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**Obama has the upper hand in the debt ceiling fight --- pol cap is key**

**Kapur, 9/9** --- TPM’s senior congressional reporter and Supreme Court correspondent

(9/9/2013, Sahil, “Is House GOP Backing Down In Debt Limit Fight?” <http://tpmdc.talkingpointsmemo.com/2013/09/house-gop-cantor-memo-debt-ceiling-cr-sequester-immigration.php>)

House **Republicans are taming members’ expectations ahead of the debt limit showdown, signaling that they may not be able to extract significant concessions from Democrats.**

**A** Friday **memo to GOP members by** Majority Leader Eric **Cantor** (R-VA) **says “the House will act to prevent a default on our obligations before” the mid-October deadline the Obama administration has established**. “House Republicans,” he says, “will demand fiscal reforms and pro-growth policies which put us on a path to balance in ten years in exchange for another increase in the debt limit.”

The language is vague — intentionally so, in order to maintain wiggle room for Republicans to avert a disastrous debt default. President Barack **Obama has vowed not to pay a ransom to ensure the U.S. can meet its obligations**.

**If and when they do cave, Republicans will be hard-pressed to show their base they got something in return for raising the debt ceiling.** In January, they got Senate Democrats to agree to pass a non-binding budget resolution. This time around, the possibilities for symbolic concessions range from a doomed Senate vote to delay or defund Obamacare or instructions to initiate the process of tax reform.

**There are a number of demands rank-and-file Republicans have urged leaders to make which could genuinely complicate the battle**, such as dollar-for-dollar spending cuts or unwinding Obamacare. Cantor’s memo mentioned neither. GOP members have also called on leadership not to bring up any debt limit bill that lacks the support of half the conference. Boehner hasn’t committed to this and Cantor didn’t mention it in his memo.

There are several reasons **Republicans will have a hard time extracting concessions. Back in January, when Obama held firm and refused to negotiate on the debt limit, Republicans folded and agreed to suspend the debt ceiling without substantial concessions** but rather symbolic ones. And due to deep divisions within the conference, House Republicans will face enormous challenges in rounding up 218 votes to pass any conceivable debt limit hike.

The party’s top priority is to cut safety-net programs like Social Security and Medicare. But there’s no internal consensus on what to cut. And Republicans, whose constituents are disproportionately older, have generally refused to vote on entitlement cuts without bipartisan cover from Democrats. In this case Democrats are highly unlikely to give it to them, which complicates their task of passing a debt limit bill.

**The Cantor memo makes it all but official that Republicans won’t seek to defund Obamacare in the fiscal battles.** The strategy, pushed by conservative activists, to withhold support for keeping the government running after Sept. 30 unless Democrats agree to defund Obamacare. Instead it vows to “hold a series of strategic votes throughout the fall to dismantle, defund, and delay Obamacare.” The memo says Republicans “will continue to pursue the strategy of systematically derailing this train wreck and replacing it with a patient-centered system.”

The GOP’s big stand in the fiscal battles will be to force Obama to accept the lower spending levels ordered by sequestration — automatic spending cuts enacted in 2011 — in a measure to keep the government funded. Here Republicans will refuse to cede and the White House has not suggested it’ll veto a bill that maintains sequester spending levels, although Obama wants to cut a deal to replace the sequester.

“In signing a CR at sequester levels,” Cantor writes, “the President would be endorsing a level of spending that wipes away all the increases he and Congressional Democrats made while they were in charge and returns us to a pre-2008 level of discretionary spending.”

**Fighting to defend his war power will sap Obama’s capital, trading off with rest of agenda**

**Kriner, 10** --- assistant professor of political science at Boston University

(Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69)

**While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives**. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60

**In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic.** Scholars have long noted that President Lyndon **Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking** the requisite funds in a war-depleted treasury and **the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away** as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, **many of** President **Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.**61

**When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies.** If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

**Political capital is finite --- the plan would tradeoff with domestic economic priorities**

**Moore, 9/10** --- Guardian's US finance and economics editor

(Heidi, 9/10/2013, “Syria: the great distraction; Obama is focused on a conflict abroad, but the fight he should be gearing up for is with Congress on America's economic security,” [http://www.theguardian.com/commentisfree/2013/sep/10/obama-syria-what-about-sequester)](http://www.theguardian.com/commentisfree/2013/sep/10/obama-syria-what-about-sequester%29))

Before President Obama speaks to the nation about Syria tonight, take a look at what this fall will look like inside America.

There are 49 million people in the country who suffered inadequate access to food in 2012, leaving the percentage of "food-insecure" Americans at about one-sixth of the US population. At the same time, Congress refused to pass food-stamp legislation this summer, pushing it off again and threatening draconian cuts.

**The country will crash into the debt ceiling in mid-October, which would be an economic disaster, especially with a government shutdown looming at the same time. These are deadlines that Congress already learned two years ago not to toy with, but memories appear to be preciously short.**

The Federal Reserve needs a new chief in three months, someone who will help the country confront its raging unemployment crisis that has left 12 million people without jobs. The president has promised to choose a warm body within the next three weeks, despite the fact that his top pick, Larry Summers, would likely spark an ugly confirmation battle – the "fight of the century," according to some – with a Congress already unwilling to do the President's bidding.

Congress was supposed to pass a farm bill this summer, but declined to do so even though the task is already two years late. As a result, the country has no farm bill, leaving agricultural subsidies up in the air, farmers uncertain about what their financial picture looks like, and a potential food crisis on the horizon.

The two main housing agencies, Fannie Mae and Freddie Mac, have been in limbo for four years and are desperately in need of reform that should start this fall, but there is scant attention to the problem.

These are the problems going unattended by the Obama administration while his aides and cabinet members have been wasting the nation's time making the rounds on television and Capitol Hill stumping for a profoundly unpopular war. The fact that all this chest-beating was for naught, and an easy solution seems on the horizon, belies the single-minded intensity that the Obama White House brought to its insistence on bombing Syria.

More than one wag has suggested, with the utmost reason, that if Obama had brought this kind of passion to domestic initiatives, the country would be in better condition right now. As it is, public policy is embarrassingly in shambles at home while the administration throws all of its resources and political capital behind a widely hated plan to get involved in a civil war overseas.

The upshot for the president may be that it's easier to wage war with a foreign power than go head-to-head with the US Congress, even as America suffers from neglect.

This is the paradox that President Obama is facing this fall, as he appears to turn his back on a number of crucial and urgent domestic initiatives in order to spend all of his meager political capital on striking Syria.

Syria does present a significant humanitarian crisis, which has been true for the past two years that the Obama administration has completely ignored the atrocities of Bashar al-Assad.

Two years is also roughly the same amount of time that key domestic initiatives have also gone ignored as Obama and Congress engage in petty battles for dominance and leave the country to run itself on a starvation diet imposed by sequestration cuts. Leon Panetta tells the story of how he tried to lobby against sequestration only to be told:

 Leon, you don't understand. The Congress is resigned to failure.

Similarly, those on Wall Street, the Federal Reserve, those working at government agencies, and voters themselves have become all too practiced at ignoring the determined incompetence of those in Washington.

**Political capital – the ability to horse-trade and win political favors from a receptive audience – is a finite resource in Washington. Pursuing misguided policies takes up time, but it also eats up credibility in asking for the next favor.** It's fair to say that **congressional Republicans**, particularly in the House, **have no love for Obama and are likely to oppose anything he supports. That's exactly the reason the White House should stop proposing policies as if it is scattering buckshot and focus with intensity on the domestic tasks it wants to accomplish, one at a time.**

The president is scheduled to speak six times this week, mostly about Syria. That includes evening news interviews, an address to the nation, and numerous other speeches. Behind the scenes, he is calling members of Congress to get them to fall into line. Secretary of State John Kerry is omnipresent, so ubiquitous on TV that it may be easier just to get him his own talk show called Syria Today.

It would be a treat to see White House aides lobbying as aggressively – and on as many talk shows – for a better food stamp bill, an end to the debt-ceiling drama, or a solution to the senseless sequestration cuts, as it is on what is clearly a useless boondoggle in Syria.

**There's no reason to believe that Congress can have an all-consuming debate about Syria and then, somehow refreshed, return to a domestic agenda** that has been as chaotic and urgent as any in recent memory. The President should have judged his options better. As it is, he should now judge his actions better.

**This will destroy the U.S. and global economy**

**Davidson, 9/10** (Adam - co-founder of NPR’s “Planet Money” 9/10/2013, “Our Debt to Society,” <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&_r=0)>)

This is the definition of a deficit, and it illustrates why the government needs to borrow money almost every day to pay its bills. Of course, all that daily borrowing adds up, and we are rapidly approaching what is called the X-Date — the day, somewhere in the next six weeks, when the government, by law, cannot borrow another penny. **Congress** has imposed a strict limit on how much debt the federal government can accumulate, but **for nearly 90 years**, it **has raised the ceiling well before it was reached**. But **since a large number of Tea Party**-aligned **Republicans entered the House** of Representatives, in 2011, **raising that debt ceiling has become a matter of fierce debate**. This summer, House **Republicans have promised**, in Speaker John Boehner’s words, **“a whale of a fight” before they raise the debt ceiling — if they even raise it at all.**

**If the debt ceiling isn’t lifted** again this fall, **some serious financial decisions will have to be made**. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, **the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster** achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, **it won’t be an isolated national crisis**. If the American government can’t stand behind the dollar, the world’s benchmark currency, **then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be**, by most accounts, **the largest self-imposed financial disaster in history**.

Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. **No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default**. And there’s certainly no record of that happening to the country that controls the global reserve currency.

Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. **If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher**, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — **which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years**.

Instead, Robert **Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious**. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, **if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.**

**While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined.** Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. **Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.**

**The U.S. benefits enormously from its status as global reserve currency and safe haven**. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If **that status erodes, the U.S. economy’s peaks will be lower and recessions deeper**; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, **no other country would benefit from America’s diminished status**. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

**Nuclear war**

**Friedberg and Schoenfeld 8**

[Aaron, Prof. Politics. And IR @ Princeton’s Woodrow Wilson School and Visiting Scholar @ Witherspoon Institute, and Gabriel, Senior Editor of Commentary and Wall Street Journal, “The Dangers of a Diminished America”, 10-28, <http://online.wsj.com/article/SB122455074012352571.html>]

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

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

* Accepting that war is inevitable even without realizing it is problematic

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

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

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

* Another impact: freeing ourselves from war = more resources for peace

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

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

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

* Democracy itself is the product of searching for peaceful solutions

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.

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#### The court will rule in favor of Bond on federalism grounds

Bettauer 13, Visiting scholar at George Washington University Law School and a former Deputy Legal Adviser at the U.S. Department of State

(Supreme Court May Consider How Broadly the “Necessary and Proper” Clause of the Constitution Authorizes Legislation to Implement Treaties, www.asil.org/insights130311.cfm)

After Carol Anne Bond discovered that her friend Myrlinda Haynes had become pregnant as a result of an affair with Bond’s husband, Bond made twenty-four attempts to poison Haynes with toxic chemicals. Twenty of these attacks were made with 10-chlorophenoxarsine and four with potassium dichromate, both of which are chemicals that can be lethal in small amounts. These attacks were carried out by placing the chemicals on Haynes’ house door knob and on Haynes’ car door handles. Haynes noticed the powders and informed the local police, but after ascertaining they were not cocaine the police did nothing. After Haynes noticed the powder on her mailbox, postal inspectors set up video surveillance and captured Bond stealing Haynes’ mail and placing powder inside Haynes’ car muffler. It was discovered that Bond, who had a degree in microbiology, had stolen chemicals from her employer.[7] A grand jury in the Eastern District of Pennsylvania charged Bond with two counts of possessing and using a chemical weapon, in violation of 18 U.S.C. § 229(a)(1), a criminal statute implementing the treaty obligations of the United States under the 1993 Chemical Weapons Convention. (The grand jury also charged Bond with two counts of mail theft, in violation of 18 U.S.C. § 1708.) The Chemical Weapons Convention is a multilateral treaty with 188 parties, including the United States, designed in part, according to its preamble, to achieve the complete and effective prohibition of the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons.[8] Article VII of the Convention requires each state party to the convention to enact penal legislation prohibiting natural and legal persons under its jurisdiction from undertaking any activity prohibited by the Convention. In accordance with this mandate, the United States enacted implementing legislation, codified in section 229 of title 18 of the U.S. Code. This section makes it unlawful for any person to possess, use or threaten to use a “chemical weapon.” Section 229F of title 18 includes in the definition of “chemical weapon” a “toxic chemical and its precursors, except where intended for a purpose not prohibited under this chapter” and lists the purposes which are not prohibited: peaceful purposes, protective purposes, unrelated military purposes and law enforcement purposes. Bond’s possession and use of the chemicals were eventually held by the Third Circuit Court of Appeals (Third Circuit Court) to fall outside all of these excepted categories.[9] Bond pleaded guilty to the charges, reserving her right to appeal, and was sentenced to six years in prison and five years of supervised release, and a fine and restitution. She appealed. Bond argued to the Third Circuit Court that the Chemical Weapons Convention was aimed at combatting rogue states and terrorist organizations and that the implementing statute, by covering ordinary domestic crime without showing a compelling federal interest, usurped the powers reserved to the states.[10] The Third Circuit Court discussed this federalism issue, noting that the issue appeared to be one of first impression for that court and that there was a significant scholarly debate over whether Missouri v. Holland had been correctly decided, but concluded “that a private party lacks standing to claim that the federal Government is impinging on state sovereignty in violation of the Tenth Amendment, absent the involvement of a state or its officers as a party or parties” and affirmed the conviction without deciding the federalism issue.[11] The Supreme Court granted Bond certiorari.[12] Bond argued that she had standing to raise her Tenth Amendment claim, asserting that “[i]n recent decades… the rampant federalization of traditional state and local crimes has upended the federal-state balance.”[13] The United States supported Bond’s position that she had standing to raise the Tenth Amendment claim, but noted that the government had explained that section 229 had been enacted under the treaty power and the necessary and proper clause and that “[i]t is well settled that, if Congress has exercised a power delegated to it in the Constitution, it is not intruding upon powers reserved to the States.”[14] The Court, in an opinion by Justice Kennedy, reversed the Third Circuit, finding that “[j]ust as it is appropriate for an individual, in a proper case, to invoke separation-of-powers or checks-and-balances constraints, so too may a litigant, in a proper case, challenge a law as enacted in contravention of constitutional principles of federalism.”[15] When the case returned to the Third Circuit, the Missouri v. Holland issue was squarely presented, and the court dealt with it extensively.[16] The appeals court found that the treaty was valid and the implementing statute rationally related: In sum, Holland teaches that, when there is a valid treaty, Congress has authority to enact implementing legislation under the Necessary and Proper Clause, even if it might otherwise lack the ability to legislate in the domain in question. (“[A]s Justice Holmes pointed out [in Holland], treaties made pursuant to [the Treaty Power] can authorize Congress to deal with “matters” with which otherwise “Congress could not deal.”) But the Third Circuit Court noted the vigorous debate on the issue of federalism and stated “[i]f there is nuance there that has escaped us, it is for the Supreme Court to elucidate.”[17] As noted in the Introduction, the Supreme Court granted certiorari for a second time in the case on January 18, 2013. In the factual paragraph leading into its statement of the two questions presented, the Court says that the Third Circuit had “grave misgivings” about its decision and characterizes the Third Circuit’s holding that Bond’s constitutional challenge “was a non-starter because the basic limits on the federal government's power are not ‘applicable’ to statutes purporting to implement a valid treaty” as a “startling result

#### The court has limited political capital to intrude on other governmental institutions – the plan’s ruling will trade off with federalism decisions

Rappaport Law San Diego ‘4

(Michael B.-, Fall, Northwestern University Law Review, “The Rehnquest Court: It’s the O’Connor Court: A Brief Discussion of Some Critiques of the Rehnquist Court and Their Implications for Administrative Law”, Lexis; Jacob)

One important element of O'Connor and Kennedy's judicial behavior is that they appear especially concerned with protecting the Court's political capital. Consequently, these Justices would be unlikely to reach too many decisions that would lead to significant attacks on the Court.

Many of the decisions that have been criticized for excessive judicial supremacy are actually better understood as reflecting an undue concern with the Court's political capital. For example, Larry Kramer portrays United States v. Dickerson, which held unconstitutional a congressional statute that conflicted with Miranda v. Arizona, as reflecting a judicially supremacist view that took umbrage at, and refused to defer to, a constitutional interpretation by Congress. 46 In my view, however, Dickerson is better understood as deriving from the Court's unwillingness to be seen as overruling Miranda. Miranda arguably is the most famous decision in all of constitutional law. Citizens who know little else about constitutional law know from television and movies about "the right to remain silent." If the Rehnquist Court had overruled Miranda, it would have not only been criticized by elite opinion but also taken a highly visible action to eliminate "a constitutional right." As a result, Dickerson could have been used to suggest that the Court was demolishing the people's liberties generally. In this situation, the most politically sensitive "conservative" Justices - O'Connor, Kennedy, and Rehnquist - bolted.

A similar analysis applies to Planned Parenthood v. Casey, where the joint opinion of Justices O'Connor, Kennedy, and Souter refused to overrule Roe v. Wade. 47 Kramer again views this case as involving undue judicial supremacy because the joint opinion was concerned about the appearance created to its independence and credibility if it were to "overrule under fire ... a watershed decision." 48 While I certainly do not want to defend the joint opinion on legal grounds, I see no reason to doubt that it was motivated by its stated fear for the political capital of the Court rather than disrespect for the public's constitutional views. Had the Court overruled Roe v. Wade, it was likely to have been subjected to a vehement attack by the political elite as well as by large numbers of ordinary citizens. These attacks could have charged not only that the Court had mistakenly eliminated a constitutional right, but that it had responded to political pressure. [\*378] It was much safer for the Court to approve the precedent while suggesting that the decision was wrong as an original matter. 49

Finally, the Court's federalism decisions can also be understood as an element of Justice O'Connor and Kennedy's political sensitivity. 50 While the five federalism Justices clearly seek to enforce constitutional federalism, the Court has not struck down any politically important legislation that might provoke the political branches to strongly attack it. Justices O'Connor and Kennedy have also adopted narrow positions regarding federalism, both in separate concurrences and in their votes. 51 It would seem that Justices O'Connor and Kennedy are wary of doing anything that would provoke the strong reactions that occurred during the New Deal.

#### Ruling in favor of Bond is key to federalism

Connelly et al. 2013 - Constitutional attorney and the Executive Director of the United States Justice Foundation (May 15, Michael, Herbert W. Titus, Robert J. Olson, William J. Olson, John S. Miles, Jeremiah L. Morgan, “BRIEF AMICUS CURIAE OF U.S. CONGRESSMAN STEVE STOCKMAN, GUN OWNERS FDN., GUN OWNERS OF AMERICA,CITIZENS UNITED’S AMERICAN SOVEREIGNTY ACTION PROJECT, U.S. JUSTICE FDN., THE LINCOLN INSTITUTE, INSTITUTE ON THE CONSTITUTION, THE ABRAHAM LINCOLN FDN., DOWNSIZE DCFDN., DOWNSIZEDC.ORG, POLICY ANALYSIS CENTER,CONSERVATIVE LEGAL DEF. AND ED. FUND, AND TENTH AMENDMENT CENTER IN SUPPORT OF PETITIONER” <http://www.lawandfreedom.com/site/constitutional/BondII_Amicus.pdf>)

There is no more fundamental provision in the United States Constitution than the Tenth Amendment in the Bill of Rights. As this Court unanimously concluded in Bond v. United States25: The principles of limited national powers and state sovereignty are intertwined. While neither originates in the Tenth Amendment, both are expressed by it. Impermissible interference with state sovereignty is not within the enumerated powers of the National Government ... and action that exceeds the National Government’s enumerated powers undermines the sovereign interests of States. [Bond III, 131 S. Ct. at 2366.] Feeling bound by Missouri v. Holland’s crabbed view of the Tenth Amendment, the court below departed from this high view of the Tenth Amendment’s protective reach. However, the Holland court neglected the Amendment’s history and original purpose. See Bond II, 681 F.3d at 156. As noted above, Joseph Story warned against an expansive interpretation of the treaty power that could “annihilate” other authorities, “chang[ing] the organization of government [or] overturn[ing] its republican form.” See Story’s Commentaries at 339. Confidently, Story contended that any such treaty would be found “void; because it would destroy, what [the constitution] was designed ... to fulfill, the will of the people.” Id. St. George Tucker likewise worried that, because “there is no[] restriction as to the subjects of treaties,” there were only two constitutional guarantees that protected the States, the one securing to the states “a republican form of government” and the other securing the States’ authority to selfprotection against invasions. Tucker’s View at 269. In sum, both Story and Tucker cautioned that the treaty power not be read in a way that, in Tucker’s words, would “dismember[] the federal republic.” Id. But that is precisely what the court below seems to have decided in its reliance on Justice Holmes’s opinion in Holland, ruling that, while there is “[n]o doubt the great body of private relations usually fall within the control of the State ... a treaty may override its power.” Holland, 252 U.S. at 434. At the heart of the constitutional guarantee of a republican form of government to every state is the principle that the laws are to be enacted by the representatives of the people of each State. See W. Rawle, A View of the Constitution of the United States, reprinted in 4 The Founders’ Constitution, Item 13, pp. 571-72 (Kurland, P. & Lerner, R., eds.: Univ. Chi. Press: 1987). In turn, the Tenth Amendment reserves to the States powers not delegated to the federal government. Traditionally, the powers reserved to the States are commonly known as the police powers, including public safety, health, and welfare. Under the guise of implementing the Convention against the use of toxic chemicals in warfare among nations, Congress has enacted section 229, utilizing such broad language that it invades the States’ sovereign police powers. If allowed to stand, it will introduce a wholly new chapter of the transfer of power from the States to the federal government via the treaty power, in a world that is increasingly trending toward the internationalization of human rights, imposing upon states “obligation[s] to protect ... civil and political rights or economic, social and cultural rights.” See T. Buergenthal, D. Shelton, & D. Stewart, International Human Rights in a Nutshell, p. 27 (4th ed. 2009). In this contemporary drive for increasingly transnational enforcement of universal norms is the “widespread international political acceptance of the proposition that democracy is a precondition for the effective protection of human rights.” Id. at 26. At stake, then, in the setting of constitutional parameters to the treaty power is whether the American federal republic, in which powers are divided between a national and several State governments, will survive, or whether the treaty power will be used to “annihilate” our system of checks and balances that otherwise would stand in the way of a national democracy unlimited by independent and sovereign States. The overriding design and purpose of the Tenth Amendment is to secure America’s federal structure so as to better secure and preserve “individual liberty.” See Bond III, 131 S. Ct. at 2364. The Amendment does that by ensuring that “the enactment of positive law [is left] to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power.” Id. To that end, the treaty power must be made subordinate to the Tenth Amendment, first because it is a power that can be exercised unchecked by the House, which is the legislative branch of the national government closest to the people. Second, the treaty can be misused as a vehicle to transfer the power reserved to the people and to the States to international bodies, disenfranchising the people of the several States and imposing upon the people of the States a totally foreign political or moral standard.

#### Iraqis look to US federalism as a model

Davis 2008 - professor of political science at Rutgers (Summer, Eric, “The Puzzle of Federalism in Iraq” <http://www.merip.org/mer/mer247/puzzle-federalism-iraq>)

Other indicators of what one might call the “return of nationalism” are to be found in polling data. In a March 2007 poll, 94 percent of respondents (and 78 percent of Kurds) stated that “separation of people along sectarian lines” is “a bad thing for Iraq.” Since then, support for a strong federal system—and a strong central state (and democracy)—has grown, indicating that the idea of a weak confederated Iraq with a number of large autonomous regions is losing ground. Thus we need to distinguish between a federal model more like the United States and a loosely integrated confederated state such as the United Arab Emirates. Clearly, the former rather than the latter model seems to have captured the imagination of the majority of Iraqis. Indeed, the outpouring of nationalist sentiment in July 2007 when Iraq’s soccer team won the Asia Cup was striking because it included all sectors of Iraqi society. Significantly, the KRG threatened Kurds who did not immediately lower Iraqi flags with seven years’ imprisonment. If Kurdish nationalism was so enshrined in Iraq’s Kurdish provinces, one wonders why the need for the KRG’s drastic response.

#### Iraqi instability will spill over to a civil war – federalism is key

Hassan 2013 (May 22, Hassan, “Federalism could help ease Iraq's dangerous pressures” <http://www.thenational.ae/thenationalconversation/comment/federalism-could-help-ease-iraqs-dangerous-pressures>)

That is why it is interesting to observe that the idea of decentralisation is, for the first time, being pushed by Iraq's Sunnis, who are a majority in all Muslim countries except Iran and Iraq. Interest in federalism is not new in Iraq. It has been growing almost since the prime minister, Nouri Al Maliki, assumed the position of interior minister in 2010, as his attempt to centralise power grew more pronounced. Since then, he has marginalised Sunni-majority areas, politically and economically. What is new, however, is that federalism offers a solution to a problem that is now more urgent than ever. Decentralised governance appears to be the only way to avoid an inevitable return to the sectarian abyss, one likely to be even more deadly than the events of 2006. Iraq's current crisis, with ominous bombings targeting both Sunni and Shia areas, is essentially caused by the stagnant political system, not by Mr Al Maliki, who has a popular base that cannot be ignored. The power-sharing system set in motion (or in stone, as it turned out) by the 2005 constitution has led to economic and political paralysis, leaving Sunni Iraqis feeling that they are disenfranchised, second-class citizens. Sunnis feel that the state failed to protect them and that the central government is and always will be controlled by sectarian parties that oppress or marginalise them. It is only a matter of time before Sunni-majority areas explode. In the current political order, the idea of coexistence is an illusion, plain and simple. Deep Sunni resentment of the central government is shown by the fact that extremist forces are side by side with pro-change protesters and tribal notables who once fought them alongside the central government.

#### Global nuclear war

Morgan 7 (Former member of the British Labour Party Executive Committee, 3/4, "Better another Taliban Afghanistan, than a Taliban NUCLEAR Pakistan!?" http://www.electricarticles.com/display.aspx?id=639)

The nightmare that is now Iraq would take on gothic proportions across the continent. The prophesy of an arc of civil war over Lebanon, Palestine and Iraq would spread to south Asia, stretching from Pakistan to Palestine, through Afghanistan into Iraq and up to the Mediterranean coast. Undoubtedly, this would also spill over into India both with regards to the Muslim community and Kashmir. Border clashes, terrorist attacks, sectarian pogroms and insurgency would break out. A new war, and possibly nuclear war, between Pakistan and India could not be ruled out. Atomic Al Qaeda Should Pakistan break down completely, a Taliban-style government with strong Al Qaeda influence is a real possibility. Such deep chaos would, of course, open a “Pandora's box” for the region and the world. With the possibility of unstable clerical and military fundamentalist elements being in control of the Pakistan nuclear arsenal, not only their use against India, but Israel becomes a possibility, as well as the acquisition of nuclear and other deadly weapons secrets by Al Qaeda. Invading Pakistan would not be an option for America. Therefore a nuclear war would now again become a real strategic possibility. This would bring a shift in the tectonic plates of global relations. It could usher in a new Cold War with China and Russia pitted against the US.

### 1NC

#### The executive branch of the United States federal government should issue an executive order that creates a statutory cause of action for damages for those unlawfully injured by targeted killing operations or their heirs that overrides the state secrets and official immunity doctrine and replaces them with carefully considered procedures for balancing the security concerns. The order should also

#### publish clear guidelines for targeting to be carried out by nonpoliticians and make assassination truly a last resort,

#### stipulate that an outside court review the evidence before placing Americans on a kill list

#### release the legal briefs upon which the targeted killing was based

#### The executive should also sign directive that consolidates lead executive authority for planning and conducting nonbattlefield targeted killings under the Department of Defense.

#### Obama himself decides drone targeting --- publishing guidelines creates transparency

[--- Court should only review if Americans are placed on a kill list]

NYT, 12 (Editorial, 5/30/2012, “Too Much Power for a President,” <http://www.nytimes.com/2012/05/31/opinion/too-much-power-for-a-president.html?_r=0)>)

It has been clear for years that the Obama administration believes the shadow war on terrorism gives it the power to choose targets for assassination, including Americans, without any oversight. On Tuesday, The New York Times revealed who was actually making the final decision on the biggest killings and drone strikes: President Obama himself. And that is very troubling.

Mr. Obama has demonstrated that he can be thoughtful and farsighted, but, like all occupants of the Oval Office, he is a politician, subject to the pressures of re-election. No one in that position should be able to unilaterally order the killing of American citizens or foreigners located far from a battlefield — depriving Americans of their due-process rights — without the consent of someone outside his political inner circle.

How can the world know whether the targets chosen by this president or his successors are truly dangerous terrorists and not just people with the wrong associations? (It is clear, for instance, that many of those rounded up after the Sept. 11, 2001, attacks weren’t terrorists.) How can the world know whether this president or a successor truly pursued all methods short of assassination, or instead — to avoid a political charge of weakness — built up a tough-sounding list of kills?

It is too easy to say that this is a natural power of a commander in chief. The United States cannot be in a perpetual war on terror that allows lethal force against anyone, anywhere, for any perceived threat. That power is too great, and too easily abused, as those who lived through the George W. Bush administration will remember.

Mr. Obama, who campaigned against some of those abuses in 2008, should remember. But the Times article, written by Jo Becker and Scott Shane, depicts him as personally choosing every target, approving every major drone strike in Yemen and Somalia and the riskiest ones in Pakistan, assisted only by his own aides and a group of national security operatives. Mr. Obama relies primarily on his counterterrorism adviser, John Brennan.

To his credit, Mr. Obama believes he should take moral responsibility for these decisions, and he has read the just-war theories of Augustine and Thomas Aquinas.

The Times article points out, however, that the Defense Department is currently killing suspects in Yemen without knowing their names, using criteria that have never been made public. The administration is counting all military-age males killed by drone fire as combatants without knowing that for certain, assuming they are up to no good if they are in the area. That has allowed Mr. Brennan to claim an extraordinarily low civilian death rate that smells more of expediency than morality.

In a recent speech, Mr. Brennan said the administration chooses only those who pose a real threat, not simply because they are members of Al Qaeda, and prefers to capture suspects alive. Those assurances are hardly binding, and even under Mr. Obama, scores of suspects have been killed but only one taken into American custody. The precedents now being set will be carried on by successors who may have far lower standards. Without written guidelines, they can be freely reinterpreted.

A unilateral campaign of death is untenable. To provide real assurance, President Obama should publish clear guidelines for targeting to be carried out by nonpoliticians, making assassination truly a last resort, and allow an outside court to review the evidence before placing Americans on a kill list. And it should release the legal briefs upon which the targeted killing was based.

### Warfighting 1NC – Courts

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

McCormack 13, Professor of Law at Utah

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

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

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

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

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

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

#### This is particularly true with the plan because…..

#### Drones are key to warfighting – they are the future of combat

Bruntstetter 12, Political Science Professor at UC Irvine

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

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

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

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

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

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

## Democratic Deliberation

#### The courts are deferring on war powers now – never take action against elected government

Devins 2010 - Professor of Law and Professor of Government, College of William & Mary (February, Neal, “Symposium: Presidential Power In Historical Perspective: Reflections on Calabresi and Yoo's the Unitary Executive: Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants” 12 U. Pa. J. Const. L. 491, Lexis)

From 1952 (when the Supreme Court slapped down President Truman's war-time seizure of the steel mills) n108 until 2004 (when the Court reasserted itself in the first wave of enemy combatant cases), the judiciary largely steered clear of war powers disputes. n109 In part, the Court deferred to presidential desires and expertise. The President sees the "rights of governance in the foreign affairs and war powers areas" as core executive powers. n110 Correspondingly, the President has strong incentives to expand his war-making prerogatives. n111 For its part, the Court has limited expertise in this area, and, as such, is extremely reluctant to stake out positions that may pose significant national security risks. n112 The Court, moreover, is extremely reluctant to risk elected branch opprobrium. Lacking the powers of purse and sword, the Court cannot ignore the risks of elected branch non-acquiescence. n113

Against this backdrop, the Court's repudiation of the Bush administration's enemy combatant initiative appears a dramatic break from past practice. Academic and newspaper commentary back up this claim - with these decisions being labeled "stunning" (Harold [\*513] Koh), n114 "unprecedented" (John Yoo), n115 "breathtaking" (Charles Krauthammer), n116 "astounding" (Neal Katyal), n117 "sweeping and categorical" (New York Times), n118 and "historic" (Washington Post and Wall Street Journal). n119 Upon closer inspection, however, the Court's decisions are anything but a dramatic break from past practice. Part I detailed how Court rulings tracked larger social and political forces. In this Part, I will show how the Court risked neither the nation's security nor elected branch non-acquiescence. n120 The Court's initial rulings placed few meaningful checks on the executive; over time, the Court - reflecting increasing public disapproval of the President - imposed additional constraints but never issued a ruling that was out-of-sync with elected government preferences. Separate and apart from reflecting growing public and elected government disapproval of Bush administration policies, the Court had strong incentives to intervene in these cases. The Bush administration had challenged the Court's authority to play any role in national security matters. n121 This frontal assault on judicial power prompted the Court to stand up for its authority to "say what the law is." In Part III, I will talk about the Court's interest in protecting its turf - especially in cases implicating individual rights.

#### Intervening in presidential powers during wartime decks court capital – gives a perception of siding with the enemy

Cole 2011 - Professor, Georgetown University Law Center (Winter, David, “WHERE LIBERTY LIES: CIVIL SOCIETY AND INDIVIDUAL RIGHTS AFTER 9/11,” 57 Wayne L. Rev. 1203, Lexis)

Indeed, a court concerned about conserving its own institutional power might be more likely to defer during times of crisis. One cannot be certain how the public will respond to a decision. Ruling for "the enemy" during wartime could be a risky proposition. A court primarily concerned about maintaining its institutional capital might therefore make the strategic choice to defer in times of crisis so as to avoid showdowns that could undermine its legitimacy, thereby preserving its power for ordinary [\*1252] times. n273 Accordingly, it is not obvious that the Supreme Court's own institutional interests in times of crisis push it in the direction of intervention, rather than deference or avoidance.

### Util/Consequences 1NC

#### Failing to prevent a horrible outcome is just as bad as causing it – the aff is moral evasion

Nielsen – philosophy prof, Calgary - 93

Kai Nielsen, Professor of Philosophy, University of Calgary, Absolutism and Its Consequentialist Critics, ed. Joram Graf Haber, 1993, p. 170-2

Forget the levity of the example and consider the case of the innocent fat man. If there really is no other way of unsticking our fat man and if plainly, without blasting him out, everyone in the cave will drown, then, innocent or not, he should be blasted out. This indeed overrides the principle that the innocent should never be deliberately killed, but it does not reveal a callousness toward life, for the people involved are caught in a desperate situation in which, if such extreme action is not taken, many lives will be lost and far greater misery will obtain. Moreover, the people who do such a horrible thing or acquiesce in the doing of it are not likely to be rendered more callous about human life and human suffering as a result. Its occurrence will haunt them for the rest of their lives and is as likely as not to make them more rather than less morally sensitive. It is not even correct to say that such a desperate act shows a lack of respect for persons. We are not treating the fat man merely as a means. The fat man's person‑his interests and rights are not ignored. Killing him is something which is undertaken with the greatest reluctance. It is only when it is quite certain that there is no other way to save the lives of the others that such a violent course of action is justifiably undertaken. Alan Donagan, arguing rather as Anscombe argues, maintains that "to use any innocent man ill for the sake of some public good is directly to degrade him to being a mere means" and to do this is of course to violate a principle essential to morality, that is, that human beings should never merely be treated as means but should be treated as ends in themselves (as persons worthy of respect)." But, as my above remarks show, it need not be the case, and in the above situation it is not the case, that in killing such an innocent man we are treating him merely as a means. The action is universalizable, all alternative actions which would save his life are duly considered, the blasting out is done only as a last and desperate resort with the minimum of harshness and indifference to his suffering and the like. It indeed sounds ironical to talk this way, given what is done to him. But if such a terrible situation were to arise, there would always be more or less humane ways of going about one's grim task. And in acting in the more humane ways toward the fat man, as we do what we must do and would have done to ourselves were the roles reversed, we show a respect for his person. In so treating the fat man‑not just to further the public good but to prevent the certain death of a whole group of people (that is to prevent an even greater evil than his being killed in this way)‑the claims of justice are not overriden either, for each individual involved, if he is reasonably correct, should realize that if he were so stuck rather than the fat man, he should in such situations be blasted out. Thus, there is no question of being unfair. Surely we must choose between evils here, but is there anything more reasonable, more morally appropriate, than choosing the lesser evil when doing or allowing some evil cannot be avoided? That is, where there is no avoiding both and where our actions can determine whether a greater or lesser evil obtains, should we not plainly always opt for the lesser evil? And is it not obviously a greater evil that all those other innocent people should suffer and die than that the fat man should suffer and die? Blowing up the fat man is indeed monstrous. But letting him remain stuck while the whole group drowns is still more monstrous. The consequentialist is on strong moral ground here, and, if his reflective moral convictions do not square either with certain unrehearsed or with certain reflective particular moral convictions of human beings, so much the worse for such commonsense moral convictions. One could even usefully and relevantly adapt herethough for a quite different purpose‑an argument of Donagan's. Consequentialism of the kind I have been arguing for provides so persuasive "a theoretical basis for common morality that when it contradicts some moral intuition, it is natural to suspect that intuition, not theory, is corrupt."" Given the comprehensiveness, plausibility, and overall rationality of consequentialism, it is not unreasonable to override even a deeply felt moral conviction if it does not square with such a theory, though, if it made no sense or overrode the bulk of or even a great many of our considered moral convictions, that would be another matter indeed. Anticonsequentialists often point to the inhumanity of people who will sanction such killing of the innocent, but cannot the compliment be returned by speaking of the even greater inhumanity, conjoined with evasiveness, of those who will allow even more death and far greater misery and then excuse themselves on the ground that they did not intend the death and misery but merely forbore to prevent it? In such a context, such reasoning and such forbearing to prevent seems to me to constitute a moral evasion. I say it is evasive because rather than steeling himself to do what in normal circumstances would be a horrible and vile act but in this circumstance is a harsh moral necessity, he allows, when he has the power to prevent it, a situation which is still many times worse. He tries to keep his `moral purity' and avoid `dirty hands' at the price of utter moral failure and what Kierkegaard called `double‑mindedness.' It is understandable that people should act in this morally evasive way but this does not make it right.

#### Voting neg doesn’t necessitate absolute utilitarianism – there is a high threshold past which we should compromise morals to avoid catastrophic consequences

## TK

**Drone court fails – can’t consider all legal factors in time.**

**Groves 13**, Senior Research Fellow @ Heritage Foundation

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

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

**Federal courts fail – no jurisdiction, kills SOP, and no due process.**

**Robertson 13**, ex-judge for District Court of D.C.

(James Robertson, “Judges shouldn’t decide about drone strikes”, Washington Post, 2/15/13, http://articles.washingtonpost.com/2013-02-15/opinions/37117878\_1\_drone-strikes-justice-department-white-paper-federal-courts)

In the wake of the recent confirmation hearing on John Brennan’s nomination as CIA director, and the probably related “leak” of a Justice Department white paper on targeted killings, **some politicians, pundits and professors have suggested that “kill lists,” drone strikes and targeting protocols be submitted for “independent judicial review”** — essentially, **that federal judges ought to be assigned the task of monitoring, mediating and approving** the killer instincts of our government. **This is a very bad idea**.¶ **U.S. judges have been hard-wired against rendering “advisory opinions”** since 1793, when the first chief justice, John Jay, declined to answer George Washington’s legal questions about the status of a British ship that had been captured by the French and brought to an American port. **To answer the president’s questions, Jay wrote, would violate “the lines of separation drawn by the Constitution between the three departments of the government.” Jay’s letter referred to Article II, Section 2 of the Constitution**, which provides that the president “may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices” — a provision, Jay wrote, that “seems to have been purposely as well as expressly united to the executive departments.”¶ **From that letter** — itself an advisory opinion — **has grown a complex but well-established and understood set of constraints on the federal courts: They are to decide only “cases” or “controversies” that are “justiciable” and “ripe” for decision. Federal courts rule on specific disputes between adversary parties. They do not make or approve policy; that job is reserved to Congress and the executive.**¶ **Nor do federal courts act ex parte** — hearing one side only — or sit in a Star Chamber, like the co-opted judges of 16th-century England. **The targets of a drone strike make no appearance before a judge; they have no notice of the charges against them; no lawyer; no chance to call witnesses or confront the evidence against them; no due process rights. Their case is necessarily considered in absentia and in secret. An American judge cannot do American justice in such a case**. If he did, his independence would be severely compromised.¶ But — say the politicians, pundits and professors — courts routinely rule on government requests for search warrants and, in the national security context, on requests for foreign intelligence surveillance. Why not requests for drone strikes? The answer is simple: **A search warrant is not a death warrant.**

**Courts fail – can’t micromanage tactical decisions.**

**Rittgers 10**, Legal Policy Analyst @ CATO

(David Rittgers, reserve judge advocate, served in Afghanistan as a special forces officer, Cato Institute, “Both Left and Right Are Wrong about Drones”, 2/25/10, http://www.cato.org/publications/commentary/both-left-right-are-wrong-about-drones)

Liberal **critics should refrain from erroneously labeling drone strikes as "nonjudicial killings." Even the most controversial drone strikes**—those that kill American citizens who have joined al Qaeda affiliates overseas—**are permissible under the laws of war. Neither Congress nor the courts should micromanage tactical decisions** such as whether the president can order soldiers to seize a particular hill or employ a certain weapon. **Referring to drone strikes as "nonjudicial" implies that the courts should be given the ability to rule out specific drone attacks. Vetting these targets for accuracy of intelligence and minimization of collateral damage is essential, and the record continues to improve on that front.**

**The FISA model fails – no oversight and secrecy compromises.**

**Opderbeck 13,** Director of Gibbons Institute of Law, Science, and Technology

(David W. Opderbeck, Professor of Law @ Seton Hall University, “Drone Courts”, Seton Hall Public Law, 8/2/13, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2305315)

Indeed, some commentators have suggested that a special¶ drone court should be established along the lines of the FISC. **The**¶ **FISC**, however, **is highly controversial because of the secrecy of its**¶ **decisions, the limitations on its scrutiny of government requests for**¶ **information, and the breadth of the permissions it has given for**¶ **government surveillance.**283¶ **FISA requires a showing of probable cause for an order**¶ **authorizing electronic surveillance, but that showing is limited to**¶ **whether “the target of the electronic surveillance is a foreign power**¶ or an agent of a foreign power.”284 As noted in Part IV.C.2., **the**¶ **purpose of the surveillance can be quite broad, since the government**¶ **need only certify that “a significant purpose of the surveillance is to**¶ **obtain foreign intelligence information**,” and that “minimization¶ procedures” will be adopted to limit disclosure of communications¶ solely between U.S. persons.285¶ The “significant purpose” language reflects a change made¶ after the September 11 attacks under the Patriot Act.286 Previously¶ the government was required to show that obtaining foreign¶ intelligence information was the purpose of the proposed¶ surveillance.287 In one of its few publicly released opinions, the FISA Court of Review held that this “significant purpose” language¶ allows information sharing between governmental intelligence and¶ criminal functions.288 It appears that **there have been additional**¶ **FISC rulings, still kept secret, which have significantly affected, and**¶ **perhaps significantly broadened, the scope of information available**¶ **to the government under FISA**.289¶ The breadth and flexibility of these requirements is borne out¶ by a review of statistics reported to Congress pursuant to FISA’s¶ reporting requirement.290 **Since 1979, the FISC has approved 33,731**¶ **FISA Orders and has denied only 12, which is less than 1% of those**¶ **approved**.291 During that same period, 26 applications for FISA¶ Orders were withdrawn by the government and 497 were modified¶ at the FISC’s request, just over 1% of the total approved.292 The¶ following chart shows this data over time: **Because the FISC is a secret court, it is impossible to know**¶ **the contents of the orders reflected in these statistics.** Perhaps the¶ overwhelming majority of proposed Orders are approved because¶ the requests are narrow and specific. Based on recent leaked¶ information, however, this does not appear to be the case. On June¶ 5, 2013, a U.K. newspaper reported that the Obama Administration¶ had obtained a FISA Order requiring the telecommunications¶ company Verizon to supply all of its call detail records on a daily¶ basis to the National Security Administration.294 This was followed¶ by the revelation of a top-secret program called “Prism” that¶ allegedly permits the government to tap directly into user data from¶ Google, Microsoft, Yahoo, Facebook, and other sites.295 These¶ revelations produced a press firestorm that resulted in a rare public defense of the FISA program and the FISC by President Obama.296¶ **The problems with the FISC show why the FISC is at best a**¶ **lukewarm model for a “drone court.” It does not appear that the**¶ **FISC has provided the sort of oversight that we ordinarily expect of**¶ **independent judicial review**. **There does not seem to be any**¶ **procedure for an adversarial hearing before the FISC**.297 **Neither the**¶ **FISC’s nor the FISA Court of Review’s opinions are published,**¶ **except in very rare and opaque circumstances, even with respect to**¶ **rulings on broad legal issues**. Although two published FISA Court¶ of Review opinions suggest that ISPs and amici may participate in¶ some appeals, it is unclear how or when this might happen.298 At¶ least from the information available to the public, **the FISC appears**¶ **to function as a “rubber stamp” for surveillance requests.**

# 2NC

## 1NC

#### Institutional integrity is key to implementation and legitimacy overall – courts get unpopular when they have to take a side in exec/legislative disagreements

DiPaulo 2010 – assistant professor of constitutional law at Middle Tennessee State(Amanda, “Zones of Twilight, Wartime Presidential Powers and Federal Court Decision Making” Lexington Books, Google Books)

Institutional integrity is important for the courts because if the courts have the force of the federal government behind them, the courts will also have the people and "[a]pproval of the Court within the mass public leads to better implementation of its decisions, reduces chances that the other branches will limit or reverse those decisions, and deters action by the legislature and executive against the Court itself (Baum. 2006: 63). The Judiciary is concerned, therefore, with "making sure the Court remains a credible force in American politics" (Epstein and Knight. 1998; 46). While the Judiciary is looked to for settling societal disputes, both legal and political, when it comes to the war powers, the courts are careful not to jeopardize its institutional integrity that it could lose if it makes a ruling that the elected branches of government found unacceptable for the defense of the nation. Instead of having the legitimacy of the Judiciary or the Constitution called into question, the courts create a principled approach to judicial decision making that places the onus on the elected branches to justify the curtailment of liberties and at the same time creates less jeopardy of individual liberties being limited in times of peace based on decisions made during times of armed conflict. In other words, agreement by the elected branches of government during armed hostilities does not necessarily create legitimacy, but rather protects it. Legal reasoning matters because no matter what the issue and how the federal courts go about making its war-powers decisions, the effort is constant with the courts looking for agreement between Congress and the Executive and the Constitution is protected.

#### Intervening in war powers destroys the judiciary’s prestige

McGinnis 1993 - Assistant Professor, Benjamin N. Cardozo School of Law (John O., “CONSTITUTIONAL REVIEW BY THE EXECUTIVE IN FOREIGN AFFAIRS AND WAR POWERS: A CONSEQUENCE OF RATIONAL CHOICE IN THE SEPARATION OF POWERS,” LAW AND CONTEMPORARY PROBLEMS Vol. 56: No. 4)

The interest the executive branch has in emphasizing the justification for military action premised on the president's authority to protect life and property is threefold: First, there is substantial historical precedent for unilateral executive action in this regard," and historical practice can become the focal point of an accommodation in much the same way that constitutional text can provide a focal point particularly when the text itself is silent or ambiguous on an issue." Second, given the widespread dispersion of U.S. citizens and property around the world, this justification will be available for a wide variety of actions; it could be invoked in instances as diverse as Grenada, Panama, and the protection of shipping in the Persian Gulf. Third and most importantly, the protection of U.S. lives and property offers a justification that the judiciary would be particularly wary of challenging. If the judiciary intervened, the prospect of specific lives at stake might well offer the executive a rationale for ignoring its order with the resulting incalculable harm to the judiciary's prestige. On the other hand, if the executive were to obey the order and lives were lost as a result, the judiciary's reputation would also be damaged. Thus, in emphasizing its obligation to protect U.S. lives and property, the executive branch not only asserts its authority but emphasizes the risks of judicial intervention to enforce the sixty-day cut-off.

#### Judicial unilateralism in wartime hurts credibility and civil liberties

Rosen 2006 - professor of law at The George Washington University and the legal affairs editor of The New Republic (June, Jeffery, “Most Democratic Branch : How the Courts Serve America” Oxford University Press, 9780195174434, ebook)

The heavy-handed performance of some judges during the Civil War provides the clearest illustration that judicial unilateralism in wartime may lead to political backlashes that hurt judicial power and civil liberties at the same time. The most aggressively unilateralist decisions involved the attempt by judges to challenge Lincoln’s suspension of the writ of habeas corpus, which allows suspects to challenge the legality of their detention. After the secretary of war, William Seward, suspended the writ at Lincoln’s direction, thousands of citizens were arrested and detained without a judicial hearing. The great constitutional question was whether Lincoln had usurped Congress’s authority by suspending habeas corpus on his own, without seeking congressional approval.

#### Evidentiary standards mean trials and habeas hearings will always go against the detainees—means they can’t solve

Ajuha and Tutt 12 [Fall, 2012, Jasmeet K. Ahuja and Andrew Tutt “Evidentiary Rules Governing Guantanamo Habeas Petitions: Their Effects and Consequences”, 31 Yale L. & Pol'y Rev. 185]

Beginning in 2001, the United States began transporting hundreds of persons captured overseas in the "War on Terror" to the U.S. Naval Base at Guantanamo Bay, Cuba. n1 They were kept at Guantanamo specifically to insulate from judicial review the military's decision to detain them. n2 Seven years later, the Supreme Court in Boumediene v. Bush granted Guantanamo detainees the right to petition for the writ of habeas corpus in the Court of Appeals for the D.C. Circuit. n3 The Court held that detainees must have "a meaningful opportunity to demonstrate that [they are] being held pursuant to the erroneous application or interpretation of relevant law." n4 The Court's central concern was with the habeas court's power to admit and consider relevant exculpatory evidence, a power necessary "for the writ of habeas corpus, or its substitute, to function." n5 But while the Court's central preoccupation was with a habeas court's power to independently review the evidence, the Court did not enumerate any specific procedural requirements. The Court - hesitant to place burdens on the military and cognizant of the need to protect classified information - sketched only the broad outlines of what the Constitution requires. n6 In so doing, it left "the extent of the showing required of the Government in these cases ... a matter to be determined" n7 and charged the district courts with the task of balancing the government's legitimate interests against each detainee's right to have a court assess the lawfulness of his detention. n8 [\*187] Since Boumediene, the courts within the D.C. Circuit have heard over sixty habeas petitions from detainees at Guantanamo Bay. n9 At first, many writs were granted. The lower courts applied a functional framework for determining the admissibility, credibility, and probity of evidence, holding the government to the ordinary burden of preponderance of the evidence. n10 However, as the government and detainees began to appeal habeas decisions on the basis of adverse evidentiary rulings, the Court of Appeals announced binding evidentiary rules limiting the district courts' discretion to admit, exclude, weigh, and consider evidence as the district courts saw fit. n11 This Note argues that these evidentiary rules deny detainees a "meaningful opportunity" to contest the factual basis of their detention. n12 The D.C. Circuit maintains that it holds the government to a preponderance standard n13 and has cast its reversals of the District Court's grants of habeas corpus as mere corrections in judging evidentiary probity. n14 However, in substance, the Court of Appeals' evidentiary rules have quietly but significantly eroded the evidentiary burden. [\*188] The way in which the evidentiary standard and the evidentiary rules interact to weaken Boumediene has, for the most part, escaped scrutiny. n15 Many have praised the D.C. Circuit for striking an appropriate balance between the needs of national security and the rights of those wrongfully detained. n16 But this underestimates the combined significance of the D.C. Circuit's evidentiary rulings. Boumediene's central purpose was to withhold from the executive branch the unchecked power to detain whomever it deems a threat. n17 Yet the D.C. Circuit's evidentiary rules have empowered the government to detain upon so little evidence that the habeas hearing no longer serves the checking role the Boumediene Court intended. n18 The D.C. Circuit has tacitly reduced the amount and quality of evidence necessary to establish the lawfulness of detention through three powerful mechanisms: (1) all but eliminating corroboration requirements and restrictions on the admissibility of hearsay evidence, no matter how unreliable; n19 (2) establishing that courts consider the evidence in the "whole record" when determining whether a petitioner meets the requirements for detention - a determination that often reduces to the Court of Appeals' deciding that the District Court [\*189] wrongly refused to credit sufficient government evidence; n20 and (3) developing irrefutable presumptions of detainability in which a single fact once established - such as a stay at an al-Qaeda affiliated guesthouse - is dispositive on the question of detention, even when other facts in the record point strongly in the opposite direction. n21

### 1NC Bagram

#### Al Maqaleh leaves massive detention authority independent of the aff—Obama will just ship detainees to Afghanistan

Vladeck 12 [10/01/12, Professor Stephen I. Vladeck of the Washington College of Law at American University, “Detention Policies: What Role for Judicial Review?”, <http://www.abajournal.com/magazine/article/detention_policies_what_role_for_judicial_review/>)]

The short chapter that follows aims to take Judge Brown’s suggestion seriously. As I explain, although Judge Brown is clearly correct that judicial review has affected the size of the detainee populations within the territorial United States and at Guantanamo, it does not even remotely follow that the jurisprudence of the past decade has precipitated a shift away from detention and toward targeted killings. To the contrary, the jurisprudence of Judge Brown’s own court has simultaneously (1) left the government with far greater detention authority than might otherwise be apparent where noncitizens outside the United States are concerned; and (2) for better or worse, added a semblance of legitimacy to a regime that had previously and repeatedly been decried as lawless. And in cases where judicial review prompted the government to release those against whom it had insufficient evidence, the effects of such review can only be seen as salutary. Thus, at the end of a decade where not a single U.S. military detainee was freed by order of a federal judge, it is more than a little ironic for Judge Brown to identify “take no prisoners” as Boumediene’s true legacy. The role of judicial review in the three post-9/11 military detention cases in which the detainees were held within the territorial United States is impossible to overstate. Despite the Bush administration’s initial position that the detention of “enemy combatants” posed a nonjusticiable political question, the federal courts (and the Supreme Court, in particular) were emphatic in suggesting that such detentions were subject to judicial review, even as they divided over the merits in each of the three cases. Thus, in the case of Yasser Esam Hamdi, the federal government argued to the Supreme Court that “some evidence” was sufficient to justify the long-term detention of U.S. citizens captured on the battlefield. Although the court agreed that the government had the authority to detain individuals like Hamdi, it disagreed as to the evidentiary burden, with a 6-1 majority concluding that a more rigorous evidentiary burden was necessary. Rather than attempting to provide such evidence on remand, the government quickly entered into an agreement with Hamdi wherein he agreed to relinquish his citizenship in exchange for his release and transfer to Saudi Arabia. In the case of Jose Padilla, although the Supreme Court initially threw out Padilla’s habeas petition in 2004 on the ground that he had filed in the wrong district court, the opinions in the contemporaneous Padilla and Hamdi decisions left the distinct impression that, on the merits, five justices would have rejected the argument that the 2001 Authorization for the Use of Military Force authorized the detention of U.S. citizens arrested within the territorial United States. Padilla refiled in the proper venue, only to have the government moot the case on the eve of Supreme Court review by indicting him on criminal charges and transferring him to civilian custody. As Fourth Circuit Judge J. Michael Luttig observed, the timing of the government’s conduct gave rise “to at least an appearance that the purpose of these actions may be to avoid consideration of our decision [upholding Padilla’s detention] by the Supreme Court.” Nevertheless, and over three dissents, the court denied certiorari. That pattern repeated itself in the case of Ali al-Marri (the one noncitizen subjected to military detention within the territorial United States), with the Obama administration mooting the merits of his detention after the Supreme Court granted certiorari by indicting him on criminal charges and transferring him to civilian custody. Thus, in all three cases, the specter of future judicial review—in the district court in Hamdi and in the Supreme Court in Padilla and al-Marri—directly led to a change in policy, and there have been no additional stateside military detention cases since. At least based on the public record, one can only make an inferential case that this pattern was repeated with regard to Guantanamo, but the circumstantial evidence is fairly compelling. Although 779 noncitizens were at one time detained as “enemy combatants” at Guantanamo, the detainee population dropped from 597 at the time of the Supreme Court’s Rasul decision in 2004 to 269 at the time Boumediene was decided, and from that number to the 171 men detained there today. And although none of the 600 detainees who have been released from Guantanamo were directly freed by a judicial order, it stands to reason that the sharp uptick in the rate of transfers out of Guantanamo (along with the virtual cessation of transfers in) after June 2004 was a direct reaction to, and result of, the court’s decision in Rasul v. Bush, which held that the federal habeas statute extended to Guantanamo. Moreover, in the four years since Boumediene, there have been at least 11 distinct district court decisions granting habeas relief that the government declined to appeal on the merits. Not all of the detainees at issue in those cases have been released, but those that were certainly weren’t hurt by the judicial proceedings on their behalf. Inasmuch as the detainee litigation appears to have exerted hydraulic pressure on the executive branch to reduce the detainee population at Guantanamo, it has arguably also invested the detentions in the cases that remain with at least a modicum of legitimacy—at least for those detainees who have not been cleared for release. After all, the government now is able to argue that the detainees still at Guantanamo have received the exact judicial review called for by the Constitution; the fact that the courts have denied relief in many of those cases only underscores the validity of that aspect of the U.S. detention regime in the short term (and perhaps in the long term as well). Far less data exists to evaluate the relationship between judicial review and the number of detainees held by the United States in Afghanistan. Here, though, the data is less important than the case law. Notwithstanding Boumediene, the D.C. Circuit held in al-Maqaleh v. Gates that noncitizens detained in Afghanistan, even if they are not citizens of or arrested in Afghanistan, are not entitled to pursue habeas relief in the U.S. federal courts. In so holding, the appeals court specifically rejected the detainees’ argument that judicial review must be available lest the government deliberately choose to send new detainees to Afghanistan to escape judicial oversight: “The notion that the United States deliberately confined the detainees in the theater of war rather than at, for example, Guantanamo, is not only unsupported by the evidence, it is not supported by reason. To have made such a deliberate decision to ‘turn off the Constitution’ would have required the military commanders or other executive officials making the situs determination to … predict the Boumediene decision long before it came down. Because Maqaleh means that judicial review will not extend to Afghanistan absent a showing of deliberate manipulation on the government’s part (and perhaps not even then), the conclusion appears manifest that Boumediene’s holding is limited to Guantanamo, and that the government in fact does not face the prospect of judicial review in future cases involving the detention of noncitizens elsewhere outside the territorial United States. As such, Judge Brown’s suggestion in Latif that Boumediene has chilled (and will chill) future military detentions of terrorism suspects necessarily fails to persuade. At least for noncitizens picked up outside the territorial United States, Maqaleh preserves substantial flexibility on the government’s part and leaves judicial review as an unlikely proposition, at best. But there’s another aspect to the jurisprudence of the past decade that also poses a stark contrast with Judge Brown’s reasoning: thanks to the work of Brown and her colleagues on the D.C. Circuit, even in cases in which judicial review does apply, the relevant substantive and procedural standards governing such review leave the government with sweeping authority. With regard to noncitizens outside the territorial United States, current case law requires the government to show merely by a preponderance of the evidence (i.e., that it is more likely than not) that the detainee was “part of” or “substantially supported” al-Qaida. And thanks to Latif (the very decision in which Judge Brown objected to Boumediene), intelligence reports are treated with a presumption of regularity—making it incredibly difficult as a practical matter for detainees to overcome the government’s evidence. In point of fact, there has not been a single case to date in which the D.C. Circuit either affirmed a district court’s grant of habeas relief or reversed the denial thereof. Given the government’s successful track record before Judge Brown and her colleagues, it’s that much harder to understand her claim that “the systemic cost of defending detention decisions” has dissuaded the government from doing so. If the litigation of the last few years has suggested anything with regard to the future of U.S. detainee policy, it is that the cost to the government of defending detention decisions in the D.C. Circuit is not particularly high, especially compared to the benefit that such review has provided.

### 1NC Kiyemba

#### The executive can just keep them in detention and ignore the ruling—Kiyemba proves

Milko 12

[Winter, 2012, Jennifer L. Milko, “Separation of Powers and Guantanamo Detainees: Defining the Proper Roles of the Executive and Judiciary in Habeas Cases and the Need for Supreme Guidance”, 50 Duq. L. Rev. 173]

A. Arguments for a Remedy By urging deference to the Executive Branch, the D.C. Circuit Court of Appeals has scolded the district courts that have second-guessed the political branches' determinations about release and suitable transfers. Those in favor of judicial power have argued that the denial of the right to review the Executive's decisions is allowing too much deference to that branch and severely limiting the remedies that courts have had the power to issue in the past. Though the petitioners have made several arguments for relief, the main arguments for judicial power stem from the idea that the court of appeals has been improperly applying Supreme Court precedent. Petitioners have argued that the D.C. Court of Appeals expanded the scope of Munaf too broadly as the Supreme Court noted that the decision was limited to the facts of that case. n118 In Munaf, the Court was primarily concerned about allowing the Iraqi government to have the power to punish people who had committed crimes in that territory when fashioning its holding, and the petitioners in that case had the opportunity of notice because they were told about their transfer and were able to petition the court to try and prevent it. n119 Petitioners have argued that those facts are entirely different than cases such as Mohammed and Khadr were there was concern of torture in foreign nations but no need to allow those nations to have the ability to prosecute the detainees for crimes, there was potential for torture at the hands of non-government entities, and no notice of transfer was permitted. n120 [\*190] Additionally, Petitioners have argued that the use of Munaf has impermissibly limited Boumediene by preventing courts from fashioning equitable relief for habeas petitions. n121 There has been concern that the ability to use the writ of habeas will be essentially eliminated if there is no chance for a petitioner to challenge the Executive Branch's determinations regarding safe transfers. The Boumediene Court spent considerable time discussing the history of the writ n122 and noted that the tribunals implemented in that case to determine enemy combatant status were not a sufficient replacement for the writ of habeas because they lacked, in part, the authority to issue an order of release. n123 Here, the D.C. Circuit Court of Appeals has effectively prevented the other courts from determining if there is a right not to be transferred, which has been argued to be an inadequate statement of the right of habeas. n124 Similarly, it has been argued that by accepting the Executive Branch's assurances of its efforts to release the detainees, the courts are not properly using the power of habeas corpus that has been granted to them by the Constitution. n125 By refusing to question these assertions, the courts would be unable to offer a remedy to the petitioners who have the privilege of habeas corpus. n126 The Petitioners also argued a due process right to challenge transfers as the detainees have a right to a meaningful hearing to at least have the opportunity to challenge the Government's conclusions regarding safety. n127 By refusing to second-guess the Executive, the judiciary may be losing an important check on the former's power because there is no guarantee that the Executive is ensuring safety or making the best effort to protect the unlawfully kept detainees. Without allowing courts to have the power to enjoin a transfer in order to examine these concerns, there is the potential that the detainee could be harmed at the hands of foreign terrorists. Without the ability to challenge the Executive Branch through the judicial tool of habeas corpus, there has been genuine concern that the courts are losing too much power and that their authority [\*191] is being improperly limited, as they are not utilizing their constitutional power properly.

## K

#### **Our mental relationship to war and peace is a controlling factor in the policy research that we do and the choices we make about militarism – we have a responsibility to be conscious of the way we represent war in our scholarship – their decision to represent war as a necessary but regulate-able evil solidifies militarism**

Jenkins 73 – Professor of Philosophy @ University of Alabama

[Iredell Jenkins, “The Conditions of Peace”, The Monist, Vol. 57, No. 4, Philosophy of War (OCTOBER, 1973), pp. 507-526, http://www.jstor.org/stable/27902329] Gender Edited

I shall argue in this paper that our thinking about the question of war and peace is vitiated at its source by a series of mistaken assumptions and intentions. These misconceptions pass as sound coin because they have the air of truisms: they appear to direct our inquiries along lines that are sure to be successful and are anyway the only ones available. At the same time, these errors are so basic that they distort both theory and practice from the start: they are red herrings, putting us on a false scent from which we never free ourselves because we cannot get close enough to the quarry to recognize our mistake. It is my purpose to expose these errors and point the way to their correction. Three basic mistakes have misled our thinking about war and peace. We have employed the wrong categories. We have studied the wrong data. And we have pursued the wrong goal. These errors are intimately related, with each in turn entailing the next. The categories we think in focus our attention too narrowly. The data we pore over yield distorted conclusions. The goals we are thus led to pursue are mirages that grow fainter the closer we approach them. It will be necessary to discuss these errors serially, but it must be remembered that they are in reality tightly forged links in a closed chain. 1. The controlling factor in all human undertakings is the conceptual apparatus that men [people] employ-the terms in which they think. These modes of thought largely determine the data we examine, the phenomena we are interested in, the questions we ask, and the purposes we pursue. In more homely language, this apparatus defines where we look, what we look for, and what we hope to do. And it is here, at their very first step, that our dealings with the problem of war and peace go astray. Our mistake is simple but critical: we think in terms that focus our attention on only one side of the issue, and that the more superficial and derivative side. What we do, in brief, is to treat war as an independent variable, which is to be understood in isolation from any larger context and dealt with strictly on its own terms. We appear to act on the assumption that wars are ultimate and ineradicable features of reality, so there are only two things we can do about them: delay their occurrence and make sure we win them when they occur. Seen in the light of reason, this procedure is paradoxical. The real and final object of our concern is peace. We want to establish amicable relations among people, and create a community of feeling and interests. Yet the overwhelming proportion of our thinking, talking, and acting is concerned with war. It is war, in fact and in threat, that constantly preoccupies us. So the universe of discourse in which we treat the problem of war and peace has a vocabulary that is derived entirely from only one of these elements: war. The concepts that dominate our thinking are 'nation states', 'sovereignty', 'foreign powers', 'treaties', 'alliances', 'the balance of power', 'nuclear deterrents', and other such. War so fascinates us that we are incapable of viewing it in perspective and putting it in context. So we fail to see that war is only one element in a complex set of human relationships, which can be neutralized by other and very different elements. Instead, we persist in thinking that the threat of war can be averted, and war itself 'won', only in the terms that it itself poses: namely, the appeal to force. Peace may be the object of our prayers, but war is the object of our efforts. I remarked above that there is something extremely paradoxical about this situation. But there is nothing unusual about it: this is not an isolated case, but an instance of a general type of behavior. In one context after another, we find men neglecting to pursue the good they seek and thinking only of averting the evil they fear. Many dichotomies of this sort come easily to mind: peace-war, health-illness, justice-injustice, equality-discrimination, rehabilitation-punishment. In every instance, it is the second item on which we lavish our efforts. It simply seems to be the case that in all of the contexts of life men [people] tend to take sound and satisfactory situations for granted, and to be concerned only with those that are unpleasant, threatening, or harmful. So instead of trying to preserve peace, we think only of preventing wars-or winning them. In short, we are in the odd position of not seeking the ends that we desire, but merely trying to avert or cure the outcomes we fear. Indeed, we do not even think much about these goods, and we usually define them as the absence of their opposites. So though our approach to the problem of war and peace is paradoxical, it is not anomolous. 2. Our initial mistake in dealing with the issues of war and peace is to employ the wrong categories: our thinking is done exclusively in terms of 'war' and concepts associated with it. The immediate result of this mistake is to focus our attention on a narrow and inadequate range of data. The common meaning of 'war' is a conflict between nation states, waged by armies using every weapon of force available, in which each party seeks to defeat the other (the "enemy") and reduce it to a condition of total subservience. As Clausewitz put it in his classic treatise, "War therefore is an act of violence intended to compel our opponent to fulfill our will".1 Since we think in terms of war, and this is what war means, these are the data we turn to when we seek enlightenment on the issues of war and peace: we look only at the relations between sovereign states, and then only when these states are in a condition of actual or threatened violent conflict. We thus find ourselves in the absurd position of trying to understand peace by studying war. This is like trying to understand motion by studying rest, as the ancients did, or trying to derive the character of man from the nature of God, as the mediaevalists did. We deride these latter efforts as exercises in futility. But we employ an exactly analogous procedure in our approach to peace, and we are perpetually surprised and frustrated when it does not succeed. What we are doing, in sum, is using the pathological case as a paradigm for studying the sound case. So we become expert only in the pathology of international relations. Our fascination with the phenomena of war leads us to certain conclusions that become as unshakeable as they are deceptive. We regard the sovereign state as at once a brute fact and an impenetrable mystery. We assume that there must be irreconcilable conflicts of interest among such states. Since these conflicts can be neither resolved nor arbitrated, they must eventually lead to trial by force. Given the facts that we study, these conclusions follow naturally.

### Link

#### **Militarism cannot be attacked one piece at a time – the affirmative is criticizing the hubcaps while the military jeep rolls on**

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.

#### **Restrictions cause net-more violence – laws of war legitimize longer-term actions and fragment dissent**

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(Thomas, *International Studies Quarterly* 46, The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence)

The argument advanced here is that the law of war has flourished at the cost of increased artificiality and elasticity. Law has successfully shaped norms and practices in the areas of warfare furthest from hi-tech tactics. Strides have been made, for example, in the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, and the 1997 Convention on the Prohibition of Anti-Personnel Mines. For hi-tech states, these are relatively low-cost laws. But when modern military necessity calls, the law of war has legitimized violence, not restrained it. New military technology invariably has been matched by technical virtuosity in the law. New legal interpretations, diminished ad bellum restraints, and an expansive view of military necessity are coalescing in a regime of legal warfare that licenses hi-tech states to launch wars as long as their conduct is deemed just. The new law of war burnishes hi-tech campaigns and boosts public relations, even as it undercuts customary limits on the use of force and erodes distinctions between soldiers and civilians. Modern warfare has dramatically reduced the number of direct civilian deaths, yet the law sanctions infrastructural campaigns that harm long-term public health and human rights

#### The aff's plan is a high-grade legal maneuver to create the legal cover for war - they bypass the complexities of moral choice by making the debate about who can be the best corporate warfare lawyer and find loopholes for the military to exploit

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(Thomas, *International Studies Quarterly* 46, The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence)

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, the Pentagon wields law with technical precision. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Rup- pert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shot- well, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating.¶ The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombuds- men either. The article acknowledged that the JAG faces pressure to demonstrate that he can be a “force multiplier” who can “show the tactical and political soundness of his interpretation of the law” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade the focus has shifted visibly from restraining violence to legitimizing it. The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept” ~The Guardian, 2001!.¶ Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law. As noted, humanitarian law is firmest in areas of marginal military utility. When opera- tional demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that civilian discrimination is “one of the least codified portions” of the law of war ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” muni- tions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collat- eral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack” ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!.¶ Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding antici- pated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calcu- lated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.” Legal fine print, hand-in-hand with new technology, replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. The crowning irony is that NATO went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroy- ing the country’s infrastructure.¶ Perhaps the most powerful justification was provided by law itself. War is often dressed up in patriotic abstractions—Periclean oratory, jingoistic newsreels, or heroic memorials. Bellum Americanum is cloaked in the stylized language of law. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. Most striking is the use of legal language to justify the erosion of noncombatant immunity. Hewing to the legal- isms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Har- vard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic word- play, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.”¶ The Pentagon’s legal narrative is certainly detached from the carnage on the ground, but it also oversimplifies and even actively obscures the moral choices involved in aerial bombing. Lawyers and tacticians made very deliberate decisions about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians. While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design.¶ Does the law of war reduce death and destruction? International law certainly has helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has mirrored wartime practice. On the ad bellum side, the erosion of right authority and just cause has eased the path toward war. Today, foreign offices rarely even bother with formal declara- tions of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its mem- bers have been extremely reluctant to brand states as aggressors. If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane.¶ For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war” ~Woollacott, 1999!. “We’ve come to expect the immacu- late,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “Precision-guided munitions make it very much easier to go to war than it ever has been historically.” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do” ~Belsie, 1999!.¶ Conclusion¶ The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications. The aspirations of humanitarian law are sound. Rather, it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast.¶ This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script. While the attack on the World Trade Center confirmed a thousand times over the illegality and inhu- manity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor. A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage. Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9¶ No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law. But these disputes have only underscored the ambiguities of human- itarian law. As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed.

### AT: Civil Society

#### They fragment civil society – that magnifies the impacts

Martin 90

(Brian, Uprooting War, http://uow.edu.au/arts/sts/bmartin/pubs/90uw/uw02.html; Jacob)

Focusing on the roots of war, such as political and economic inequality, suggests that war should be seen as only one of a range of social problems, and that the elimination of war must go hand in hand with elimination of other problems. In terms of strategies, this means that war should not be given undue attention compared to other social problems. Campaigns to oppose sexism, heterosexism, economic exploitation, racism, poverty, political repression, alienation and environmental degradation are also a contribution to the overall antiwar effort in as much as they are oriented to challenge and replace oppressive social structures.¶ An implication of this principle is that campaigns of different social movements should be linked at the level of strategy, and should be mutually stimulating and provide mutual learning. This already happens to some extent, for example when feminists emphasise the fostering of aggressiveness in men as a factor in war, or when antiwar activists support environmentalists opposed to nuclear power.¶ On the other hand, antiwar movements, like other social movements, often adopt strategies or demands which have little relevance to other social problems. One example is the demand for a nuclear freeze, promoted heavily in the United States in the 1980s. This demand, that the United States and Soviet governments halt new developments in or additions to their nuclear arsenals, has little immediate relevance to other social problems. This is no coincidence. The nuclear freeze campaign, which is based on influencing state elites by public pressure, has worked through existing structures rather than attempting to transform them.¶ To claim that the problem of war, or nuclear war in particular, is so pressing that it should be given priority over other issues is bad politics. It cuts the antiwar movement off from other social movements vital to opposing war-linked structures. And it often leads to strategies such as the nuclear freeze which do not address the roots of war. The aim should not be to set up hierarchies of oppression, but to link social issues and movements in theory and action.

### Alt Overview

#### **The perm maintains peperpetual wartime – creating legal limitations on war clings to the myth of distinct times of peace and not peace**

Margulies 12 (Joseph, Northwestern University, Humanities and Social Science Online, The Myth of Wartime, http://www.h-net.org/reviews/showrev.php?id=35306)

After the attacks of September 11, it became popular to describe what was thought of as the typical American response to war: the nation is thrown off course at the onset of a military emergency but gradually steers back to a peacetime norm once the threat recedes.[1] It is the great myth of deviation and redemption. It imagines a sudden and violent storm, when the Ship of State is tempest-toss’d by buffeting gales of savage hatred, until such time as the seas finally calm and the country begins the long, difficult journey back to more familiar waters. Like any national myth, this one serves an important purpose in American life. It allows Americans to comfort themselves that whatever transgressions may occur during these periods are both aberrational and temporary. Wartime is a cosmic Get Out of Jail Free card, when all is forgiven because everything has changed, which comes in handy if you go to war a lot. But like any myth, the myth of deviation and redemption suffers if we study it too closely. For one thing, it cannot account for continued forays into a repressive wilderness even after the threat has subsided. Yet what one scholar has called “the terrorism narrative” is at least as potent today as it was immediately after September 11, even though the consensus of the intelligence community is that the threat from transnational jihad in general and al Qaeda in particular, while always overblown, has now been substantially reduced.[2] Nor does the myth take into consideration the possibility that partisan pressures might nourish and sustain wartime impulses long past the point justified by any sober assessment of the risk to national security. Yet we know the Cold War lasted far longer and cut far deeper into the fabric of American life precisely because of partisan pressure, and that the same thing is taking place during the war on terror.[3] In other words, the myth requires that we suspend what we know to be true in just about every other aspect of our lives--viz., that our understanding of reality is largely constructed and that partisanship matters. These illustrations help train our thinking on the myth’s essential flaw. It imagines that wartime is a fixed and recognizable period, that it is a statement of fact rather than a state of mind. And this is indeed the widely held belief. To be sure, the courts have recognized for many years that the transition from war to peace is better imagined as a dimmer than a light switch. The issue arises now and again when someone complains that he should not be subject to this or that wartime rule because the shooting stopped a long time ago. Courts do not take kindly to these claims. The case law includes a lot of throat-clearing about “winding down,” along with the occasional observation that love and war apparently have at least this much in common: it’s usually easier to know when things start than when they end. But apart from this, people seem to think they know when the country is “at war” and when it is not. Wartime is a condition that comes round now and again. We all know when it begins, when it ends, and where it happens, or so the story goes. But for at least two generations in the United States, “wartime” has been nothing like what the myth imagines it to be, and grows less so as the seasons pass and the wars accumulate. In Wartime: An Idea, Its History, Its Consequences, the legal historian Mary Dudziak has taken a closer look at the entire conceptual category. A slim and engaging volume, wonderfully written and carefully wrought, Wartime is a fascinating meditation on the perils of clinging to a myth of national identity that increasingly bears only a glancing resemblance to modern life. Particularly since the Cold War, “wartime” has been pretty near all the time. It is, as Dudziak writes, “not an exception to normal peacetime, but an enduring condition” (p. 4). And at least since President George W. Bush launched the “war on terror,” it’s also everywhere, unbounded not only in time (since no one knows what victory over an ideology looks like) but also in space (since ideologies have a way of taking root in the darnedest places). Many writers have made a similar point and the concern that wartime initiatives will last beyond the emergency that summoned them forth is a familiar complaint. But Professor Dudziak, a professor of law, history, and political science at the University of Southern California, goes significantly beyond prior discussions by focusing our attention not on the risk of normalization, which is serious enough, but on the very idea that wartime remains an identifiable category, recognizably separate from whatever might be its opposite. The problem is not simply that we may come to accept roving wiretaps as part of the “normal” landscape of life (i.e., that we will tolerate them even when we are “at peace”), but that we will come to tolerate the idea that we are always “at war” and therefore eternally prepared to accept all manner of ostensibly exceptional measures because we cling to the myth that war is temporary and aberrational. The concern, in short, is that the myth to which we have grown so attached has outlasted its relevance to the American experience. It has decayed from myth (which has at least a passing resemblance to the truth), to fantasy (which is nothing more than truth as we would wish it). Though Professor Dudziak does not put things in precisely these terms, that is the implication of her account, and it is an exceptionally valuable insight.

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

Pankhurst 3

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

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

### AT: Consequences/Ethics Don’t Matter/Self Defense

#### **All types of violence remain unjustifiable under a consequentialist frame**

Cady 10 (Duane L., prof of phil @ hamline university, From Warism to Pacifism: A Moral Continuum, pp. 11-12)

Toward the middle of the nineteenth century, Adin Ballou, leader of the New England Non-Resistance Society, developed pragmatic pacifism to a level previously unknown. Seizing the warist’s most common justification for violence, self- defense, Ballou says, “If it be the true method, it must on the whole work well. It must preserve human life and secure mankind against injury more certainly and effectively than any other possible method. Has it done this? I do not admit it.”36 Ballou goes on to cite death tolls from history, millions slain in war, most in the name of self- defense. To preserve those lives that were preserved at such staggering cost itself renders life a thing of doubtful value to Ballou. If only a few thousand or even a few million had perished, if innocence and justice and right had always triumphed, if aggression, violence, and injustice always had been defeated, if gradually the world had come out of barbarity by these self- defensive wars into a condition of peace and justice, if self- defensive violence had deterred aggression, perhaps then we could believe that self- defensive war was justifiable. But history demonstrates that we are no better off, rather, that we are worse off for having used self- defensive violence.37 Ballou takes the consequentialist to task. When wars are taken to be justifiable and justified, they are so as means to some end. Ballou simply reminds us of what the results have been. His is not a principled pacifism that forbids violence out of respect for human rights or divine command; he simply calls on the consequentialist to examine the empirical evidence of the results of justifying violence by appeal to self- defense. Rather than propose definitive grounds for pacifism, Ballou undermines the principal justification of warism. Pacifism is defended indirectly by exposing the failure of the consequentialist justification of war.

# 1NR

### Predictions

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### The Name’s Bond

### AT Gibson

**Expanding judicial review depletes political capital**

**Kloppenberg**, Law Prof at Dayton, **01**

Playing It Safe, Pg. 43

Standing requires that the right person or entity bring a dispute to the federal courts. Article III of the Constitution provides that a federal court may hear "cases" and "controversies." The Constitution's text does not mention the pivotal justiciability doctrines such as standing\* ripeness, and mootness that the Court has created to limit federal courts' powers to hear some kinds of cases. The Framers did not specify these limits, either. **The Court**, especially in the past twenty-five years, **has augmented** these **barriers to judicial review**. Standing, in particular, now requires a plaintiff to demonstrate three elements: (1) that he or she has suffered (or immi­nently will suffer) a personalized injury (2) caused by the defendants and (3) redressable by the court. **The Court attempts to promote separation of powers by minimizing the role of federal judges—and increasing the role of the executive and legislative branches**—in developing federal law. **The Court** also **emphasizes that** standing increases **judicial efficiency**. It **affords chances for federal courts to safeguard their political capital.**5 Ad­ditionally, the Court uses standing to ensure vigorous advocacy from liti­gants to sharpen the presentation of issues to yield better decision mak­ing by federal courts. Finally, the Court says that standing advances fair­ness by making sure that the people raising claims are those truly affected by the dispute rather than bystanders.6

Legal scholars criticize the standing rules for numerous reasons. A leading expert called the standing decisions "erratic, even bizarre."7 The Court has admitted that this area of constitutional law is confused.8 Oth­ers complain that standing restricts the role of federal courts and unfairly limits the types of claims they can hear. Standing is usually considered at the outset of a case to advance efficiency and fairness, but it is viewed as so important that judges can bring it up themselves at any time.

### AT Linton

**The court operates based on political capital – a controversial decision will restrain them from making another controversial decision**

**Grosskopf**, Poli Sci Prof at Long Island, **98**

 “Do attitudes Toward Specific Supreme Court Decisions Matter? The Impact of Webster and Texas v. Johnson on Public Confidence in the Supreme Court.” Political Research Quarterly 51 no.3 633-54 S ‘98

The existence of a strong link between basic values and diffuse support does not necessarily preclude a role for specific decisions, particularly when we seek to understand how support comes to change over time (e.g., Caldeira and Gibson 1992: 658-61). We believe that **any claim that the Supreme Court is fully immune to backlash against controversial decisions can be rejected on a prima facie level.** First, consider the extreme case. Were the Supreme Court to make its occasional blockbusters-Brown v. Board oJEducation, Roe v. Wade, Texas v. Johnson, etc. -the norm by routinely ruling on the thorniest social questions, we see it as implausible that such actions would bring no cumulative impact on how people view the Court. Second, **the Supreme Court’s typical mode of operation suggests that justices themselves view institutional support as an expendable political capital** (Choper 1980). That is**, the** **Court recognizes its own political limitations, and thus justices pick their spots carefully when approaching potentially controversial cases**. From this perspective, the apparent dominance of democratic values as a determinant of institutional support (e.g., Caldeira and Gibson 1992) means not that the Court is insulated from backlash, but **that strategic justices tread cautiously so as to keep backlash to a minimum**. Consequently, how and where we examine whether public response to Supreme Court decisions affects institutional support may shape what answer we find.

**Controversial court rulings trade off – they have limited political capital**

**Sullivan**, Attorney with Bollinger Ruberry & Garvey, 99

60 Ohio St. L.J. 1103

**Political capital is a concept stemming from the idea that the Court** (or any institution of government) **can only "rock the boat" so much; it spends political capital by exercising its will in ways that flout the wishes of its co- institutions**, or which defy the will of the People as a whole. For a general discussion of the Court's extremely limited political capital in the specific context of homosexual rights, see Louis Michael Seidman, Romer's Radicalism: The Unexpected Revival of Warren Court Activism, [1996 Sup. Ct. Rev. 67, 98-99 (1996)](http://www.lexis.com/research/buttonTFLink?_m=a4ff755bc1d4a9bc415f1f669fdbf04f&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b60%20Ohio%20St.%20L.J.%201103%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=175&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1996%20Sup.%20Ct.%20Rev.%2067%2cat%2098%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=767128c8078c378706d8b0e4b4bc2140) (summarizing the criticism levied at the Court by liberal activists dissatisfied with the Court's inability to bring about real social change).

**PC predicts court decisions**

**McGinnis**, Law Prof at Cardozo, **93**

15 Cardozo L. Rev. 375

It should not escape notice that this analysis of OLC suggests that it operates, at least in part, on **the political or reputational capital model** not wholly dissimilar to that which **has been used to explain the performance of the Supreme Court**. **[219](http://www.lexis.com/research/retrieve?pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=VKWIC&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=581e98a9eda38e6a34f1e836f455aa21&newStartCite=1&crnCh=0&crnCt=ALLCASES&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAB&_md5=ea24a65139dcb61f928b65cb388e139c&focBudTerms=supreme+court+w%2F40+%28institutional+capital+or+political+capital%29+w%2F40+%28immigration+or+plenary+power%29&focBudSel=all" \l "n219" \t "_self)** While its opinions for the most part aim at objectivity and consistency, **the jurisdictional doctrines it employs** are subject to - perhaps even designed for - manipulation. **[220](http://www.lexis.com/research/retrieve?pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=VKWIC&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=581e98a9eda38e6a34f1e836f455aa21&newStartCite=1&crnCh=0&crnCt=ALLCASES&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAB&_md5=ea24a65139dcb61f928b65cb388e139c&focBudTerms=supreme+court+w%2F40+%28institutional+capital+or+political+capital%29+w%2F40+%28immigration+or+plenary+power%29&focBudSel=all" \l "n220" \t "_self)** These "passive virtues" permit OLC to **avoid entanglements that would be unwise and preserve its political capital for other decisions** that will be of more use both to the President and to its own reputation. **[221](http://www.lexis.com/research/retrieve?pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=VKWIC&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=581e98a9eda38e6a34f1e836f455aa21&newStartCite=1&crnCh=0&crnCt=ALLCASES&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAB&_md5=ea24a65139dcb61f928b65cb388e139c&focBudTerms=supreme+court+w%2F40+%28institutional+capital+or+political+capital%29+w%2F40+%28immigration+or+plenary+power%29&focBudSel=all" \l "n221" \t "_self)** Occasionally, this political capital is spent in giving the President the benefit of the doubt on a close issue that is of particular importance to him, just as occasionally the Court appears to make an unprincipled decision for the greater social good. Moreover, just as **the Court's product is** also **shaped** in part **by internal institutional considerations** **such as**, for instance, **its concern for institutional stability**, **[222](http://www.lexis.com/research/retrieve?pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=VKWIC&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=581e98a9eda38e6a34f1e836f455aa21&newStartCite=1&crnCh=0&crnCt=ALLCASES&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAB&_md5=ea24a65139dcb61f928b65cb388e139c&focBudTerms=supreme+court+w%2F40+%28institutional+capital+or+political+capital%29+w%2F40+%28immigration+or+plenary+power%29&focBudSel=all" \l "n222" \t "_self)** it is not surprising OLC's methods and products also reflect the interests and aspirations of those who work there.

**Unregulated drones good — Barnett says they’re the best check on terrorism — empirically stops terrorism**

**Confusion – congressional involvement creates murky lines of authority – undermines warfighting**

**Wall 12 – senior official @ Alston & Bird**

**(Andru,** Demystifying the Title 10-Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action, Harvard National Security Journal)

**Congress’s** failure to provide necessary interagency authorities and budget **authorizations threatens our ability to** prevent and **wage warfare. Congress’s stubborn insistence that military and intelligence activities inhabit separate worlds** **casts a pall of illegitimacy over interagency support, as well as unconventional and cyber warfare.** The U.S. military and intelligence agencies work together more closely than perhaps at any time in American history, yet **Congressional oversight and statutory authorities** sadly **remain mired in an obsolete paradigm.** After ten years of war, Congress still has not adopted critical recommendations made by the 9/11 Commission regarding congressional oversight of intelligence activities. **Congress’s stovepiped oversight sows confusion over statutory authorities and causes Executive Branch attorneys to waste countless hours distinguishing** distinct lines of **authority and funding. Our military and intelligence operatives work tirelessly to coordinate, synchronize, and integrate their efforts; they deserve** interagency authorities and **Congressional oversight that encourages and supports such integration.**

**4) Perception– Congressional interference sends the signal to our enemies that we don’t have the political will for warfighting**

**Newton 12 – prof of law @ Vanderbilt**

(Michael, CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL. 45, Inadvertent Implications of the War Powers Resolution)

The corollary to this modern reality, and the second of three inadvertent implications of the Resolution, is that **our enemies now focus on American political will as the Achilles heel of our vast capabilities**. Prior to the War Powers Resolution, President Eisenhower understood that it was necessary to “seek the cooperation of the Congress. Only with that can we give the reassurance needed to deter aggression.”62 President Clinton understood the importance of clear communication with the Congress and the American people in order to sustain the political legitimacy that is a vital element of modern military operations. Justifying his bombing of targets in Sudan, he argued that the “risks from inaction, to America and the world, would be far greater than action, for that would embolden our enemies, leaving their ability and their willingness to strike us intact.”63 In his letter to Congress “consistent with the War Powers Resolution,” the president reported that the strikes “were a necessary and proportionate response to the imminent threat of further terrorist attacks against U.S. personnel and facilities” and “were intended to prevent and deter additional attacks by a clearly identified terrorist threat.”64 The following day, in a radio address to the nation, the president explained his decision to take military action, stating, “Our goals were to disrupt bin Laden’s terrorist network and destroy elements of its infrastructure in Afghanistan and Sudan. And our goal was to destroy, in Sudan, the factory with which bin Laden’s network is associated, which was producing an ingredient essential for nerve gas.”65 Citing “compelling evidence that the bin Laden network was poised to strike at us again” and was seeking to acquire chemical weapons, the president declared that we simply could not ignore the threat posed, and hence ordered the strikes.66 Similarly, President Clinton understood that intervention in Bosnia could not be successful absent some national consensus, which had been slow to form during the long Bosnian civil war.67 Secretary of State George Schultz provided perhaps the most poignant and pointed example of this truism in his testimony to Congress regarding the deployment of US Marines into Lebanon to separate the warring factions in 1982. On September 21, 1983, he testified before the Senate Foreign Relations Committee and provided a chilling premonition of the bombing that would come only one month later and kill 241 Americans, which was the bloodiest day in the Marine Corps since the battle of Iwo Jima.68 Seeking to bolster legislative support and to better explain the strategic objectives, he explained that: It is not the mission of our marines or of the [Multinational Force in Lebanon] as a whole to maintain the military balance in Lebanon by themselves. Nevertheless, their presence remains one crucial pillar of the structure of stability. They are an important deterrent, a symbol of the international backing behind the legitimate Government of Lebanon, and an important weight in the scales. To remove the marines would put both the Government and what we are trying to achieve in jeopardy. This is why our domestic controversy over the war powers has been so disturbing. **Uncertainty about the American commitment can only weaken our effectiveness. Doubts about our staying power** can only **cause political aggressors to discount our presence or to intensify their attacks in hopes of hastening our departure.** An accommodation between the President and Congress to resolve this dispute will help dispel those doubts about our staying power and strengthen our political hand.69 Following the spectacularly successful terrorist attack on the Marine barracks in Beirut, President Reagan withdrew the Marines. Osama bin Laden later cited this as an example of American weakness that could not withstand the jihadist fury he sought.70 The legal battles over the scope and effect of the War Powers Resolution have highlighted the focus on national political will as the fulcrum of successful military operations by requiring assurances that military operations are limited in nature, duration, and scope, and therefore well within the president’s constitutional authority as Commander-in-Chief and chief executive. President Obama’s report to Congress in the context of the Libya operations in 2011 cited precedent from air strikes in Bosnia that took just over two weeks and involved more than 2,300 US sorties and the deployment of US forces in Somalia in 1992 and Haiti in 1993.71 The White House released a memorandum from the OLC, similar to previous interventions, explaining how the authorization to use such force was constitutional on the basis that “‘war’ within the meaning of the [Constitution’s] Declaration of War Clause” does not encompass all military engagements, but only those that are “prolonged and substantial . . . typically involving exposure of U.S. military personnel to significant risk over a substantial period.”72 President Obama consistently maintained that the US role in Libya was limited, unlikely to expose any US persons to attack (especially given the role of missiles and drones and the utter inability of Qaddafi’s forces to strike back with conventional means), and likely to end expeditiously.73 By that logic, it did not require authorization from Congress. The administration ultimately adopted a legal analysis that the US military’s activities fell short of “hostilities,” and thus, the president needed no permission from Congress to continue the mission after the expiration of the sixty-day reporting window specified in the War Powers Resolution.74 The president’s reasoning rested on previous OLC opinions that what counts as war depends on “a fact- specific assessment of the ‘anticipated nature, scope, and duration’ of the planned military operations.”75 Present justifications for bypassing the War Powers Resolution hinge on interpretations that it requires “prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period.”76 The OLC engaged in similar reasoning in the Bosnia intervention in 1995, explaining that in deciding whether the proposed deployment into Bosnia amounted to a “‘war’ in the constitutional sense, considerable weight was given to the consensual nature and protective purposes of the operation.”77 That deployment was similarly intended to be a limited mission but that mission, in contrast to the present one, was in support of an agreement that the warring parties had reached and it was at the invitation of the parties that led to the belief that little or no resistance to the deployment would occur. Though some scholars argued that the Libya OLC Memorandum defended its reasoning for why the operation did not amount to “war,” it did not address whether the administration believed that it will have to stop operations upon expiration of the sixty-ninety-day clock under the War Powers Resolution.78 The deadline passed with little fanfare. The memorandum also relied upon quite distinguishable precedent to serve as a guiding point in this intervention. Professor Goldsmith argued the opinion broke “new ground . . . in its extension of the ‘no war’ precedents beyond the Bosnia and Haiti situations—which involved consensual peacekeeping-like introductions of ground troops but no significant uses of force—to cover two weeks of non-consensual aerial bombardments.”79 Thus, even as it incentivizes short term, limited deployments, **the War Powers Resolution embeds an inevitable constitutional collision between the coordinate branches.** **Our enemies can rely upon constitutional carping from Congress, and in fact can adapt tactics and statements that seek to undermine political will in the US Congress and among the American people from the first days of an operation. The Resolution helps to ensure that such debates over the national political will take center stage sooner rather than later, and an asymmetric enemy can in theory erode our political will even before it solidifies.**