar era have been breached. For example, the distinction between nuclear and conventional weapons had always constituted a radical barrier. The standoff between the us and the ussr was epitomized by mind-numbing hydrogen bomb-missiles facing each other in a scenario called “Mutual Assured Destruction.î”In short, a strategic condition of deterrence prevailed, which made nuclear weapons seem unthinkable. With the demise of the ussr, deterrence no longer inhibits us nuclear weaponry, and the weapons themselves have proliferated downward, becoming miniaturized and increasingly tactical rather than strategic. Meanwhile, the genie of the weapons industries has developed ever more destructive “conventional” weapons. These include non-explosive devices of awesome power, such as laser beams, microwaves, and large-scale climate manipulation, along with a new generation of super-powerful explosive devices. Thus the strongest non-nuclear weapons are now considerably more lethal than the least powerful nuclear weapons, making the latter thinkable and eliminating a major barrier against their employment. These so-called conventional bombs have already been used, for example, in Afghanistan, where the us employed a gigantic explosive weapon, called a “Bunker Buster” to root out al-Qaeda combatants in underground bunkers. They are based upon the “daisy cutter,” a giant bomb about the size of a Volkswagen Beetle and capable of destroying everything within a square kilometer. Significantly, the model used in Afghanistan, the B61-11, already employs nuclear technology, the infamous depleted uranium warhead, capable by virtue of its extreme density, of great penetrating power. Depleted uranium (du) is a by-product of the nuclear power industry (chiefly being U-238 created in the extraction of U-235 from naturally occurring uranium ore). Over 500,000 tons of deadly du have accumulated and 4-5,000 more tons are being produced every year. Like all products of the nuclear power industry, du poses immense challenges of disposal. It has this peculiar property of being almost twice as dense as lead and it is radioactive with a half-life of 4.5 billion years. Wherever depleted uranium is used, it has another peculiar property of exploding, vaporizing at 56 degrees centigrade, which is just like a little more than half the way to boiling water. So it is very volatile, it explodes, it forms dust and powders that are inhaled, disburses widely, and produces lethal cancers, birth defects, and so forth for 4.5 billion years. In the case of depleted uranium, the challenge of disposal was met by incorporating the refuse from the “peaceful” branch of nuclear technology into the war-making branch. Already used in anti-tank projectiles in the first Iraq war (approximately 300 tons worth) and again in Yugoslavia (approximately 10-15 tons were used in each of the various Yugoslav wars), it is presumed, although the defense department coyly denies it, that this material was also used in the Afghanistan war. Depleted uranium has spread a plague of radioactivity and further rationalized the use of nuclear weapons as such. Consequently, the B61-11 is about to be replaced with the BLU113, where the bunker buster will now be a small nuclear weapon, almost certainly spear-tipped with du. Pollutants to Earth and Space To the boundaries crossed between nuclear and non-nuclear weapons, and between the peaceful and militaristic uses of atomic technology, we need to add those between earth and its lower atmosphere on the one hand, and space on the other. The administration is poised to realize the crackpot and deadly schemes of the Reagan administration to militarize space and to draw the rest of the world into the scheme, as client and victim. In November 2002, Bush proposed that nato allies build missile defense systems, with components purchased, needless to add, from Boeing, Raytheon, etc, even as Congress was approving a fiscal 2003 defense budget containing $7.8 billion authorization for missile defense research and procurement, as part of the $238 billion set aside for Star Wars over the next 20 years. The administration now is poised to realize the crackpot and deadly schemes of the Reagan administration to militarize space and to draw the rest of the world into the scheme, as client and victim. A new missile defense system bureaucracy has risen. It is currently developing such wild items as something called ìbrilliant pebblesî which involves the release of endless numbers of mini satellites into outer space. All of this was to protect the world against the threat of rogue states such as North Korea. As the Seattle Times reported, the us expects the final declaration to, “express the need to examine options to protect allied forces, territories, and population centers against the full range of missile threats.” As an official put it, "This will establish the framework within which nato allies could work cooperatively toward fielding the required capabilities. With the us withdrawal this year from the anti-ballistic treaty with Russia, it is no longer a question of whether missile defenses will be deployed. The relevant questions are now what, how, and when. The train is about to pull out of the station; we invite our friends, allies, and the Russian Federation to climb on board." The destination of this train is defensive only in the Orwellian sense, as the missiles will be used to defend us troops in the field. In other words, they will be used to defend armies engaged in offensive activities. What is being “defended” by the Strategic Defense Initiative (sdi), therefore, is the initiative to make war everywhere. Space has now become the ultimate battlefield. And not just with use of these missiles. The High Frequency Active Aural Research Program (haarp) is also part of sdi. This amounts to weather warfare: deliberately manipulating climate to harm and destroy adversaries. A very dubious enterprise, to say the least, in an age when global warming and climate instability are already looming as two of the greatest problems facing civilization. The chief feature is a network of powerful antennas capable of creating controlled local modifications of the ionosphere and hence producing weather disturbances and so forth. All of these technical interventions are accompanied by many kinds of institutional and political changes. The National Aeronautics and Space Administration, nasa, for instance, is now a partner in the development of this strategic defense initiative. The very way in which the United Nations was drawn into the resolution in the war against Iraq is a breach and a violation of the original un Charter, which is to never make war, never to threaten to make war on any member state. The un was a peacemaking institution, but now the Super power has forced it into its orbit. The scrapping of the abm and other elements of the treaty structure (non- proliferation, test-ban) that had organized the world of the Cold War is one part of a process of shedding whatever might inhibit the cancerous growth of militarism. It also creates an atmosphere of general lawlessness in the world. This is felt at all levels, from the rise of an ultra-militarist clique in the White House to the formal renunciation of no-first-use nuclear strategy, the flouting of numerous un regulations, the doctrine of pre-emptive war, and, as the logical outcome of all these developments, the condition of Permanent War and its accompaniment of general lawlessness, media slavishness, and a wave of repression for whose parallel we have to go back to the Alien and Sedition acts of the 1790s, or Trumanís loyalty oaths of 1947. Militarism cannot be reduced to politics, economics, technology, culture, or psychology. All these are parts of the machine, make the machine go around, and are themselves produced by the actions of the machine. There is no doubt, in this regard, that the machine runs on natural resources (which have to be secured by economic, political, and military action), and that it is deeply embedded in the ruling corporate order. There is no contradiction here, but a set of meshing parts, driven by an insensate demand for fossil fuel energy. As a man from Amarillo, Texas put it when interviewed by npr as to the correctness of Bush’s plan to go to war in Iraq: “I agree with the president, because how else are we going to get the oil to fly the F-16s?” We go to war, in other words, to get the oil needed to go to war. A Who's Who List of MIC Beneficiaries The fact that our government is front-loaded with oil magnates is another part of the machine. It is of interest, therefore, that Unocal, for example, celebrated Condoleezza Riceís ascendancy to the post of National Security Advisor by naming an oil tanker after her. Or that Dick Cheney, originally a poor boy, became a rich man after the first Gulf War, when he switched from being Secretary of Defense, in charge of destroying the Kuwait oil fields, to ceo of a then-smallish company, Halliburton, in charge of rebuilding the same oil fields. Or that G.W. Bush himself, aside from his failed venture with Harken Oil, is scion of a family and a dynasty that controls the Carlyle Group, founded in 1987 by a former Carter administration official. Carlyle is now worth over $13 billion and its high officials include President Bush I, his Secretary of State (and fixer of the coup that put Bush II in power) James Baker, Reaganís Secretary of Defense Frank Carlucci, former British Prime Minister John Major, and former Phillipine President Fidel Ramos, among others. The Carlyle Group has its fingers everywhere, including ìdefenseî, where it controls firms making vertical missile launch systems currently in use on us Navy ships in the Arabian sea, as well as a range of other weapons delivery systems and combat vehicles. And as a final touch which the worldís people would be much better off for knowing, there are very definite connections between Carlyle and the family of Osama bin Laden - a Saudi power whose fortunes have been fused with those of the United States since the end of World War II. Thus the military-industrial complex lives, breathes, and takes on new dimensions. There is a deep structural reason for the present explosion of us militarism, most clearly traceable in the activities of Vice President Cheney, made clear in the energy report that he introduced with the generous assistance of Enron executives in May 2001. According to the report, American reliance on imported oil will rise by from about 52 percent of total consumption in 2001 to an estimated 66 percent in 2020. The reason for this is that world production, in general, and domestic production in particular are going to remain flat (and, although the report does not discuss this, begin dropping within the next 20 years). Meanwhile consumptionówhich is a direct function of the relentless drive of capitalism to expand commodity productionóis to grow by some two- thirds. Because the usage of oil must rise in the worldview of a Cheney, the us will actually have to import 60 percent more oil in 2020 to keep itself going than it does today. This means that imports will have to rise from their current rate of about 10.4 million barrels per day to about 16.7 million barrels per day. In the words of the report: “The only way to do this is persuade foreign suppliers to increase their production to sell more of their output to the us.” The meaning of these words depends of course on the interpretation of “persuade”, which in the us lexicon is to be read, I should think, as requiring a sufficient military machine to coerce foreign suppliers. At that point they might not even have to sell their output to the us, as it would already be possessed by the superpower. Here we locate the root material fact underlying recent us expansionism. This may seem an extravagant conclusion. However an explicit connection to militarismóand Iraqóhad been supplied the month before, in April 2001, in another report prepared by James Baker and submitted to the Bush cabinet. This document, called “Strategic Energy Policy Challenges for the 21st Century,” concludes with refreshing candor that ìthe us remains a prisoner of its energy dilemma, Iraq remains a destabilizing influence to the flow of oil to international markets from the Middle East, Saddam Hussein has also demonstrated a willingness to threaten to use the oil weapon and to use his own export program to manipulate oil markets, therefore the us should conduct an immediate policy review toward Iraq, including military, energy, economic, and political diplomatic assessments. Note the absence of reference to “weapons of mass destruction,” or aid to terrorism, convenient rationalizations that can be filled in later. Clearly, however things turn out with Iraq, the fundamental structural dilemma driving the military machine pertains to the contradictions of an empire that drives toward the invasion of all social space and the total control over nature. Since the former goal meets up with unending resistance and the latter crashes against the finitude of the material world, there is no recourse except the ever-widening resort to force. But this, the military monster itself, ever seeking threats to feed upon, becomes a fresh source of danger, whether of nuclear war, terror, or ecological breakdown. The situation is plainly unsustainable, a series of disasters waiting to happen. It can only be checked and brought to rationality by a global uprising of people who demand an end to the regime of endless war. This is the only possible path by which we can pull ourselves away from the abyss into which the military machine is about to plunge, dragging us all down with it.

#### 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

Demenchonok 9 – Worked as a senior researcher at the Institute of Philosophy of the Russian Academy of Sciences, Moscow, and is currently a Professor of Foreign Languages and Philosophy at Fort Valley State University in Georgia, listed in 2000 Outstanding Scholars of the 21st Century and is a recipient of the Twenty-First Century Award for Achievement in Philosophy from the International Biographical Centre --Edward, Philosophy After Hiroshima: From Power Politics to the Ethics of Nonviolence and Co-Responsibility, February, American Journal of Economics and Sociology, Volume 68, Issue 1, Pages 9-49

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.

### 1NC T

#### A – Interpretation:

#### The only topical justification for an affirmative ballot can be the advantages of the hypothetical enactment of a statutory or judicial restriction of the presidents war powers in the area of targeting killing

#### B – Definitions

#### Should denotes an expectation of enacting a plan

#### **American Heritage Dictionary 2000 (Dictionary.com)**

should. The will to do something or have something take place: I shall go out if I feel like it.

#### Federal government is the central government in Washington DC

Encarta Online 2005,

http://encarta.msn.com/encyclopedia\_1741500781\_6/United\_States\_(Government).html#howtocite

United States (Government), the combination of federal, state, and local laws, bodies, and agencies that is responsible for carrying out the operations of the United States. The federal government of the United States is centered in [Washington, D.C.](http://encarta.msn.com/encyclopedia_761576320/Washington_D_C.html)

#### Resolved implies a policy

Louisiana House 3-8-2005, <http://house.louisiana.gov/house-glossary.htm>

Resolution A legislative instrument that generally is used for making declarations, stating policies, and making decisions where some other form is not required. A bill includes the constitutionally required enacting clause; a resolution uses the term "resolved". Not subject to a time limit for introduction nor to governor's veto. ( Const. Art. III, §17(B) and House Rules 8.11 , 13.1 , 6.8 , and 7.4)

#### “Statutory restrictions” require statutory language - Congress

Kershner 10 (Joshua, Articles Editor, Cardozo Law Review. J.D. Candidate (June 2011), Benjamin N. Cardozo School of Law, “Political Party Restrictions and the Appointments Clause: The Federal Election Commission's Appointments Process Is Constitutional” Cardozo Law Review de novo 2010 Cardozo L. Rev. De Novo 615)

n17 The phrase "statutory restrictions" is used hereinafter to mean statutory language that restricts the President's powers of nomination and appointment to those individuals meeting specific criteria. Examples include gender, state of residence, and most importantly political party. n18 Since 1980, more than one hundred Presidential signing statements have specifically mentioned the Appointments Clause. See The Public Papers of the Presidents, AM. PRESIDENCY PROJECT, http://www.presidency.ucsb.edu/ws (search for "Appointments Clause"). n19 These signing statements typically invoke the authority of the Appointments Clause to argue that statutory restrictions on appointment or removal of Officers of the United States are merely advisory. For numerous examples, see id. See also infra note 175. n20 The phrase "hyper-partisan atmosphere" has been frequently used by the news media and commentators to describe the political gridlock in Washington during the first years of the Obama administration. See, e.g., Eric Moskowitz, Hundreds Brave Cold to Hear From Scott Brown, THE BOSTON GLOBE, Jan. 29, 2010, http://www.boston.com/news/local/breaking\_news/2010/01/scores\_wait\_for.html (reporting on then Senator-Elect Scott Brown explaining that "he felt the hyper-partisan atmosphere in Washington was already changing as a result of his election" ten days earlier); Editorial, Bayh Bailout No Cause to Mourn Moderation, ORANGE COUNTY REG., Feb. 17, 2010, at H, available at http://www.ocregister.com/opinion/bayh-234673-sen-one.html (describing Senator Bayh's verbal attacks on the operation of the Senate after announcing his decision not to run for reelection as "using the occasion to decry the hyperpartisan atmosphere in Washington"). n21 As political battles over delays in approving Presidential nominations continue to be the norm, it is progressively more likely that Presidents will seek to bypass the Senate in the nomination process. This could include recess appointments bypassing both the "advice and consent" of the Senate, as well as any statutory restrictions. See, e.g., Scott Wilson, Obama Considers Recess Appointments, WASH. POST, Feb. 9, 2010 ("President Obama is considering recess appointments to fill some or all of the nominations held up in the Senate. President Bush used a recess appointment to make John Bolton the U.S. ambassador to the United Nations bypassing Democrats."). n22 Statutory restrictions date back to the first Congress and continue today. See infra notes 116, 118, 122. n23 See discussion infra Part I.D and note 128. n24 The phrase "political party restrictions" is used hereinafter to mean statutory restrictions on the President's powers of nomination and appointment by political party.

#### Judicial restrictions are limits imposed by the courts

Charles Grove Haines – PhD, Fellow @ Columbia University – 2001, The Conflict over Judicial Powers, googlebooks

The political theories of the time favored judicial restriction of state laws to the point of practical nullification. The same trend of thought regarded the federal courts as the only proper tribunals to determine the validity or the invalidity of state laws contrary to the terms of the treaty of peace or to the principles of the law of nations. In practice a principle was emerging, not sanctioned by any positive enactment, which dealt a severe blow to the power of the legislative department. State courts were asserting authority above that of the legislative assemblies. Federal courts were claiming the right to declare void state laws contrary to national laws and treaties, and contrary to the “sovereign rights of peace and war” vested in the Confederate Congress. It was but a short step, therefore, to Mar- bury vs. Madison.

#### Targeted killing is the killing of an individual or group of individuals exclusively for reasons of self-defence – that’s distinct from assassinations, which are the premeditated killing of a prominent person for political or ideological reasons

Thomas B. Hunter – 2009, Targeted Killing: Self-Defense, Preemption, and the War on Terrorism, Mr. Hunter holds a Master’s Degree in Unconventional Warfare from the American Military University, a Master’s Degree in International Security Studies from the University of St. Andrews, Scotland, and an undergraduate degree in English and American Literature from the University of Southern California, googlebooks

Before proceeding with an examination of targeted killing as a method of state self-defence in the war on terrorism, it is important to differentiate between targeted killing and assassination. This is an important distinction in the context of this discussion for two primary reasons: to clearly illuminate the differences between the two, and secondly, to demonstrate that targeted killing is not a method for expressing political or ideological differences, but rather a purely defensive act intended to protect the state and its populace. Though numerous scholars and other experts have tried, the concept and practice of assassi nation has proven a complicated concept to define.4 Decades of research and the resultant books and papers have failed to result in comprehensive and shared parameters and characteristics for this complex concept. For purposes of this discussion, assassination is defined as the premeditated killing of a prominent person for political or ideological reasons. Assassination, as a political tool, was long considered an acceptable and rational action. As a method of statecraft, it dates back to the earliest recorded governments and includes the death of Julius Caesar ¡n March 44 B.C. Since that time, individuals, groups, and states have participated in the killings of prominent persons (usually heads of state or senior government officials) ¡n order to further their own political or ideological goals. One notable government body was, in fact, based on the concept of assassination. The Ismalian sect founded by Hasan ibn-al-Sabbah had, as its primary function, assassination. Indeed, it has long been believed that we derive the term ‘assassination’ in use today from the ‘assassins’—the Hashashi of this sect, though the validity of this belief is currently under debate.5 The practice of assassination was long used as a method of expediting political or ideological goals is, as mentioned, a matter of historical fact. What is also equally clear is that assassination, as we term it here, has not been used to preemptively eliminate an individual who planned, personally or as part of a larger group, to asymmetrically attack a given state.7 Instead, this particular type of killing ¡s reserved for the elimination of political and ideological opponents of prominence. Despite this background, assassination ¡s today considered a politically and morally unacceptable activity, and has fallen into disuse as a tool in the statecraft of modern nations, though formal steps to renounce its use came about only in the latter half of the 20th century.89 Even the U.S., which formally outlawed political assassination in 1970 with the signing of Executive Order 12333, was not above employing such tactics, particularly during the Cole War. 10 11 12 We are able to draw a distinct line between assassination and targeted killing. In sum, assassination is the killing of an individual or group of individuals for purely political or ideological reasons. Targeted killing, in contrast, is the killing of an individual or group of individuals without regard for politics or ideology, but rather exclusively for reasons of state self-defence.

#### Violation—A jurga is not a statutory or judicial restriction, and they’re extra-topical for claiming advantages not based off the implementation of the plan

#### Vote negative

#### 1. Extra-topicality—allowing advantages about non-resolutional questions shifts the burden of proof and rejoinder away from the merits of a resolutional action to a discussion of debate as a Jirga and individual policy making

#### The primary purpose of debate should be to improve our skills as decision-makers. We are all individual policy-makers who make choices every day that affect us and those around us. We have an obligation to the people affected by our decisions to use debate as a method for honing these critical thinking and information processing abilities.

Austin J. Freeley and David L. Steinberg – John Carroll University / U Miami – 2009, Argumentation and Debate: Critical Thinking for Reasoned Decision Making, p. 1-4, googlebooks

After several days of intense debate, first the United States House of Representatives and then the U.S. Senate voted to authorize President George W. Bush to attack Iraq if Saddam Hussein refused to give up weapons of mass destruction as required by United Nations's resolutions. Debate about a possible military\* action against Iraq continued in various governmental bodies and in the public for six months, until President Bush ordered an attack on Baghdad, beginning Operation Iraqi Freedom, the military campaign against the Iraqi regime of Saddam Hussein. He did so despite the unwillingness of the U.N. Security Council to support the military action, and in the face of significant international opposition.¶ Meanwhile, and perhaps equally difficult for the parties involved, a young couple deliberated over whether they should purchase a large home to accommodate their growing family or should sacrifice living space to reside in an area with better public schools; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job. Each of these\* situations called for decisions to be made. Each decision maker worked hard to make well-reasoned decisions.¶ Decision making is a thoughtful process of choosing among a variety of options for acting or thinking. It requires that the decider make a choice. Life demands decision making. We make countless individual decisions every day. To make some of those decisions, we work hard to employ care and consideration; others seem to just happen. Couples, families, groups of friends, and coworkers come together to make choices, and decision-making bodies from committees to juries to the U.S. Congress and the United Nations make decisions that impact us all. Every profession requires effective and ethical decision making, as do our school, community, and social organizations.¶ We all make many decisions every day. To refinance or sell one's home, to buy a high-performance SUV or an economical hybrid car. what major to select, what to have for dinner, what candidate to vote for, paper or plastic, all present us with choices. Should the president deal with an international crisis through military invasion or diplomacy? How should the U.S. Congress act to address illegal immigration?¶ Is the defendant guilty as accused? The Daily Show or the ball game? And upon what information should I rely to make my decision? Certainly some of these decisions are more consequential than others. Which amendment to vote for, what television program to watch, what course to take, which phone plan to purchase, and which diet to pursue all present unique challenges. At our best, we seek out research and data to inform our decisions. Yet even the choice of which information to attend to requires decision making. In 2006, TIME magazine named YOU its "Person of the Year." Congratulations! Its selection was based on the participation not of ''great men" in the creation of history, but rather on the contributions of a community of anonymous participants in the evolution of information. Through blogs. online networking. You Tube. Facebook, MySpace, Wikipedia, and many other "wikis," knowledge and "truth" are created from the bottom up, bypassing the authoritarian control of newspeople, academics, and publishers. We have access to infinite quantities of information, but how do we sort through it and select the best information for our needs?¶ The ability of every decision maker to make good, reasoned, and ethical decisions relies heavily upon their ability to think critically. Critical thinking enables one to break argumentation down to its component parts in order to evaluate its relative validity and strength. Critical thinkers are better users of information, as well as better advocates.¶ Colleges and universities expect their students to develop their critical thinking skills and may require students to take designated courses to that end. The importance and value of such study is widely recognized.¶ Much of the most significant communication of our lives is conducted in the form of debates. These may take place in intrapersonal communications, in which we weigh the pros and cons of an important decision in our own minds, or they may take place in interpersonal communications, in which we listen to arguments intended to influence our decision or participate in exchanges to influence the decisions of others.¶ Our success or failure in life is largely determined by our ability to make wise decisions for ourselves and to influence the decisions of others in ways that are beneficial to us. Much of our significant, purposeful activity is concerned with making decisions. Whether to join a campus organization, go to graduate school, accept a job oiler, buy a car or house, move to another city, invest in a certain stock, or vote for Garcia—these are just a few of the thousands of decisions we may have to make. Often, intelligent self-interest or a sense of responsibility will require us to win the support of others. We may want a scholarship or a particular job for ourselves, a customer for out product, or a vote for our favored political candidate.

#### Specifically, through discussing paths of government action, debate teaches us to be better organizational decision makers. Learning about the uniquely different considerations of organizations is necessary to affecting change in a world overwhelmingly dominated by institutions.

Algoso 2011 – Masters in Public Administration (May 31, Dave, “Why I got an MPA: Because organizations matter” <http://findwhatworks.wordpress.com/2011/05/31/why-i-got-an-mpa-because-organizations-matter/>)

Because organizations matter. Forget the stories of heroic individuals written in your middle school civics textbook. Nothing of great importance is ever accomplished by a single person. Thomas Edison had lab assistants, George Washington’s army had thousands of troops, and Mother Teresa’s Missionaries of Charity had over a million staff and volunteers when she passed away. Even Jesus had a 12-man posse. In different ways and in vastly different contexts, these were all organizations. Pick your favorite historical figure or contemporary hero, and I can almost guarantee that their greatest successes occurred as part of an organization. Even the most charismatic, visionary and inspiring leaders have to be able to manage people, or find someone who can do it for them. International development work is no different. Regardless of your issue of interest — whether private sector investment, rural development, basic health care, government capacity, girls’ education, or democracy promotion — your work will almost always involve operating within an organization. How well or poorly that organization functions will have dramatic implications for the results of your work. A well-run organization makes better decisions about staffing and operations; learns more from its mistakes; generates resources and commitment from external stakeholders; and structures itself to better promote its goals. None of this is easy or straightforward. We screw it up fairly often. Complaints about NGO management and government bureaucracy are not new. We all recognize the need for improvement. In my mind, the greatest challenges and constraints facing international development are managerial and organizational, rather than technical. Put another way: the greatest opportunities and leverage points lie in how we run our organizations. Yet our discourse about the international development industry focuses largely on how much money donors should commit to development and what technical solutions (e.g. deworming, elections, roads, whatever) deserve the funds. We give short shrift to the questions around how organizations can actually turn those funds into the technical solutions. The closest we come is to discuss the incentives facing organizations due to donor or political requirements. I think we can go deeper in addressing the management and organizational issues mentioned above. This thinking led me to an MPA degree because it straddles that space between organizations and issues. A degree in economics or international affairs could teach you all about the problems in the world, and you may even learn how to address them. But if you don’t learn how to operate in an organization, you may not be able to channel the resources needed to implement solutions. On the flip side, a typical degree in management offers relevant skills, but without the content knowledge necessary to understand the context and the issues. I think the MPA, if you choose the right program for you and use your time well, can do both.

#### Additionally, The best route to improving decision-making is through discussion about public policy

#### Mutually accessible information – There is a wide swath of literature on governmental policy topics – that ensures there will be informed, predictable, and in-depth debate over the aff’s decision. Individual policymaking is highly variable depending on the person and inaccessible to outsiders.

#### Harder decisions make better decisionmakers – The problems facing public policymakers are a magnitude greater than private decisions. We all know plans don’t actually happen, but practicing imagining the consequences of our decisions in the high-stakes games of public policymaking makes other decisionmaking easier.

#### External actors – the decisions we make should be analyzed not in a vacuum but in the complex social field that surrounds us

#### 2. Predictable Limits—extra topicality is indistinct from being untopical—additional portions of the plan force the negative to debate T to get back to square one—this creates no functional limit on the topic which prevents a well prepared negative opponent

#### Debate has unique potential to change attitudes and grow critical thinking skills because it forces pre-round internal deliberation on a of a focused, common ground of debate

Robert E. Goodin and Simon J. Niemeyer- Australian National University- 2003,

When Does Deliberation Begin? Internal Reflection versus Public Discussion in Deliberative Democracy, POLITICAL STUDIES: 2003 VOL 51, 627–649, http://onlinelibrary.wiley.com/doi/10.1111/j.0032-3217.2003.00450.x/pdf

What happened in this particular case, as in any particular case, was in some respects peculiar unto itself. The problem of the Bloomfield Track had been well known and much discussed in the local community for a long time. Exaggerated claims and counter-claims had become entrenched, and unreflective public opinion polarized around them. In this circumstance, the effect of the information phase of deliberative processes was to brush away those highly polarized attitudes, dispel the myths and symbolic posturing on both sides that had come to dominate the debate, and liberate people to act upon their attitudes toward the protection of rainforest itself. The key point, from the perspective of ‘democratic deliberation within’, is that that happened in the earlier stages of deliberation – before the formal discussions (‘deliberations’, in the discursive sense) of the jury process ever began. The simple process of jurors seeing the site for themselves, focusing their minds on the issues and listening to what experts had to say did virtually all the work in changing jurors’ attitudes. Talking among themselves, as a jury, did very little of it. However, the same might happen in cases very different from this one. Suppose that instead of highly polarized symbolic attitudes, what we have at the outset is mass ignorance or mass apathy or non-attitudes. There again, people’s engaging with the issue – focusing on it, acquiring information about it, thinking hard about it – would be something that is likely to occur earlier rather than later in the deliberative process. And more to our point, it is something that is most likely to occur within individuals themselves or in informal interactions, well in advance of any formal, organized group discussion. There is much in the large literature on attitudes and the mechanisms by which they change to support that speculation.31 Consider, for example, the literature on ‘central’ versus ‘peripheral’ routes to the formation of attitudes. Before deliberation, individuals may not have given the issue much thought or bothered to engage in an extensive process of reflection.32 In such cases, positions may be arrived at via peripheral routes, taking cognitive shortcuts or arriving at ‘top of the head’ conclusions or even simply following the lead of others believed to hold similar attitudes or values (Lupia, 1994). These shorthand approaches involve the use of available cues such as ‘expertness’ or ‘attractiveness’ (Petty and Cacioppo, 1986) – not deliberation in the internal-reflective sense we have described. Where peripheral shortcuts are employed, there may be inconsistencies in logic and the formation of positions, based on partial information or incomplete information processing. In contrast, ‘central’ routes to the development of attitudes involve the application of more deliberate effort to the matter at hand, in a way that is more akin to the internal-reflective deliberative ideal. Importantly for our thesis, there is nothing intrinsic to the ‘central’ route that requires group deliberation. Research in this area stresses instead the importance simply of ‘sufficient impetus’ for engaging in deliberation, such as when an individual is stimulated by personal involvement in the issue.33 The same is true of ‘on-line’ versus ‘memory-based’ processes of attitude change.34 The suggestion here is that we lead our ordinary lives largely on autopilot, doing routine things in routine ways without much thought or reflection. When we come across something ‘new’, we update our routines – our ‘running’ beliefs and pro cedures, attitudes and evaluations – accordingly. But having updated, we then drop the impetus for the update into deep-stored ‘memory’. A consequence of this procedure is that, when asked in the ordinary course of events ‘what we believe’ or ‘what attitude we take’ toward something, we easily retrieve what we think but we cannot so easily retrieve the reasons why. That more fully reasoned assessment – the sort of thing we have been calling internal-reflective deliberation – requires us to call up reasons from stored memory rather than just consulting our running on-line ‘summary judgments’. Crucially for our present discussion, once again, what prompts that shift from online to more deeply reflective deliberation is not necessarily interpersonal discussion. The impetus for fixing one’s attention on a topic, and retrieving reasons from stored memory, might come from any of a number sources: group discussion is only one. And again, even in the context of a group discussion, this shift from ‘online’ to ‘memory-based’ processing is likely to occur earlier rather than later in the process, often before the formal discussion ever begins. All this is simply to say that, on a great many models and in a great many different sorts of settings, it seems likely that elements of the pre-discursive process are likely to prove crucial to the shaping and reshaping of people’s attitudes in a citizens’ jury-style process. The initial processes of focusing attention on a topic, providing information about it and inviting people to think hard about it is likely to provide a strong impetus to internal-reflective deliberation, altering not just the information people have about the issue but also the way people process that information and hence (perhaps) what they think about the issue. What happens once people have shifted into this more internal-reflective mode is, obviously, an open question. Maybe people would then come to an easy consensus, as they did in their attitudes toward the Daintree rainforest.35 Or maybe people would come to divergent conclusions; and they then may (or may not) be open to argument and counter-argument, with talk actually changing minds. Our claim is not that group discussion will always matter as little as it did in our citizens’ jury.36 Our claim is instead merely that the earliest steps in the jury process – the sheer focusing of attention on the issue at hand and acquiring more information about it, and the internal-reflective deliberation that that prompts – will invariably matter more than deliberative democrats of a more discursive stripe would have us believe. However much or little difference formal group discussions might make, on any given occasion, the pre-discursive phases of the jury process will invariably have a considerable impact on changing the way jurors approach an issue. From Citizens’ Juries to Ordinary Mass Politics? In a citizens’ jury sort of setting, then, it seems that informal, pre-group deliberation – ‘deliberation within’ – will inevitably do much of the work that deliberative democrats ordinarily want to attribute to the more formal discursive processes. What are the preconditions for that happening? To what extent, in that sense, can findings about citizens’ juries be extended to other larger or less well-ordered deliberative settings? Even in citizens’ juries, deliberation will work only if people are attentive, open and willing to change their minds as appropriate. So, too, in mass politics. In citizens’ juries the need to participate (or **the anticipation of participating) in formally organized group discussions might be the ‘prompt’ that evokes those attributes**. But there might be many other possible ‘prompts’ that can be found in less formally structured mass-political settings. Here are a few ways citizens’ juries (and all cognate micro-deliberative processes)37 might be different from mass politics, and in which lessons drawn from that experience might not therefore carry over to ordinary politics: • A citizens’ jury concentrates people’s minds on a single issue. Ordinary politics involve many issues at once. • A citizens’ jury is often supplied a background briefing that has been agreed by all stakeholders (Smith and Wales, 2000, p. 58). In ordinary mass politics, there is rarely any equivalent common ground on which debates are conducted. • A citizens’ jury separates the process of acquiring information from that of discussing the issues. In ordinary mass politics, those processes are invariably intertwined. • A citizens’ jury is provided with a set of experts. They can be questioned, debated or discounted. But there is a strictly limited set of ‘competing experts’ on the same subject. In ordinary mass politics, claims and sources of expertise often seem virtually limitless, allowing for much greater ‘selective perception’. • Participating in something called a ‘citizens’ jury’ evokes certain very particular norms: norms concerning the ‘impartiality’ appropriate to jurors; norms concerning the ‘common good’ orientation appropriate to people in their capacity as citizens.38 There is a very different ethos at work in ordinary mass politics, which are typically driven by flagrantly partisan appeals to sectional interest (or utter disinterest and voter apathy). • In a citizens’ jury, **we think and listen in anticipation of the discussion phase, knowing that we soon will have to defend our views in a discursive setting where they will be probed intensively**.39 In ordinary mass-political settings, there is no such incentive for paying attention. It is perfectly true that citizens’ juries are ‘special’ in all those ways. But if being special in all those ways makes for a better – more ‘reflective’, more ‘deliberative’ – political process, then those are design features that we ought try to mimic as best we can in ordinary mass politics as well. There are various ways that that might be done. Briefing books might be prepared by sponsors of American presidential debates (the League of Women Voters, and such like) in consultation with the stakeholders involved. Agreed panels of experts might be questioned on prime-time television. Issues might be sequenced for debate and resolution, to avoid too much competition for people’s time and attention. Variations on the Ackerman and Fishkin (2002) proposal for a ‘deliberation day’ before every election might be generalized, with a day every few months being given over to small meetings in local schools to discuss public issues. All that is pretty visionary, perhaps. And (although it is clearly beyond the scope of the present paper to explore them in depth) there are doubtless many other more-or-less visionary ways of introducing into real-world politics analogues of the elements that induce citizens’ jurors to practice ‘democratic deliberation within’, even before the jury discussion gets underway. Here, we have to content ourselves with identifying those features that need to be replicated in real-world politics in order to achieve that goal – and with the ‘possibility theorem’ that is established by the fact that (as sketched immediately above) there is at least one possible way of doing that for each of those key features.

### 1NC The Jirga

#### Executive will circumvent the plan --- has institutional incentives and public support to expand its powers

Barron & Lederman, 8 --- \*Professor of Law at Harvard, AND \*\* Visiting Professor of Law at Georgetown

(February 2008, David J. Barron and Martin S. Lederman, Harvard Law Review, “THE COMMANDER IN CHIEF AT THE LOWEST EBB -- A CONSTITUTIONAL HISTORY,” 121 Harv. L. Rev. 941)

VII. Conclusion

Powers once claimed by the Executive are not easily relinquished. One sees from our narrative how, in a very real sense, the constitutional law of presidential power is often made through accretion. A current administration eagerly seizes upon the loose claims of its predecessors, and applies them in ways perhaps never intended or at least not foreseen or contemplated at the time they were first uttered. The unreflective notion that the "conduct of campaigns" is for the President alone to determine has slowly insinuated itself into the consciousness of the political departments (and, at times, into public debate), and has gradually been invoked in order to question all manner [\*1112] of regulations, from requirements to purchase airplanes, to limitations on deployments in advance of the outbreak of hostilities, to criminal prohibitions against the use of torture and cruel treatment. In this regard, the claims of the current Administration represent as clear an example of living constitutionalism in practice as one is likely to encounter. There is a radical disjuncture between the approach to constitutional war powers the current President has asserted and the one that prevailed at the moment of ratification and for much of our history that followed. But that dramatic deviation did not come from nowhere. Rarely does our constitutional framework admit of such sudden creations. Instead, the new claims have drawn upon those elements in prior presidential practice most favorable to them. That does not mean our constitutional tradition is foreordained to develop so as to embrace unchecked executive authority over the conduct of military campaigns. At the same time, it would be wrong to assume, as some have suggested, that the emergence of such claims will be necessarily self-defeating, inevitably inspiring a popular and legislative reaction that will leave the presidency especially weakened. In light of the unique public fears that terrorism engenders, the more substantial concern is an opposite one. It is entirely possible that the emergence of these claims of preclusive power will subtly but increasingly influence future Executives to eschew the harder work of accepting legislative constraints as legitimate and actively working to make them tolerable by building public support for modifications. The temptation to argue that the President has an obligation to protect the prerogatives of the office asserted by his or her predecessors will be great. Congress's capacity to effectively check such defiance will be comparatively weak. After all, the President can veto any effort to legislatively respond to defiant actions, and impeachment is neither an easy nor an attractive remedy.

#### Women are excluded from the decision making process- resulting in worse resolutions and not a representative dispute mechanism and Jirga decisions reproduce rape culture, Honor Killings and marginalization of women – the reprisal component of the Jirga described in their Ahmed evidence and below explains how punishments target women

Marie D. Castetter, J.D., Indiana University School of Law - Indianapolis, 2004 (expected); B.S. in Organizational Leadership, Purdue University, 2003, "TAKING LAW INTO THEIR OWN HANDS: UNOFFICIAL AND ILLEGAL SANCTIONS BY THE PAKISTANI TRIBAL COUNCILS" Lexis

I. Introduction In June 2002, a Pakistani tribal village council sentenced a woman to be gang raped in order to restore the honor of an opposing tribe. n1 It is unfathomable that such an atrocious human rights violation could be rendered as a form of punishment in a civilized country. In order to understand how something like that could happen in the twenty-first century, one only need look at the state of Pakistani law and order, or the lack thereof. n2 This Note will look at the historical effects that led up to the present-day determination that the country is in a state of lawlessness. n3 More importantly, this Note will look at the effects on the Pakistani culture and society when such inhumane punishment is ordered by the tribal justice system. An analysis will be conducted to determine what role these tribal councils play as an alternative to the official court system in resolving disputes and how some of the remedies sanctioned by the council are in conflict with the Pakistan Constitution. In addition, this Note will compare how India officially utilizes the tribal councils within their society for the purpose of illustrating how Pakistan could utilize a tribal jury system effectively and officially. Finally, this Note will analyze whether the tribal councils should be abolished or reformed. n4 [\*544] II. Incident of Gang-Rape In June 2002, a human rights atrocity occurred in the Punjab n5 province of Pakistan when a young woman from the Gujjar tribe n6 was sentenced to a gang rape in order to restore the honor of another woman from the Mastoi tribe. n7 An unofficial tribal jury, armed with machine guns, laid down the sentence in order to punish the victim's twelve-year-old brother. n8 The victim's brother was allegedly having an illicit affair with a Mastoi woman, who was from a tribe of a higher caste. n9 It was later proven that the alleged affair was simply a cover-up by the Mastoi tribe after several tribal members kidnapped, beat, and sodomized the young boy. n10 They held the boy captive until the boy's uncle requested the boy's captivity be resolved before a tribal council or what is commonly referred to as a panchayat in Pakistan. n11 Although the victim's father offered to allow the boy to marry the Mastoi woman, the Mastoi tribe rejected this offer because the boy was from a lower caste. n12 Subsequently, the panchayat decided that the aggrieved family members of the higher caste could be restored after members of the Mastoi tribe disgraced a member of the boy's family. n13 The young Gujjar woman had been at the court to seek leniency for her brother, but immediately after the ruling, four Mastoi [\*545] tribesmen dragged her to a nearby hut and repeatedly raped her. n14 While this by itself is extremely disturbing, even more appalling was the fact that the young victim, who happened to teach the Quran n15 to the Mastoi tribe's children, pleaded for mercy as several hundred villagers stood outside the hut and jeered and laughed while she was being gang-raped. n16 After the horrendous ordeal, the woman was forced to return home by walking naked through the village; under the Pakistan Penal Code, being in public in a state of undress is a crime in itself. n17 This story only became public after a local reporter heard about the atrocious act and subsequently published the story in a local newspaper. n18 Upon hearing about this ordeal, Pakistan's President, Pervez Musharraf, n19 and the Pakistani Supreme Court n20 ordered the local police to apprehend the offenders. n21 Additionally, many human rights organizations voiced their outrage at this horrible human rights violation. n22 Although the victim filed a complaint with the local police, it was not until one week later that the police arrested any suspects in the gang rape. n23 Subsequently, a member of the police force was arrested for failing to file a [\*546] report of the woman being gang-raped. n24 Local human rights activists accused the police of knowing about the tribal council meeting, but then failing to stop the attack on the woman. n25 Pakistani officials brought the suspected rapists, as well as some members of the tribal council, to trial in the Anti-Terrorism Court (ATC). n26 The ATC was created under the Anti-Terrorism Act of 1997 in order to expedite criminal trials so they are completed within thirty days. n27 Because the panchayat is not an official court and Punjab is not one of the federally recognized tribal areas subject to their own rule, the rapists could not claim that their tribal law was sovereign, and they were, therefore, immune to prosecution. n28 However, one of the accused did try to prove his innocence by claiming that the woman was given to him in marriage and therefore there was no violation of rape. n29 Ultimately, the ATC found six of the fourteen arrested guilty and sentenced them to death. n30 III. Analysis of Pakistani Law and Order It is arguable that Pakistan is not a civilized country, but rather is in a primitive state. n31 One comparison between the two terms "primitive" n32 and [\*547] civilized" n33 indicates that the former is generally where the people identify themselves by a particular blood relationship, whereas in the latter, the people define themselves in terms of relation to a given territory. n34 Typically, there are two forms of government. n35 The first form, social organization, or society, is analyzed by how the government deals with the people in their capacity as members of tribal groups. n36 The second form, political organization, is based on a territorial state whereby the government deals with the constituents as a region. n37 The rural area of Pakistan consists primarily of tribes that are organized on the basis of kinship with each tribe functioning as a simple society with tribal governments. n38 This has been equated with a primitive government. n39 This varies from a higher civilization where one would find multiple cultures living under the same authority. n40 A. Historical Aspect As a result of the partitioning of British India, n41 Pakistan was formed on August 14, 1947. n42 However, many conflicts arose between the Pakistan refugees that came from Afghanistan and India and the traditional rural tribal people who already inhabited Pakistan. n43 The typical village in Pakistan is divided into separate factions based upon kinship, ethnic, ideological, or class rationales. n44 Many of the country's punishments, such as amputation, whipping, and stoning, have been sanctioned for decades. n45 These punishments are viewed by modern societies as barbaric and uncivilized. n46 The Human Rights [\*548] Commission of Pakistan (HRCP) n47 stated that the informal justice the tribal councils provide is simply the tribe taking the law into their own hands and rendering justice in a medieval way. n48 The state of lawlessness has been present since the Islamic Republic of Pakistan was formed. n49 Ethnic, regional, or sectarian conflicts factored in the breakdown of social order in Pakistan. n50 The State's failure to manage and meet the demands of minority groups drove the tribal areas to change their focus from demanding cultural and political autonomy to seeking territorial sovereignty. n51 The majority of Pakistan people live in the rural areas as opposed to the urban cities. n52 According to the 1981 census, seventy-one percent (71%) of Pakistan's population lived in a village with fewer than 5000 inhabitants. n53 Pakistan's rural areas suffer from extremely rapid population growth. n54 The major source of this growth is the influx of refugees from Afghanistan and India. n55 Subsequently, such rapid growth played havoc on rural development plans and placed severe demands on an already inefficient local government structure. n56 The military and civilian rulers created authoritarian measures to oppress the citizens of Pakistan. n57 As a result, several decades of economic and social inequality burdened the development of a democratic regime over a heterogeneous population. n58 In 1981, while the State was under martial law, [\*549] Zia ul-Haq n59 replaced sections of the 1973 Constitution with a Provisional Constitutional Order that required the judiciary to be subordinate to the military. n60 The current federal justices were forced to take a new oath or else lose their position on the court. n61 Several judges lost their jobs because they would not accept the fact that the courts were under the military's power. n62 In 1985, Pakistan adopted the United Nations Convention on the Prevention of Crime and the Treatment of Offenders. n63 This UN Convention stated, "certain forms of crime can hamper the political, economic, social and cultural development of peoples and threaten human rights, fundamental freedoms, and peace, stability and security." n64 By adopting this Convention, Pakistan agreed to strengthen crime prevention programs and undertake a criminal justice process that is responsive to the diversity of political and economic systems as well as the ever- changing conditions of society. n65 Despite Pakistan's adoption of this Convention, it is doubtful that Pakistan has adequate programs in place to change social conditions. n66 During the early 1990s, maintaining law and order was no longer a priority in Pakistan. n67 This resulted in violence and corruption. n68 In addition, the resolution of judicial matters became increasingly difficult. n69 During this time, the Pakistani government routinely denied its human rights abuses. n70 Nevertheless, Pakistan was quick to publicize the deteriorating human rights situation in the valley of Kashmir. n71 By the early 1990s, institutional life was so underdeveloped and weakened that the tribal areas disregarded the authority of the State. n72 The basic administration of the area, such as census taking, school regulation, and taxation, had been interrupted. n73 Yet, without the interference of federal governmental administration, the tribal people were able to survive in a state [\*550] of isolation by continuing their daily struggles regardless of the power plays of the self-interested elites of the local government. n74 B. Women's Role in Society Violence against women, within their own families, is an extension of the subordination of women in the larger society, which is reinforced by religious beliefs, cultural norms, traditional practices, and actual laws in Pakistan. n75 The women of Pakistan are subjected to the social code of behavior known as purda, which requires that women be safeguarded from unauthorized persons. n76 When a woman is allowed outdoors, she must be covered completely except for the upper part of her face; and she also must be chaperoned by a male family member. n77 This social custom scars the women in Pakistan because they develop a deep-seated fear of any interaction with men. n78 In Pakistan and some other Muslim countries, there is a unique category of criminal conduct committed by women known as "crimes of honor." n79 Honor is a very important aspect of Pakistani culture whereby a man's honor resides in the actions of the women of his family. n80 These crimes include adultery, freely choosing a marriage partner without the father's permission, or seeking a divorce. n81 This practice has been deeply rooted in tribal societies for decades. n82 The woman holds all of the honor for the family and the social order depends upon her maintaining this honor. n83 In addition, the woman's honor or shame strongly affects the general standing of the tribe within the [\*551] community. n84 To ensure that the women do not dishonor their families and tribes, women are restricted in their activities, limited in their mobility, and allowed very limited contact with the opposite sex. n85 In addition to the common occurrence of gang rape, many women have been killed for a violation of honor. n86 Unfortunately for tribal women, the community socially and morally sanctions such "honor killings." n87 Further hindering the system is the fact that the State does not generally condemn these activities nor take action against the murderers. n88 Nevertheless, in 2000 the government declared that there is nothing honorable in this form of murder and that the practice, carried over from ancient tribal customs, is anti-Islamic. n89 The fact that women are treated less favorably than men is in conflict with the Quran, n90 which says that men and women should be treated equally. n91 Furthermore, the Quran reminds men that women have the same status as human beings that men enjoy. n92 However, the Quran's teachings are in direct conflict with tribal culture, where daughters are often not particularly welcome at birth. n93 Recent studies referred to rape as an act of deliberate communal humiliation in this region. n94 Rape is so rampant in Pakistan that every two hours a woman is raped. n95 Statistics also report that in Punjab, a woman is gang-raped every four days. n96 However, even with these high rates of occurrence, rape is seldom reported for fear of retaliation. n97 Even the victim [\*552] of the gang rape discussed did not register a complaint with the local police force until eight days later. n98 In addition to rape, honor killings frequently occur in Pakistan. n99 The killings are on the rise because the murderers in honor killings are rarely punished. n100 Furthermore, as the women in Pakistan gain knowledge of their rights and begin to assert them, the rate of honor killings also increases. n101 C. National Identity The lack of a national identity has a causal connection with Pakistan's state of lawlessness. n102 Within the territorial boundaries, there are several ethnic and tribal areas that maintain their own autonomy. n103 Therefore, Pakistan has a hodgepodge of governing laws gathered from old British laws, Islam laws, state and tribal laws. n104 In the rural areas where transportation and communication is poor, the tribes are independent and the villages tend to be isolated even from neighboring tribes. n105 When the tribes live by the law of their own tribe without the social interaction from other tribes, the traditional social customs dominate their life. n106 The notion of national identity or loyalty has little value to the Pakistani citizens. n107 Ethnic, regional, caste, and family loyalties factor more in society than the national loyalty. n108 An individual's loyalties are defined in terms of family, local leaders, clan or tribe, and caste. n109 The people of Pakistan have always remained distant from the political system and they have been unable to understand a Constitutional theory or relate to the idea of a consensual plurality or national identity. n110 On the contrary, the citizens have continued to follow the local tribal leaders whom they trust. n111 [\*553] Without a national identity, Pakistan has created a weak and shaky political and social structure. n112 As a result, society has disintegrated into a collection of individual and tribes where the lawlessness further reinforces the tribal loyalties. n113 The tribes live and socialize amongst themselves and are only concerned with the political and economic benefits for themselves. n114 D. Caste Systems A caste system exists in Pakistan to distinguish the different levels of society. n115 The structure of society in the provinces of Pakistan are caste-ridden and tribal-feudal, n116 with the upper castes having large holdings of land while the lower castes consist of peasants who are treated as slaves. n117 The caste's levels are based upon the specialized occupations that one holds. n118 Ideally, the multi-level caste systems are self- sufficient in providing the community with the needed goods and services thereby alienating them from other tribal interaction. n119 The landed-elite were favored during the pre-Pakistan days when Britain ruled the region whereby an exchange was made for the British to meet the wants and needs of the Punjab tribal landlords who reciprocated by maintaining the law and order in the rural areas. n120 With agriculture being the main industry in Pakistan's economy, landlords are prominent figures in society because they wield both political and economic power to either grant favors or render sanctions against others. n121 When Pakistan was formed, the State's independence did not change this social and cultural atmosphere. n122 Although the lower castes are guaranteed equal rights through the Constitution, it is clear they are being denied economic and political [\*554] privileges. n123 Furthermore, the landlords defied the courts and provincial law by holding illegal tribal jirgas to settle feuds, award fines, and even sentence people to the death penalty. n124 Similar to the discrimination that the women in these tribal regions endure, the lower castes are also subjected to discrimination. n125 The higher caste members generally are segregated from the lower castes and typically cannot share food with the lower castes nor can they marry someone from the lower castes. n126 Furthermore, the inequality in the distribution of income adversely affects crime prevention and criminal justice systems. n127 The wealthy and influential citizens benefit from the police protection, while the less fortunate victims and witnesses end up facing retaliation for reporting the offense. n128 Consequently, there is a miscarriage of justice when there is a failure to convict the guilty among the rich and powerful higher castes; while the lower castes are wrongfully convicted. n129 Some citizens petitioned the courts to look into the wrongdoings of the police, but even the court ordered inquiries result in very few trials and so far no convictions have been obtained against any police officers. n130 E. Economic Effect Unfortunately, Pakistan has not maintained the economic growth that its neighboring countries have sustained. n131 Countries without the law and order [\*555] problems that plague Pakistan, generally benefit from having economic stability and economic growth. n132 Because of its state of lawlessness, Pakistan has suffered the effects of the industrialists fleeing the region. n133 Also, Pakistan is somewhat disadvantaged where foreign investment is concerned. n134 Economists believe that foreign investment is closely related to domestic investment. n135 Many of the more advantaged members of society are merely concerned with their wants and needs. n136 As a result, foreign investors do not build business relationships with the local entrepreneurs. n137 Many of the impoverished are in the rural areas where they are plagued with problems. n138 The Pakistan government has not made sufficient efforts to provide any social services to the tribal people. n139 Thus, even though millions are being spent on nuclear warfare, most of society remains in poverty. n140 The amount of funding that is allocated for criminal justice administration is extremely inadequate. n141 Nonetheless, it is reported that Pakistan spends seventy percent (70%) of its budget on defense-related projects. n142 Additionally, the Pakistani economy ultimately is disadvantaged because they have excluded women from the social and political process. n143 Modern economic advisers see the need for women to participate in the economic sector in order to promote development of the country. n144 Unfortunately, the traditional cultural norm is that women should not be allowed out of the house, much less employed. n145 [\*556] IV. Role of Tribal Councils In some rural areas of Pakistan, a tribal judiciary forum traditionally deals with crimes of dignity and punishes the offenders outside of Pakistani law. n146 Their role is to bring reconciliation between the conflicting parties, based upon evidence and arguments presented. n147 During this process, the respected elder members of the jirga are consulted frequently. n148 Similar to the Western tort law system, the tribal council's focus is on reconciliation and conflict resolution; however, it is not focused on punishment. n149 Also, tribal law is not necessarily aimed at finding out the truth. n150 In the federal court system, often the individual takes an oath, and then fearing that the truth will come out and he will consequently lose the case, he proceeds to lie in his testimony. n151 In contrast, the panchayat system allows the individual to give a true account because there is trust among the locals as opposed to the federal justices who are mistrusted. n152 With regard to reconciliation, the panchayat system has the objective of ending the hostility peacefully. n153 In a trial court, the hostility remains after the verdict and sentence are imposed. n154 The jirgas often resolve land conflicts between two warring factions, water disputes, inheritance disputes, honor breaches, and internal and external tribal killings. n155 Many cases have been reported where the jirgas have sentenced the tribes to pay for crimes its members have committed such as kidnapping or theft. n156 Some wrongful death claims have also been settled before a jirga. n157 The tribal juries have been known to impose cruel and degrading punishments; and although they rarely impose the death penalty, they have rendered the death sentence in some honor cases. n158 [\*557] It appears that the tribal council form of justice increased in the past few years. n159 The HRCP n160 filed a report in 2001 with three full pages dedicated to a discussion of jirga rule. n161 There also are regular adjudication days that are widely known and attended by many individuals. n162 Generally, the State has been supportive toward the actions of the tribal councils. n163 When actions have violated human rights or caused severe physical harm, the council members have not been prosecuted by the State. n164 However, after the gang-rape incident, the government urged the local police to investigate and arrest those that violated the law. n165 Many human rights organizations and others would like to see these tribal councils eliminated. n166 It is clear that the jirgas affect the human rights of the citizens. n167 However, the State appears to acquiesce to these frequent practices. n168 Although the Pakistan Constitution outlaws the panchayats, Pakistan is ultimately responsible for their actions. n169 The government has failed to use due diligence to prevent the abuses and provide adequate justice to the victims. n170 The councils consist of non-elected bureaucrats who usually come from the prominent landholding class. n171 Many tribal leaders are actually parliamentary members themselves or have family links with the government administration. n172 However, there is no specialized training provided to the tribal councils who are making judgments. n173 [\*558] Some courts refer civil disputes to the tribal councils. n174 Although state officials avoid recognizing the tribal justice system as a legitimate judiciary, the officials ask for advice on how to handle complicated cases. n175 However, those proceedings related to criminal actions, including murder, assault, and land trespasses, are to be tried by the constitutional court system. n176 Yet, in the tribal regions, the government has little or no authority over citizens, rendering the federal court system somewhat useless. n177 Primarily, laws enforced in the tribal courts have been handed down from one generation to the next. n178 Rural tribal villages have persisted effectively for centuries without laws but have maintained a code of informal standards of social conduct. n179 Furthermore, the informal set of codes that the tribes follow may have a more powerful hold on behavior of its members than the State's formal laws. n180 The tribal code has been enforced through the conscience of the tribal members and also by the tribal councils sanctions such as ostracision. n181 Typically, the social pressure from the tribal community requires that the verdicts be carried out. n182 The tribal jury may consult with tribal elders or schoolteachers when determining decisions. n183 These advisers or counselors feel honored when consulted and their opinions are respected and highly valued. n184 The proceedings continue through a mediation-type process until a compromise is met. n185 There is no appellate procedure; thus, the Supreme Court cannot hear an appeal on a jirga ruling because they do not recognize the tribunal. n186 V. Conflicts with Pakistani Law Pakistan is a country with Muslim ideology as the rule of law. n187 According to some modern Muslim leaders, a country cannot be an Islamic state when there is a feeling of insecurity as a result of lawmakers breaking the [\*559] law. n188 Subsequently, the citizens fear the police, who are there to protect and enforce the law, more than fearing those that break the law. n189 The Pakistan Constitution n190 has an Equal Protection section that prohibits discrimination on account of religion, race, caste, color, or creed. n191 Although fundamental rights were given through the Pakistan Constitution, they are still subject to law. n192 Consequently, if the laws in question are in conflict with public morality or public order, it is likely that these fundamental rights will be ignored. n193 Although the panchayat involved in the gang rape of the Gujjar woman rendered the sanction, rape is a criminal offense in Pakistan. n194 However, this is not an isolated event where the panchayat has sexually harassed a party to the dispute. n195 It also has been reported that a Punjab village council ordered the wife of a man who was convicted of rape to be raped by the victim's husband. n196 The tribal community socially and morally accepted these sanctions as punishment. n197 Furthermore, the State failed to take any action against the tribal councils for their human rights violations. n198 Other violations of human rights committed by the tribal councils include the trading or killing of women as a means of retribution to settle the scores between conflicting parties, n199 and the handing over of women as a form [\*560] of settlement of a dispute. n200 In this often-repeated act, the unfortunate women are not consulted, nor do they give their consent, yet they are turned over to live in a hostile environment. n201 Disputes involving honor result in the exchange of women. n202 For purposes of compensation payments, the standard amount of compensation for the murder of a man is rs200,000 n203 while the murder of a woman is rs400,000. n204 However, when murder has occurred, the jirga generally resolves the dispute without having the local authorities involved. n205 One jirga decided that two very young girls from the murderer's side of the family would be turned over to the family of the victim. n206 Unfortunately for females, the handing over of women is considered to be the best way to cool tempers and heal the conflict by bringing the families together through marriage. n207 Before 1979, the Pakistan Penal Code n208 regulated the criminal offense of rape. n209 However, after a military coup brought General Zia n210 to power with a goal to Islamisize Pakistan, he enacted the Zina Ordinance, n211 which repealed the crime of rape under the Pakistan Penal Code. n212 The Zina Ordinance regulated sexual intercourse between two individuals who were not married, whether it was consensual or not. n213 If the intercourse was [\*561] consensual, the crime of zina n214 was committed; and if the intercourse was not consensual, the crime was zina-bil-jabr. n215 In addition, the Zina Ordinance sets forth the evidentiary standards and the punishments available for the criminal offense of rape. n216 The punishment for rape, if convicted, is the death penalty; however, there have been no executions carried out under this law. n217 Despite the punishments available for the crime of rape, it is so widespread that rape has been decriminalized. n218 Furthermore, the burden of proof in a rape claim falls upon the victim. n219 This is extremely hard to prove because the Law of Evidence provides that the testimony of a woman is equated to that of two [\*562] men. n220 In addition, claims of rape can be proven by the rapist admitting to the attack after the woman has filed a First Information Report (FIR) n221 or by having four male witnesses of good standing in the community to verify the claim. n222 Although rape is hard to prove, if successfully proven, possible punishments include death by hanging. n223

## 2NC

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#### **Subject formation is what we are trying to accomplish in debate on an everyday level, we form better subjects by attuning our ethical sensibilities to the violence of militarism – comparatively more effective than a hubristic fantasy that we can change the world**

Chandler, Professor of IR at Westminster, 13

(The World of Attachment? The Post-humanist Challenge to Freedom and Necessity, Millenium: Journal of International Studies, 41(3), 516– 534)

The world of becoming thereby is an ontologically flat world without the traditional hierarchies of existence and a more shared conception of agency. For Bennett, therefore, ‘to begin to experience the relationship between persons and other materialities more horizontally, is to take a step toward a more ecological sensibility’.78 Here there is room for human agency but this agency involves a deeper understanding of and receptivity to the world of objects and object relations. Rather than the hubristic focus on transforming the external world, the ethico-political tasks are those of work on the self to erase hubristic liberal traces of subject-centric understandings, understood to merely create the dangers of existential resentment. Work on the self is the only route to changing the world. As Connolly states: ‘To embrace without deep resentment a world of becoming is to work to “become who you are”, so that the word “become” now modifies “are” more than the other way around.’ Becoming who you are involves the ‘microtactics of the self’, and work on the self can then extend into ‘micropolitics’ of more conscious and reflective choices and decisions and lifestyle choices leading to potentially higher levels of ethical self-reflectivity and responsibility. Bennett argues that against the ‘narcissism’ of anthropomorphic understandings of domination of the external world, we need ‘some tactics for cultivating the experience of our selves as vibrant matter’. Rather than hubristically imagining that we can shape the world we live in, Bennett argues that: ‘Perhaps the ethical responsibility of an individual human now resides in one’s response to the assemblages in which one finds oneself participating. Such ethical tactics include reflecting more on our relationship to what we eat and considering the agentic powers of what we consume and enter into an assemblage with. In doing so, if ‘an image of inert matter helps animate our current practice of aggressively wasteful and planet-endangering consumption, then a materiality experienced as a lively force with agentic capacity could animate a more ecologically sustainable public’. For new materialists, the object to be changed or transformed is the human – the human mindset. By changing the way we think about the world and the way we relate to it by including broader, more non-human or inorganic matter in our considerations, we will have overcome our modernist ‘attachment disorders’ and have more ethically aware approaches to our planet. In cultivating these new ethical sensibilities, the human can be remade with a new self and a ‘new self-interest’.

### 2NC Drones Focus

#### **restrictions on drones address symptoms but don’t resolve any core problems, only the alternative can spark a critical analysis of targeted killing that solves**

al-Gharbi 13 -- fellow @ Southwest Initiative for Study of Middle East Conflicts

(Musa, al-jazeera America, the ill-considered debate about drones, http://america.aljazeera.com/opinions/2013/12/drones-uavs-counterterrorism.html)

That said, the major problem with the U.S. drone campaign is not the technologies utilized but the underlying ethos that the United States can do anything it wants in the name of national security, wherever, whenever and to whomever it pleases, without any accountability. This is a problem that transcends the use of drones. Consider the scale and audacity of the recently revealed U.S. global-surveillance programs, whose operations are also largely cloaked in secrecy and lacking in accountability, especially when paired with the administration’s relentless crackdown on whistle-blowers. As with the drone attacks, these tools have been deployed against Americans and at times abused, with little accountability or oversight. Like the drone campaign, the surveillance programs have shown little regard for national sovereignty. Because this psychology is so prevalent, reducing the use of drones will not solve the problem. Of late, the United States has been ramping up special-operations missions in order to decrease reliance on unmanned systems. However, insofar as these operations are planned and executed via the same calculus that animates the UAV campaigns, this change is little more than cosmetic. A telling example is the rendition of Abu Anas al-Libi, a former computer and intelligence specialist for Al-Qaeda — which occurred in conjunction with similar raids in Somalia and Afghanistan. It was a boots-on-the-ground intervention that resulted in no civilian deaths. Teams successfully captured al-Libi in Tripoli, Libya, and interrogated him, and he is now standing trial in the United States for his role in the 1998 U.S. Embassy bombings. On its face, the mission seems like a success. It could even seem like progress insofar as al-Libi is going to be subjected to the legal system rather than executed in an extrajudicial strike or detained ­indefinitely at Guantánamo Bay in Cuba. However, the same careless disregard for national sovereignty and international norms and laws persists, with all the second-order effects that entails. Libya was already on the brink of disintegration as a result of the haphazard and shortsighted NATO intervention that deposed Muammar Gaddafi without dedicating the necessary forces and resources to ensure that a stable and viable government succeeded the regime. As with the assassination of Osama bin Laden in Pakistan, the rendition of al-Libi created a major legitimacy crisis for the already weak government — in this case, pushing the country to the precipice of a civil war. These disasters are likely to persist as long as the critical discourse remains so shallow and toothless. The problem isn’t drones per se but rather how they fit into the United States’ often ill-conceived strategies. Critics have largely focused on the means of execution rather than on the acts themselves or the ends these tactics are intended to serve. Drones are a powerful symbol of the deep problems with U.S. counterterrorism and foreign policy, but in their rhetorical power, they have also misled. In the case of the popular fetish with UAVs, what has vanished is substantive debate.

#### Drone focus is a smoke-and-mirrors tactic to distract energy onto the techniques of militarism rather than the system itself

Trombly ‘12 (Dan, Associate Analyst @ Caerus Analytics, National Security/International Affairs Analyst, “The Drone War Does Not Take Place,” NOVEMBER 16, 2012, http://slouchingcolumbia.wordpress.com/2012/11/16/the-drone-war-does-not-take-place/)

I’ll try to make this a bit shorter than my usual fare on the subject, but let me be clear about something. As much as I and many others inadvertently use the term, there is no such thing as drone war. There is no nuclear war, no air war, no naval war. There isn’t really even irregular war. There’s just war.¶ There is, of course, drone warfare, just as there is nuclear warfare, aerial warfare, and naval warfare. This is verging on pedantry, but the use of language does matter. The changing conduct and character of war should not be confused with its nature, as Colin Gray strives to remind us in so many of his writings. When we believe that some aspect of warfare changes the nature of war – whether we do so to despair its ethical descent or praise its technological marvels, or to try to objectively discern some new and irreversible reality – we lose sight of a logic that by and large endures in its political and conceptual character.¶ Hence the title (with some, but not too much, apology to Baudrillard). There is no drone war, there is only the employment of drones in the various wars we fight under the misleading and conceptually noxious “War on Terror.” Why does this matter?¶ To imbue a weapons system with the political properties of the policy employing it is fallacious, and to assume its mere presence institutes new political realities relies on a denial of facts and context. This remains the case with drones. The character of wars waged with drones is different – the warfare is different – but the nature of these wars do not change, and very often this argument obscures the wider military operations occurring.¶ Long before the first drone strikes occurred in Somalia, America was very much at war there. Before their availability in that theater, the U.S. had deployed CIA and SOF assets to the region. It supported Ethiopia’s armies and it helped bankroll and coordinate proxy groups, whether they were Somali TFG units, militias, or private contractors. It bombarded select Somali targets with everything from naval guns to AC-130 gunships to conventional strike aircraft. It deployed JSOC teams to capture or kill Somalis. That at some point the U.S. acquired a new platform to conduct these strikes is not particularly relevant to the character of that war and even less to its nature.¶ We sometimes assume drones inaugurate some new type of invincibility or some transcendental transformation of war as an enterprise of risk and mutual violence. We are incorrect to do so. The war in Somalia is certainly not risk free for the people who the U.S. employs or contracts to target these drones. It is not risk free for the militias, mercenaries, or military partners which follow up on the ground. Nor is it risk free for those who support the drones. Just ask Abu Talha al-Sudani, one of the key figures behind the 1998 U.S. Embassy bombings in Kenya and Tanzania, who sent operatives to case Camp Lemonier and launch a commando raid – one which looks, in retrospect, very much like the one that crippled Marine aviation at Camp Bastion recently – that might have killed a great many U.S. personnel on a base then and now critical to American operations in the Horn of Africa and Gulf of Aden.¶ The existence of risk is an inherent product of an enemy whose will to fight we have not yet overcome. The degree of that inherent risk – whether it is negligible or great – is a product of relative military capabilities and war’s multifarious external contexts. Looked at through this lens, it’s not drones that reduce U.S. political and material risk, it’s the basic facts of the conflict. In the right context, most any kind of military technology can significantly mitigate risks. A 19th century ironclad fleet could shell the coast of a troublesome principality with basic impunity. When Dewey said, “You may fire when ready, Gridley,” at Manila Bay, according to most history and much legend he lost only one man – due to heatstroke! – while inflicting grievous casualties on his out-ranged and out-gunned Spanish foes. That some historians have suggested Dewey may have concealed a dozen casualties by fudging them in with desertions, which were in any case were a far greater problem than casualties since the Navy was still in the habit of employing foreign sailors expendable by the political standards of the day is even more telling. Yes, there are always risks and almost always casualties even in the most unfair fights, but just as U.S. policymakers wrote off Asian sailors, they write off the victims of death squads which hunt down the chippers, spotters, and informants in Pakistan or the contractors training Puntland’s anti-piracy forces. And no, not even the American spooks are untouchable, the fallen at Camp Chapman are testament to that.¶ This is hardly unique to drones or today’s covert wars. The CIA’s secret air fleet in Indochina lost men, too, and the Hmong suffered mightily for their aid to the U.S. in the Laotian civil war. The fall of Lima Site 85, by virtue or demerit of policy, resonated little with the American public but deeply marks the intelligence community and those branches of the military engaging in clandestine action. The wars we wage in Pakistan, Yemen, and Somalia are not drone wars any more than our war in Laos was an air war simply because Operation Barrel Roll’s bombers elicit more attention than the much more vulnerable prop-driven spotting aircraft or Vang Pao’s men on the ground.¶ There is a certain hubris in thinking we can limit war by limiting its most infamous weapons systems. The taboo and treaties against chemical weapons perhaps saved men (but not the Chinese at Wuhan, nor the Allied and innocents downwind of the SS John Harvey at Bari) from one of the Great War’s particular horrors, but they did nothing appreciable to check the kind of war the Great War was, or the hypersanguinary consequences of its sequel but a generation later.¶ The Predators and Reapers could have never existed, and very likely the U.S. would still be seeking ways to carry out its war against al Qaeda and its affiliates under the auspices of the AUMF in all of today’s same theaters. More might die from rifles, Tomahawks, Bofors guns or Strike Eagles’ JDAMs than remotely-launched Griffins, and the tempo of strikes would abate. But the same fundamental problems – the opaque decisions to kill, the esoteric legal justifications for doing so, the obtuse objectives these further – would all remain. Were it not for the exaggerated and almost myopic focus on “killer robots,” the U.S. public would likely pay far less attention to the victims, excesses, and contradictions. But blaming drones qua drones for these problems, or fearing their proliferation at home, makes little more sense than blaming helicopters for Vietnam, or fearing airmobile assaults when DC MPD’s MD-500s buzz over my neighborhood.¶ That concern that proliferation of a weapons system equates to proliferation of the outcomes associated with them, without regard to context, is equally misleading. Nobody in America should fear the expansion of the Chinese UAV fleet because, like the U.S. UAV fleet, it is merely going to expand their ability to do what similar aircraft were already doing. Any country with modern air defenses can make mincemeat of drone-only sorties, and for that reason China, which unlike Yemen and Pakistan would not consent to wanton U.S. bombing of its countryside, need not fear drones. For an enormous number of geographical, political, and military reasons, the U.S. ought fear the “drone war” coming home even less. Drones do not grant a country the ability to conduct the kind of wars we conduct against AQAM. The political leverage to build bases and clear airspaces, and the military and intelligence capabilities to mitigate an asymmetric countermeasure operation do. If another country gains that ability to conduct them against a smaller country, even, it is not because they lacked the ability to put weapons on planes, but because of the full tapestry of national power and military capabilities gave them such an ability.¶ It was not asymmetry in basic technical ability that made the U.S. submarine blockade of Japan so much more effective than the Axis’s attempts to do the same against America’s shores, but the total scope of the assets in the field and context of their use. It was not because of precedent or moral equivalence, or lack thereof that the Axis could bomb Britain or lose the ability to do so, but because of the cumulative effect of military capabilities and the judgments guiding them. What might expand the battlefield of a “drone war” is much the same. America’s enemies do not refrain from attacking bases in CONUS or targeting dissidents in the U.S. (not that they have not before), they wait for an opportunity and practical reason to do so, and that has very little to do with drones in particular and even less the nature of the war itself.¶ Fearing that the mere use of a weapons system determines the way in which our enemies will use it without regard to this context is not prophetic wisdom. It is quasi-Spenglerian hyperventilation that attributes the decision to use force to childlike mimesis rather than its fundamentally political purposes. Iran and Russia do not wait on drones to conduct extrajudicial targeted killings, and indeed drones would be of much less use to them in their own political contexts. Focusing on drones and the nature of targeted killings as some sort of inherent link ignores those contexts and ultimately does a disservice to understanding of wars past, present, and future, and by doing so, does little help – and possibly a great deal of harm – to understanding how to move forward.

## 1NR

### 1NR Case

#### Assassination is by definition illegal – the plan to restrict “legalized assassination” is the squo – vote neg on presumption

Philip Alston - Professor of Law, New York University School of Law – 2011, Harvard National Security Journal, ARTICLE: The CIA and Targeted Killings Beyond Borders, 2 Harv. Nat'l Sec. J. 283

Although in most circumstances targeted killings violate the right to life, in the exceptional circumstance of armed conflict, they may be legal. This is in contrast to other terms with which "targeted killing" has sometimes been interchangeably used, such as "extrajudicial execution," "summary execution," and "assassination," all of which are, by definition, illegal. n44 Consistent with the detailed analysis developed by Nils Melzer, n45 this Article adopts the following definition: a targeted killing is the intentional, premeditated, and deliberate use of lethal force, by States or their agents acting under color of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator. n46

#### The executive exercise self-restraint which is distinct from judicial or congressional restrictions that create external checks on presidential war powers authority

Fisher 12 (Louis, Scholar in Residence at The Constitution Project; served for four decades at the Library of Congress, as Senior Specialist, Congressional Research Service, “Basic Principles of the War Power,” 2012 Journal of National Security Law & Policy 5 J. Nat'l Security L. & Pol'y 319)

Article II designates the President as Commander in Chief, but that title does not carry with it an independent authority to initiate war or act free of legislative control. Article II provides that the President "shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States." Congress, not the President, does the calling. Article I grants Congress the power to provide "for calling forth the Militia to execute the laws of the Union, suppress Insurrections, and repel invasions." Presidential use of the militia depends on policy enacted by Congress. The Commander in Chief Clause is sometimes interpreted as an exclusive, plenary power of the President, free of statutory checks. It is not. Instead, it offers several protections for republican, constitutional government. Importantly, it preserves civilian supremacy over the military. The individual leading the armed forces is an elected civilian, not a general or admiral. Attorney General Edward Bates in 1861 concluded that the President is Commander in Chief not because he is "skilled in the art of war and qualified to marshal a host in the field of battle." He possesses that title for a different reason. Whatever military officer leads U.S. forces against an enemy, "he is subject to the orders of the civil magistrate, and he and his army are always "subordinate to the civil power.'" n23 Congress is an essential part of that civil power. The Framers understood that the President may "repel sudden attacks," especially when Congress is out of session and unable to assemble quickly, but the power to take defensive actions does not permit the President to initiate wars and exercise the constitutional authority of Congress. President Washington took great care in instructing his military commanders that operations against Indians were to be limited to defensive actions. n24 Any offensive action required congressional authority. He wrote in 1793: "The Constitution vests the power of declaring war with Congress; therefore no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure." n25 [\*324] In 1801, President Jefferson directed that a squadron be sent to the Mediterranean to safeguard American interests against the Barbary pirates. On December 8, he informed Congress of his actions, asking lawmakers for further guidance. He said he was "unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense ... ." It was up to Congress to authorize "measures of offense also." n26 In 1805, after conflicts developed between the United States and Spain, Jefferson issued a public statement that articulates fundamental constitutional principles: "Congress alone is constitutionally invested with the power of changing our condition from peace to war." n27 In the Smith case of 1806, a federal circuit court acknowledged that if a foreign nation invades the United States, the President has an obligation to resist with force. But there was a "manifest distinction" between going to war with a nation at peace and responding to an actual invasion: "In the former case, it is the exclusive province of congress to change a state of peace into a state of war." n28 The second value that the Founders embraced in the Commander-in-Chief Clause is accountability. Hamilton in Federalist No. 74 wrote that the direction of war "most peculiarly demands those qualities which distinguish the exercise of power by a single hand." The power of directing war and emphasizing the common strength "forms a usual and essential part in the definition of the executive authority." n29 Presidential leadership is essential but it cannot operate outside legislative control. The President is subject to the rule of law, including statutory and judicial restrictions.