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#### 2. Presidential authority stems from the constitution or statutory delegation.

Gaziano, 2001 (Todd, senior fellow in Legal Studies and Director of the Center for Legal Judicial Studies at the Heritage Foundation, 5 Texas Review of Law & Politics 267, Spring, lexis)

Although President Washington's Thanksgiving Proclamation was hortatory, other proclamations or orders that communicate presidential decisions may be legally binding. n31 Ultimately the authority for all presidential orders or directives must come from either the Constitution or from statutory delegations. n32 The source of authority (constitutional versus statutory) carries important implications for the extent to which that authority may be legitimately exercised or circumscribed. Regardless of the source of substantive power, however, the authority to use written directives in the exercise of that power need not be set forth in express terms in the Constitution or federal statutes. As is explained further below, the authority to issue directives may be express, implied, or inherent in the substantive power granted to the President. n33 The Constitution expressly mentions certain functions that are to be performed by the President. Congress has augmented the President's power by delegating additional authority within these areas of responsibility. The following are among the more important grants of authority under which the President may issue at least some directives in the exercise of his constitutional and statutorily delegated powers: Commander in Chief, Head of State, Chief Law Enforcement Officer, and Head of the Executive Branch.

#### **3.** Executive has authority to exclude women

Barry 13 (Ben Barry, Senior Fellow for Land Warfare at the IISS, 03 Apr 2013, “Women in Combat,” Survival vol. 55 no. 2 April–May 2013 pp. 19, summon //nimo)

On 14 January US Secretary of Defense Leon Panetta and Chairman of¶ the Joint Chiefs of Staff General Martin Dempsey announced that ‘we are¶ eliminating the direct ground combat exclusion rule for women and we¶ are moving forward with a plan to eliminate all unnecessary gender-based¶ barriers to service’.‘ This triggered media speculation that all barriers to¶ women serving in the US military would quickly be lifted. But much of the¶ reporting on the policy shift was over-simplistic. Panetta and Dempsey's¶ announcement is more conditional and nuanced than is often described.¶ And it allows the Pentagon to decide to continue to exclude women from¶ some combat roles. There is a real possibility that this may happen — espe-¶ cially for US Army and Marine Corps infantry.

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#### 4. Lack of state authority means endless war among factions

Woodward 99 Dr. Susan L. Woodward, Senior Fellow at the Brookings Institution in Washington, served as Head, Analysis and Assessment Unit, Office of the Special Representative of the Secretary General, UNPROFOR, in 1994, and was associate professor of political science at Yale University prior to joining Brookings Naval War College Review, 00281484, Spring 99, Vol. 52, Issue 2 “Failed states” Academic Search Premier

The loss of a state's monopoly on authority to legislate, tax, enforce, and restrict the right to bear arms creates a situation of relative balance in resources, especially arms, and in access to finances for war. Examples are regional control over trade routes and customs posts, as can be seen in Bosnia, and over mineral resources, as in Angola today. (The Angolan case shows that where there are such resources, lucrative financial offers are likely to appear from international businesses who have no scruples about dealing with warlords and who do not condition their payments on certain behavior and reforms, as do the United States and international organizations.) Contrary to the stabilizing effects of balance-of-power interstate relations, the most likely result of this anarchic balance of resources (particularly military ones) domestically is unending war of attrition.[ [7](http://web.ebscohost.com/ehost/detail?vid=3&hid=13&sid=54f20012-08e1-4c38-892a-3ce935be2595%40sessionmgr13&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#bib7)] The equilibrium result--a negative equilibrium, in economists' terms--is "stable anarchy," in which "all resources would be spent in fighting rather than production." There may be temporary cessations of fighting, but only as battlefield stalemates; internal actors cannot on their own end the fight. ¶ This relative balance also creates layer upon layer of security dilemmas. A spiraling dynamic of mutual fear continues to feed such wars once they begin.[ [8](http://web.ebscohost.com/ehost/detail?vid=3&hid=13&sid=54f20012-08e1-4c38-892a-3ce935be2595%40sessionmgr13&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#bib8)] To understand the disintegration of Yugoslavia or the Bosnian war, for example, one must recognize that once the federal state lost its authority, each group pressed for its own national fights and claimed to be at risk of exploitation and even extirpation by other groups in the same dissolving state; it became critical that each group was a numerical minority and perceived itself as acting only in defensive ways. Interventions that attempt to remain impartial, delivering food and shelter to all civilians but not intervening politically to stop the spiraling dynamic, thus are likely to perpetuate these perceptions and the stalemate; those that do intervene politically, taking one side but not going to war in support of that side (and thereby resolving the battlefield situation) also perpetuate the conflict, by demonstrating to the other sides that they are indeed endangered and that they cannot safely disarm, psychologically or physically.

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#### 6. Six specific external factors restrain president from circumvention in the squo

Pildes 12 (Richard H. Pildes, Sudler Family Professor of Constitutional Law, NYU School of Law, “Book Reviews Law And The President,” Harvard Law Review [Vol. 125:1381] 2012, //nimo)

III. THE INCOMPLETE CONSEQUENTIALIST THEORY¶ FOR THE ROLE OF LAW¶ For these reasons, I want to move beyond empirical issues and en- gage Posner and Vermeule on their own terms, and at a deeper, more theoretical, and general level. Posner and Vermeule see presidents as Holmesians, not Hartians.69 Yet even if we enter their purely conse- quentialist world, in which presidents follow the law not out of any normative obligation or the more specific duty to faithfully execute the laws but only when the cost-benefit metric of compliance is more fa- vorable than that of noncompliance, powerful reasons suggest that presidents will comply with law far more often than Posner and Vermeule imply. And analysis of those reasons might also point us to understanding better the contexts in which presidents are less likely to comply (either by invoking disingenuous or wholly unpersuasive legal interpretations or by defying the law outright).¶ The Posner and Vermeule approach is characteristic of a general approach to assessing public institutions and the behavior of judges, legislators, presidents, and other public officials that has emerged re- cently within legal scholarship. Under the influence of rational-choice theory and empirical social science from other disciplines, such as po- litical science and economics, some public law scholarship has shifted to trying to predict and understand the behavior of public officials wholly in terms of the material incentives to which they are posited to respond. These incentives include the power of effective sanctions other actors can impose on public officials who deviate from those ac- tors’ preferred positions. In this general rational-choice approach, considerations of morality or duty internal to the legal system do not motivate public actors. Indeed, in the case of Posner and Vermeule’s book, that is more the working assumption of the approach than a fact that the theories actually prove. Public officials do not follow the law out of any felt normative sense of official or moral obligation. In what they view as hard-headed realism, scholars like Posner and Vermeule believe a more external perspective is required to understand presiden- tial behavior. All that matters, from this vantage point, are the conse- quences that will or will not flow from compliance or defiance and manipulation of the law. If other actors, including Congress, thecourts, or “the public” (whatever that might mean, precisely) will ac- cept an action, the President will be able to do it; if not, his credibility and power will be undermined. It is that externally oriented cost- benefit calculation — not the law and not any internal sense of obliga- tion to obey the law — that determines how presidents act in fact. Thus, “politics,” not “law,” determines how much discretion presidents actually have.¶ This approach to presidential power finds its analog in the way a number of constitutional law scholars have come to portray the behav- ior of the Supreme Court. These scholars, such as Professors Michael Klarman,70 Barry Friedman,71 Jack Balkin,72 and others, have asserted various versions of what I call the “majoritarian thesis”73: the claim that Court decisions are constrained to reflect the policy preferences of national political majorities (or national political elite majorities), ra- ther than the outcomes that good-faith internal elaboration of legal doctrine would compel based on normative considerations about ap- propriate methods of legal reasoning and interpretation. In some ver- sions of the majoritarian thesis, these potential external sanctions im- pose outer boundaries on the degrees of freedom the Court has; within those boundaries, the Court remains free to act on its own considera- tions, including perhaps purely legal ones as viewed from an internal perspective. In other versions, the Court is cast as almost mirroring the preferences of national political majorities. Here, too, the behavior of the Court is seen as based less on internal, legal considerations and more on the anticipated external reactions to decisions.¶ At an even broader theoretical level, Professor Daryl Levinson has employed the same kind of purely consequentialist framework to ana- lyze what he calls the “puzzle” of the stability and effectiveness in general of constitutional law.74 Constitutional law decisions often frus-trate the preferences of political majorities. As Levinson puts it, the question of why those majorities do or should ever abide by such deci- sions is much like the question of why presidents do or should abide by law. For Levinson, as for Posner and Vermeule, legal compliance, to the extent that it occurs, cannot be explained by more traditional accounts of the normative force of law or by the sense that courts are politically legitimate institutions whose authority ought to be accepted for that reason. Instead, the explanation must lie in considerations ex- ternal to the legal system, such as the material incentives other actors have to obey, or ignore, Court decisions. Levinson then catalogues an array of material incentives political majorities confront in deciding whether to follow Court decisions whose outcomes they dislike; the re- sulting cost-benefit calculations end up making compliance with Court decisions usually the “rational” course of action even for disappointed political majorities (at least in well-functioning constitutional sys- tems).75 Thus, the rational-choice and normative views end up con- verging in practice. And presumably, most actors do not actually run through these consequentialist calculations in deciding whether to obey particular Court decisions. Instead, these calculations lie deep beneath the surface of much larger systems of education, socialization, public discourse, and the like; most individuals, including public officials, comply with Court decisions unreflectively, because it is the “right” thing to do. But the rational-choice framework leaves open the possi- bility that, at any given moment, the actors the Court’s decision lim- its — the President, Congress, state legislatures, or others — could mobilize the underlying cost-benefit calculations that otherwise lie la- tent and conclude that, this time around, refusal to abide by the law is the more “rational” course.¶ But as Levinson’s work helps to show, even on its own terms, Pos- ner and Vermeule’s approach offers an incomplete account of the role of law. Levinson’s work, for example, is devoted to showing why con- stitutional law will be followed, even by disappointed political majori- ties, for purely instrumental reasons, even if those majorities do not experience any internal sense of duty to obey. He identifies at least six rational-choice mechanisms that will lead rational actors to adhere to constitutional law decisions of the Supreme Court: coordination, repu- tation, repeat-play, reciprocity, asset-specific investment, and positive political feedback mechanisms.76 No obvious reason exists to explain why all or some of these mechanisms would fail to lead presidents sim- ilarly to calculate that compliance with the law is usually important to a range of important presidential objectives. At the very least, for ex- ample, the executive branch is an enormous organization, and for in- ternal organizational efficacy, as well as effective cooperation with other parts of the government, law serves an essential coordination function that presidents and their advisors typically have an interest in respecting. There is a reason executive branch departments are staffed with hundreds of lawyers: while Posner and Vermeule might cynically speculate that the reason is to figure out how to circumvent the law artfully, the truth, surely, is that law enables these institutions to func- tion effectively, both internally and in conjunction with other institu- tions, and that lawyers are there to facilitate that role. In contrast to Posner and Vermeule, who argue that law does not constrain, and who then search for substitute constraints, scholars like Levinson establish that rational-choice theory helps explain why law does constrain. In- deed, as Posner and Vermeule surely know, there is a significant litera- ture within the rational-choice framework that explains why powerful political actors would agree to accept and sustain legal constraints on their power, including the institution of judicial review.77

#### 8. Obama supports women in combat – won’t circumvent

AP 13 (Associated Press, Feb 04, 2013, “Obama Says He Won't Hesitate on Women in Combat,” http://www.military.com/daily-news/2013/02/04/obama-says-he-wont-hesitate-on-women-in-combat.html //nimo)

WASHINGTON -- President Barack Obama says he would have no hesitation ordering women into combat and explained that, as a practical matter, they're already serving that role.¶ Obama, who spoke with CBS television shortly before Sunday's Super Bowl game, was asked about the recent order ending the Pentagon's ban on women serving in combat.¶ Obama said female troops are already vulnerable to attack and they've been wounded and killed carrying out their jobs. He said they are taking great risks and should not be prevented from advancing in their careers.

#### 10. Refusal to engage state politics worsens the impacts of the critique

Boggs 2k (CAROL BOGGS, PF POLITICAL SCIENCE – SOUTHERN CALIFORNIA, 00, THE END OF POLITICS, 250-1)

But it is a very deceptive and misleading minimalism. While Oakeshott debunks political mechanisms and rational planning, as either useless or dangerous, the actually existing power structure-replete with its own centralized state apparatus, institutional hierarchies, conscious designs, and indeed, rational plans-remains fully intact, insulated from the minimalist critique. In other words, ideologies and plans are perfectly acceptable for elites who preside over established governing systems, but not for ordinary citizens or groups anxious to challenge the status quo. Such one-sided minimalism gives carte blanche to elites who naturally desire as much space to maneuver as possible. The flight from “abstract principles” rules out ethical attacks on injustices that may pervade the status quo (slavery or imperialist wars, for example) insofar as those injustices might be seen as too deeply embedded in the social and institutional matrix of the time to be the target of oppositional political action. If politics is reduced to nothing other than a process of everyday muddling-through, then people are condemned to accept the harsh realities of an exploitative and authoritarian system, with no choice but to yield to the dictates of “conventional wisdom”. Systematic attempts to ameliorate oppressive conditions would, in Oakeshott’s view, turn into a political nightmare. A belief that totalitarianism might results from extreme attempts to put society in order is one thing; to argue that all politicized efforts to change the world are necessary doomed either to impotence or totalitarianism requires a completely different (and indefensible) set of premises. Oakeshott’s minimalism poses yet another, but still related, range of problems: the shrinkage of politics hardly suggests that corporate colonization, social hierarchies, or centralized state and military institutions will magically disappear from people’s lives. Far from it: the public space vacated by ordinary citizens, well informed and ready to fight for their interests, simply gives elites more room to consolidate their own power and privilege. Beyond that, the fragmentation and chaos of a Hobbesian civil society, not too far removed from the excessive individualism, social Darwinism and urban violence of the American landscape could open the door to a modern Leviathan intent on restoring order and unity in the face of social disintegration. Viewed in this light, the contemporary drift towards antipolitics might set the stage for a reassertion of politics in more authoritarian and reactionary guise-or it could simply end up reinforcing the dominant state-corporate system. In either case, the state would probably become what Hobbes anticipated: the embodiment of those universal, collective interests that had vanished from civil society.16 And either outcome would run counter to the facile antirationalism of Oakeshott’s Burkean muddling-through theories.

#### 11. Without the state authority warlords will take control -- they use violence, exploit the people, and replicate the worst aspects of the state structure

Jackson 3 Paul Jackson, International Development Department of the University of Birmingham, UK (2003):

Warlords as alternative forms of Governance, Small Wars & Insurgencies, 14:2, 131-150 Tandfonline

Use of Violence to Reassert Local Power

With the complete breakdown of moral authority and the law, let alone any means of enforcement, the only recourse is to establish rule through force.¶ The violence associated with warlords is the most publicised aspect of their activity, and its seeming randomness is undoubtedly one of the most horrific characteristics of warlords. The casual nature of violence within areas held by warlords is symptomatic of the gang culture outlined by Lary in China, but equally resonant of earlier cultures of violence.¶ Replacement of Formal Structures with Gang Mentality¶ The collapse of formal structures and norms, including formal military structures, lead warlords to develop their own internal structures. In particular, the replacement of hierarchical structures with gang cultures, with the warlord and close associates at the core of the gang. This gang culture manifests itself in particular ways, not least of which is the fact that gangs act as a spur to further violence by subgroups. In other words, the replacement of formal structures by ad hoc, primitive and personalised control leads to a behavioural logic based on the licensing of gratuitous violence.¶ The gang culture has a further element of interest: the development of subgroups. These subgroups may be smaller gangs, or alternatively part of the larger group aiming to progress up the pecking order. One of the features of all periods of warlord rule has been the behaviour of smaller groups of armed men on the periphery of the gang, which adds a further element of randomness into the violence. We will return to this below.

11. Their kritik creates a false dichotomy between total rejection and oppression—their “all or nothing” alternative dooms coalitions and closes off space for political activism

Krishna ’93 [Sankaran, Dept. of Polit. Sci., Alternatives, 1993]

The dichotomous choice presented in this excerpt is straightforward: one either indulges in total critique, delegitimizing all sovereign truths, or one is committed to “nostalgic”, essential unities that have become obsolete and have been the grounds for all our oppressions. In offering this dichotomous choice, Der Derian replicates a move made by Chaloupka in his equally dismissive critique of the more mainstream nuclear oppression, the Nuclear freeze movement of the early 1980s, that according to him, was operating along obsolete lines emphasizing “facts” and “realities” while a “postmodern” President Reagan easily outflanked them through an illusory Star Wars program. (See KN: chapter 4)Chaloupka centers this difference between his own supposedly total critique of all sovereign truths (which he describes as nuclear criticism in an echo of literary criticism) and the more partial (and issue-based) criticism of what he calls “nuclear opposition” or “antinuclearists” at the very outset of his book. (KN: xvi) Once again, the unhappy choice forced upon the reader is to join Chaloupka in his total critique of sovereign truths or be trapped in obsolete essentialisms.This leads to a disastrous politics, pitting groups that have the most in common (and need to unite on some basis to be effective) against each other. Both Chaloupka and Der Derian thus reserve their most trenchant critique for political groups that should, in any analysis, be regarded as the closest to them in terms of an oppositional politics and their desired futures. Instead of finding ways to live with these differences and to (if fleetingly) coalesce against the New Right, this fratricidal critique is politically suicidal. It obliterates the space for a political activism based on provisional and contingent coalitions, for uniting behind a common cause even as one recognizes that the coalition is comprised of groups that have very differing (and possibly unresolvable) views of reality.¶ Moreover, it fails to consider the possibility that there may have been other, more compelling reasons for the “failure” of the Nuclear Freedom movement or anti-Gulf War movement. Like many a worthwhile cause in our times, they failed to garner sufficient support to influence state policy. The response to that need not be a totalizing critique that delegitimizes all narratives.The blackmail inherent in the choice offered by Der Derian and Chaloupka, between total critique and “ineffective” partial critique, ought to be transparent. Among other things, it effectively militates against the construction of provisional or strategic essentialisms in our attempts to create space for an activist politics. In the next section, I focus more widely on the genre of critical international theory and its impact on such an activist politics

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#### **3. No cause of action – statutes are necessary to provide grounds to sue. Without lawsuits there will be no mechanism for enforcement.**

Konnoth 11 CRAIG KONNOTH, The Yale Law Journal March, 2011 120 Yale L.J. 1263 COMMENT: Section 5 Constraints on Congress Through the Lens of Article III and the Constitutionality of the Employment Non-Discrimination Act

ENDA raises exactly these concerns, as the remedies that states currently provide are anemic, and indeed, are subject to repeal. The Williams Institute notes that of the few cities and counties that responded to its survey, two incorrectly referred employee complaints regarding discrimination to the  [\*1275]  EEOC (which has no federal mandate to address them). [n60](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.834391.4260498759&target=results_DocumentContent&returnToKey=20_T18281063812&parent=docview&rand=1380689849090&reloadEntirePage=true#n60) One respondent was unaware of its own antidiscrimination provisions, another did not know what enforcement mechanisms were in place, and several lacked the resources to provide data or handle complaints. [n61](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.834391.4260498759&target=results_DocumentContent&returnToKey=20_T18281063812&parent=docview&rand=1380689849090&reloadEntirePage=true#n61) Similarly, local provisions often have lower caps on damages, lack compensation for attorney's fees, or fail to protect discrimination based on perceived orientation. [n62](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.834391.4260498759&target=results_DocumentContent&returnToKey=20_T18281063812&parent=docview&rand=1380689849090&reloadEntirePage=true#n62) Executive orders prohibiting discrimination fail to create a private cause of action and are not always backed up by investigative mechanisms. [n63](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.834391.4260498759&target=results_DocumentContent&returnToKey=20_T18281063812&parent=docview&rand=1380689849090&reloadEntirePage=true#n63) Courts have also found that some localities' provisions are preempted by federal law. [n64](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.834391.4260498759&target=results_DocumentContent&returnToKey=20_T18281063812&parent=docview&rand=1380689849090&reloadEntirePage=true#n64) Thus, only Congress can pass a bill that would definitively prevent localities' discrimination.

#### 4. XOs can be overturned by Congress

Nosanchuk 12 Mathew S. Nosanchuk, Senior Counselor to the Assistant Attorney General for the Civil Rights Division, U.S. Department of Justice. Albany Government Law Review 2012 5 Alb. Gov't L. Rev. 440 LGBT RIGHTS: TOWARD A MORE PERFECT UNION: ARTICLE: THE ENDURANCE TEST: EXECUTIVE POWER AND THE CIVIL RIGHTS OF LGBT AMERICANS

 [\*454]  Any executive order can be overturned by Congress, and there was an attempt to overturn this one. Representative Joel Hefley, a Republican from Colorado, introduced an amendment to an appropriations bill in an attempt to limit the executive order, claiming that Executive Order 13,087, in prohibiting discrimination on the basis of sexual orientation in the federal workforce, infringed the freedom of speech of federal employees possessing religious or moral objections to homosexuality. [n90](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.730014.2905893163&target=results_DocumentContent&returnToKey=20_T18280841981&parent=docview&rand=1380686611788&reloadEntirePage=true#n90) The amendment sought both to prohibit the addition of any categories beyond those already identified in federal civil rights laws, and the expenditure of funds by the executive branch to enforce Executive Order 13,087. [n91](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.730014.2905893163&target=results_DocumentContent&returnToKey=20_T18280841981&parent=docview&rand=1380686611788&reloadEntirePage=true#n91) The legislation was defeated in the House, by a vote of 252-176, leaving the executive order in place. [n92](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.730014.2905893163&target=results_DocumentContent&returnToKey=20_T18280841981&parent=docview&rand=1380686611788&reloadEntirePage=true#n92)

#### 8. Links to politics – congress backlashes on other agenda items

Risen 10 (Clay Risen, assistant editor of The New Republic, 8.4.10 [http://www.prospect.org/web/page.ww?section=root&name=ViewPrint&articleId=8140])

Congress provides an additional, if somewhat less effective, check on executive orders. In theory, any executive order can be later annulled by Congress. But in the last 34 years, during which presidents have issued some 1,400 orders, it has defeated just three. More often, Congress will counter executive orders by indirect means, holding up nominations or bills until the president relents. “There’s always the potential that a Congress angry about one issue will respond by limiting other things you want,” says Mayer.

#### 9. The next president will repeal XO and the military would just ignore it

Pope 11 [Robert S. Pope, Lieutenant Colonel, USAF, Former Research Fellow, Belfer International Security Program, 2009–2010 Interagency Task Forces The Right Tools for the Job Strategic Studies Quarterly ♦ Summer 2011]

Large changes to the national security system above the single agency or department level would most certainly require action by the president and Congress. Some have argued that a presidential executive order would be sufficient to enact the proposed reforms.93 While an executive order might change the interagency system during the current administration, history indicates it would be unlikely to remain under the next president.**94** For example, President Clinton’s new process for interagency reconstruction and stabilization operations, described in Presidential Decision Directive-56 (PDD-56), did not outlast his presidency, nor was it generally followed while he was in office.95 Nor does an executive order presuppose any support from Congress, which funds the executive branch agencies. Because political power in Congress is often strongly tied to the large sums of money associated with the defense budget, Congress will certainly want to be involved in any reforms that change the national security structure. The CSIS “Beyond Goldwater-Nichols” study team noted: “The role of Congress in the process is the most crucial determinant of the prospects for a reform effort. The recommendations that flow from congressionally mandated groups, commissions, or blue ribbon panels are more likely to lead to lasting changes than efforts launched exclusively at the executive branch level.”96 Enduring change comes from legislation. Examples include the 1947 National Security Act which created, among other things, the National Security Council and the Department of Defense; the 1986 GoldwaterNichols Act which created the joint military team; the 2002 act which created the Department of Homeland Security; and the 2004 act which created the office of the Director of National Intelligence.

#### 10. Presidential action and his powers are seen through a lens of hypermasculine necessity, where emotion is ‘weak’ and ‘feminine’ – this conceptualization creates the exceptional Other and justifies the War on Terror

Athanassiou 12 (Cerelia Athanassiou, School of Sociology, University of Bristol, “‘Gutsy’ Decisions and Passive Processes: The Warrior Decision-Maker After The Global War On Terror,” International Feminist Journal of Politics, 24 Dec 2012 //nimo)

The decision to kill the leader of al-Qaeda, Osama bin Laden, in a Pakistani safe-house proved to be politically advantageous for an administration that too often fell prey to characterizations of being ‘weak’ on national security, despite also being responsible for rising death tolls in the growing ‘CIA drone war’ (DeYoung 2011; Friedersdorf 2011; Woods 2012) and associated practices (e.g. Reprieve 2012). Obama's credentials as a warrior could finally be confirmed, after years of challenges to his masculinity that came mostly from the political opposition. As Senator Patrick Leahy, Chairman of the US Senate Committee on the Judiciary, observed, the killing of bin Laden proved ‘President Obama and his national security team have never lost sight of the Nation's war against terrorism’ (Leahy 2011). It demonstrated that, far from being ‘weak’, Obama was able to ‘use our full arsenal to protect and defend the American people’ when he needed to (Leahy 2011). However, the jubilation that followed also confirmed that the workings of the ‘war machine’ were best suited for fighting the terrorist threat. Indeed, the continuing celebration of the mission and the decision it spurred can be seen in the proposed plans to make a film about this mission (BBC 2012), the outpouring of flag-clad crowds onto US streets in the aftermath (BBC 2011) or the now-iconic status of a picture of the primary decision-makers in the White House Situation Room watching a live-feed of the Navy SEALs' operation (Couts 2011). The episode seemed to offer a reaffirmation of US identity in the wake of the GWOT, and this was seen as something to be celebrated.¶ Killing Osama bin Laden without so much as a hint at judicial process to determine exactly what this man could be accused of (see also Greenwald 2011) was hailed as ‘the most courageous decision’ (Clapper in Obama 2011a) and as ‘gutsy’ (Panetta in Obama 2011a). The pats on the back and the congratulations Obama received demonstrated the exclusivity of national security circles, and the respect within them for leadership that decides to act even on ‘circumstantial intelligence’ (Clapper in Obama 2011a), stepping outside of the established process for the sake of the national interest (see also Brennan in Bendery 2011; Lieberman 2011; for similar demands on George W. Bush see Benjamin 2008). Importantly, this episode demonstrated that despite Obama's potentially suspect insistence that terrorist ‘others’ are entitled to due process, he was able to adhere to the warrior logic when necessary. Indeed, this episode proved that the same (GWOT) framework of war and its warrior mentality still hold for an administration that adamantly pursued the return to the rule of law.¶ What was praised here then was the ‘cool and decisive’ leadership (Lieberman 2011) that distinguished between ‘exception’ (i.e. Osama bin Laden) and ‘normality’ (i.e. petty criminals). This showed that Obama was able to respond to the ‘exceptional’ and that he could do so violently. The same dynamics were at work in the Abdulmutallab episode where, by the same standards, Obama failed to perform in an unambiguous way towards the seemingly unambiguous category of the terrorist and so was criticized for this ‘weakness’. What has become clear is that the President's giving precedence to legal processes could not inspire as much confidence as his taking on the warrior decision-maker stance to contain violently a terrorist threat.¶ The ‘cool and decisive’ characterization used after the killing of Osama bin Laden served to discipline all decision-makers: the iconic picture from the White House Situation Room of members of the national security team monitoring the assassination operation shows a sea of serious faces, with one of the two women, Secretary of State Hillary Clinton, covering her mouth in what appeared to be shock (see Pasetsky 2011). The image generated much speculation, and Clinton finally commented after a few days that the situation was ‘most intense’, but offered the following justification for covering her mouth: ‘I am somewhat sheepishly concerned that it was my preventing one of my early spring allergic coughs’ (Pasetsky 2011). The weight given to understanding her potentially emotional behaviour shows that retaining warrior credentials involves excluding the presence of emotions in the Situation Room.¶ After all, the ‘warrior decision-maker's’ credentials have to be earned: for Obama, a significant victory in this was won with the killing of bin Laden, whereby Obama was able to use his behaviour in this case to demonstrate ‘toughness’, with the phrase ‘ask bin Laden’ (if Obama is an ‘appeaser’/‘not prepared’) becoming somewhat of a refrain whenever his team's masculine credentials are challenged (see Epstein 2011; Memmott 2011). Similarly then, the preoccupation with assigning meaning to Clinton's potential demonstration of emotion in the Situation Room again showed that national security is to be equated with ‘manly shows of overt strength’ (Enloe 2007: 50), crucially for those, like Clinton, who are not seen to embody this. The Obama team's ‘tough’ action awarded them full participation in the ‘fraternal nation-state’ (Peterson 1999; see also Puar 2007: 49) and the (in)securities – personal and more general – this brings with it. By this logic then, the decision to kill bin Laden ensured that ‘the world is a safer and better place’ (Lieberman 2011): the hegemonic understandings of what constitutes security for the USA, and what masculinity is required for this, remained in place and comfortably unchanging.¶ The killing of bin Laden, and more importantly its branding as ‘justice [having] been done’ (Obama 2011b), were a continuation of the GWOT's framework of justice depending on who proclaims it rather than on how it is carried out, with an immediate consensus on the action's legality among US policy-making circles (e.g. Holder in Gerstein 2011; Holder 2011; Leahy 2011; countering this: Greenwald 2011). 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The logic of the ‘“save civilization itself”-fantasy’ (Richter-Montpetit 2007: 41) not only remains unquestioned, but is one more area which privileges the system of realpolitik-by-elites (see also Carver 2008: 79–80) that relies on masculine constructions of the ‘norm’ of politics and the ‘exceptionalism’ of security.

### 2AC DA

#### 1. Bureaucracy thumps effectiveness

Martin 10 (David Martin, CBS News' National Security Correspondent, “Gates Criticizes Bloated Military Bureaucracy,” May 10, 2010, CBS News, http://www.cbsnews.com/8301-18563\_162-6470348.html //nimo)

Gates has frequently complained the Pentagon bureaucracy takes too long to field critical pieces of equipment like predator drones and mine resistant vehicles. But in a speech this weekend he upped the ante.¶ "The Defense Department must take a hard look at every aspect of how it is organized, staffed and operated - indeed every aspect of how it does business," the defense secretary said.¶ Speaking at the Eisenhower Library, which houses the records of the president who famously warned about the military-industrial complex, Gates ticked off example after example of Pentagon bloat.¶ "Overhead, broadly defined, makes up roughly 40 percent of the department's budget," he said.¶ He described a top-heavy bureaucracy where generals hang on to their jobs long after the need has vanished.¶ "Two decades after the end of the cold war led to steep cuts in U.S. forces in Europe, our military still has more than 40 generals, admirals or civilian equivalents based on the continent," Gates said.¶ Gates said health care costs are "eating us alive," going from $19 billion to $50 billion in 10 years. He even took a shot at pay for the troops, up 42 percent since the wars in Afghanistan and Iraq began - better than civilians have fared. ¶ Not counting those wars, the Pentagon budget has almost doubled in the last decade even though no other country is remotely close in military power.¶ The last time a defense secretary tried to take on the Pentagon bureaucracy was September 10, 2001. On that day, Donald Rumsfeld said, "Money disappears into duplicative duties and bloated bureaucracy."¶ Two wars and one economic meltdown later, Gates says it's past time for the Pentagon to take a hard look at how it operates.

#### 2. Women make the military stronger, not weaker

Hlad 13 (Jennifer Hlad, master of journalism from the University of Maryland, January 25, 2013, “Combat roles for women will strengthen the military, leaders say,” Stars and Stripes, http://www.stripes.com/combat-roles-for-women-will-strengthen-the-military-leaders-say-1.205216 //nimo)

WASHINGTON – As some soldiers and Marines question whether women can meet gender-neutral physical standards and perform alongside men in combat roles, service leaders stress that women have already proven themselves on the battlefield and say removing the combat exclusion policy will strengthen, not weaken, the military.¶ “This is a great opportunity to make our Army better,” said Lt. Gen. Howard Bromberg, the Army’s deputy chief of staff.

#### 3. Syria thumps war powers

Fisher, 13 (Max Fisher is the Post's foreign affairs blogger. He has a master's degree in security studies from Johns Hopkins University. Obama’s Syria choice: Good for politics, good for the constitution, bad for Syria. http://www.washingtonpost.com/blogs/worldviews/wp/2013/08/31/obamas-syria-choice-good-for-politics-good-for-the-constitution-bad-for-syria/)

A problem that critics often describe as “the imperial presidency ” – the enormous growth, since September 2001, of the executive branch’s ability to unilaterally conduct foreign policy and pursue aggressive national security policies – just took a big symbolic blow. Obama, by deferring to Congress even though he probably doesn’t have to, may have just undercut some of those “imperial presidency” practices – which he himself had previously used extensively, for example with drone campaigns and with the 2011 strikes on Libya.¶ Harvard Law School Prof. Jack Goldsmith, who has not been shy about criticizing Obama on such grounds, had just run a New York Times op-ed column sharply criticizing Obama for what many assumed would be unilateral strikes on Syria without congressional approval. After the speech, Goldsmith praised Obama on his blog for the move to defer to Congress, calling it a “big risk” but saying that Obama would be “incomparably strengthened, legally and especially politically.”

#### 4. Strong presidential power causes constant intervention wars

Schlesinger 04, (Arthur M. Jr., Professor Emeritus, City University of New York Graduate Center, THE IMPERIAL PRESIDENCY, 2004, p. 497-498.)

There is little more typically American than to despair of the republic. As early as 1802, Hamilton pronounced the Constitution a “frail and worthless fabric.” Seventy years later Henry Adams declared that “the system of 1789” has “broken down.” The dirges of our own day are hardly novel. But the constitutional strain imposed by chronic international crisi is new. Tocqueville’s warning lingers. International crisis has given American Presidents the opportunity to exercise almost royal prerogatives. Some Presidents have exercised these prerogatives with circumspection. Others have succumbed to the delusion that American has been charged by the Almighty with a global mission to redeem fallen humanity. In The Imperial Presidency I doubted that a messianic foreign policy, America as world savior, was reconcilable with the American Constitution (see pages 163-166, 206-208, 298). Nearly two decades later, I conclude with the same question. When an American President conceives himself the appointed guardian of the world in which an eternal foreign threat requires a rapid and incessant deployment of men, weapons and decisions behind a wall of secrecy, the result can only be a radical disruption of the balance of the American Constitution. It is hard to reconcile the separation of powers with a foreign policy driven by an indignant ideology and disposed to intervene unilaterally and secretly everywhere around the planet. The Constitution must buckle under the weight of a vainglorious policy, aiming at the redemption of lesser breeds without law, relying on secret actions and duplicitous methods, involving the United States in useless wars and grandiose dreams.

#### **5. Presidential war powers inevitable – the president enjoys institutional advantages.**

Howell and Pevehouse, 07 (Willam G. Howell, Prof @ U Chicago, Jon C. Pevehouse, Prof @ U Chicago. While Dangers Gather: Congressional Checks on Presidential War Powers. 7-8)

There is, at present, a burgeoning body of work within the American politics that documents the strategic advatnages presidents enjoy when they exercise unilateral powers, or what we have called “power without persuasion,” which very much much embodies the deployment of troops abroad. Two features of this unilateral politics literature are worth noting. The first concerns sequence. When presidents act unilaterally, they stand at the front end of the policy-making process and thereby place on congress and the courts the burden of revising a new political landscape. If adjoining branches of government choose not to retaliate, either bv passing a law or ruling against the president then the president's order stands. Only by taking (or credibly threatening to take) positive action can either adjoining institution limit the president's unilateral powers. "Members of congress often do confront presidents when their military order prove misguided or ill-informed. They do so, however, under less than circum-stances. For starters, when debating the merits of an ongoing military venture, members of congress are vulnerable to the accusation that they are undermining troop morale and catering to the enemy. As James Lindsay recognizes, members often avoid putting themselves in the politically and morally difficult position of allowing funds to be cut off to troops who may be fighting for their lives." BY way of example, recall Clinton's deployment of troops to Haiti in 1994. Before the action a majority of senators opposed the plan, but once troops were deployed, Congress-did not attempt to force their immediate return. One political commentator surmised, "There's bipartisan criticism of going into Haiti. There's also bipartisan support, at least, in supporting the troops now that they're there."15 Though members can, and do, take on the president during the ongoing course of a military venture, they do so under condi- tions that hardly foster open and critical debate.17 Instead, members pro- ceed cautiously ever aware of how their actions and words are likely to be interpreted by a public wary of any criticism directed at troops who have willingly placed their lives on the line. . Some military actions, meanwhile, are sufficiently limited in scope and duration that Congress has little if any opportunity to coordinate an ef- fective response, either before or during the actual intervention. In the spring of "1986 for instance, Reagan "consulted" with congressional party leaders on planned air strikes against Libya while U.S. planes were en route to Northern Africa. Obviously there was little that the members could do to curb these attacks. As one Democrat attending the meeting noted, what could we have done? . . . Told [the president] to turn the planes oround?"18 The military completed its bombing campaign long before members of Congress could possibly have enacted authorizing legislation. Though Congress might have passed legislation either supporting or condemning the president's action after the fact, its members could do precious little to redirect the course of this particular targeted military strike. By seizing the initiative and unilaterally deploying the military to perform short and small attacks, presidents often elude the checks that Congress might otherwise place on them. The second feature of unilateral powers that deserves attention is that when the president acts, he acts alone. Of course, he relies on numerous advisors to formulate the policy, to devise ways of protecting it against congressional or judicial encroachment, and to oversee its implementation. But to issue the actual policy, as either an executive order or memorandum or any other kind of directive, the president need not rally majorities, compromise with adversaries, or wait for some interest group to bring a case to court. The president, instead, can strike out on his own, placing on others the onus of coordinating an effective response. Doing so, the modern president is in a unique position to lead, break through the stasis that pervades the federal government, and impose his will in more and more areas of governance. In foreign policy making generally, and on issues involving the use of force in particular, this feature of unilateral powers reaps special rewards. If presidents had to build broad-based consensus behind every deployment before any military planning could be executed, most ventures would never get off the ground. Imagine having to explain to members of Congress why events in Liberia this month or Ethiopia the next demand military action, and then having to secure the formal consent of a supermajority before any action could be taken. The federal government could not possibly keep pace with an increasingly interdependent world in which every region holds strategic interests for the United States. Because presidents, as a practical matter, can unilaterally launch ventures into distant locales without ever having to guide a proposal through a circuitous and uncertain legislative process, they can more effectively manage these responsibilities and take action when congressional deliberations often result in gridlock. It is no wonder, then, that in virtually every system of governance, executives (not legislatures or courts) mobilize their nations through wars and for- eign crises. Ultimately, it is their ability to act unilaterally that enables them to do so. In sum, the advantages of unilateral action are significant: they allow the president to move first and move alone. All of the institutional features of Congress that impede consensus building around a military venture ex ante also make it equally if not more difficult, later, to dismantle an operation that is up and running' This is what makes the president's unilateral powers ,so potent. Multiple veto points, high transaction costs, and collective action problems regularly conspire against the president when he tries to guide his legislative agenda through Congress. Each, though, works to his advantage when he issue a unilateral directive, as each cripples Congress’s capacity to muster an effective response. To be sure, congressional checks on war powers do not disappear entirely – this book is based on the premise that under well specified conditions (see chapter 2) they remain operative. But in an era when presidents unilaterally deploy troops with greater and greater frequency, Congress often trips over the same institutional features that undermine its capacity to govern more generally.

#### 6. The president and his powers are seen through a lens of hypermasculine necessity, where emotion is ‘weak’ and ‘feminine’ – this conceptualization creates the exceptional Other and justifies the War on Terror

Athanassiou 12 (Cerelia Athanassiou, School of Sociology, University of Bristol, “‘Gutsy’ Decisions and Passive Processes: The Warrior Decision-Maker After The Global War On Terror,” International Feminist Journal of Politics, 24 Dec 2012 //nimo)

The decision to kill the leader of al-Qaeda, Osama bin Laden, in a Pakistani safe-house proved to be politically advantageous for an administration that too often fell prey to characterizations of being ‘weak’ on national security, despite also being responsible for rising death tolls in the growing ‘CIA drone war’ (DeYoung 2011; Friedersdorf 2011; Woods 2012) and associated practices (e.g. Reprieve 2012). Obama's credentials as a warrior could finally be confirmed, after years of challenges to his masculinity that came mostly from the political opposition. As Senator Patrick Leahy, Chairman of the US Senate Committee on the Judiciary, observed, the killing of bin Laden proved ‘President Obama and his national security team have never lost sight of the Nation's war against terrorism’ (Leahy 2011). It demonstrated that, far from being ‘weak’, Obama was able to ‘use our full arsenal to protect and defend the American people’ when he needed to (Leahy 2011). However, the jubilation that followed also confirmed that the workings of the ‘war machine’ were best suited for fighting the terrorist threat. Indeed, the continuing celebration of the mission and the decision it spurred can be seen in the proposed plans to make a film about this mission (BBC 2012), the outpouring of flag-clad crowds onto US streets in the aftermath (BBC 2011) or the now-iconic status of a picture of the primary decision-makers in the White House Situation Room watching a live-feed of the Navy SEALs' operation (Couts 2011). The episode seemed to offer a reaffirmation of US identity in the wake of the GWOT, and this was seen as something to be celebrated.¶ Killing Osama bin Laden without so much as a hint at judicial process to determine exactly what this man could be accused of (see also Greenwald 2011) was hailed as ‘the most courageous decision’ (Clapper in Obama 2011a) and as ‘gutsy’ (Panetta in Obama 2011a). The pats on the back and the congratulations Obama received demonstrated the exclusivity of national security circles, and the respect within them for leadership that decides to act even on ‘circumstantial intelligence’ (Clapper in Obama 2011a), stepping outside of the established process for the sake of the national interest (see also Brennan in Bendery 2011; Lieberman 2011; for similar demands on George W. Bush see Benjamin 2008). Importantly, this episode demonstrated that despite Obama's potentially suspect insistence that terrorist ‘others’ are entitled to due process, he was able to adhere to the warrior logic when necessary. Indeed, this episode proved that the same (GWOT) framework of war and its warrior mentality still hold for an administration that adamantly pursued the return to the rule of law.¶ What was praised here then was the ‘cool and decisive’ leadership (Lieberman 2011) that distinguished between ‘exception’ (i.e. Osama bin Laden) and ‘normality’ (i.e. petty criminals). This showed that Obama was able to respond to the ‘exceptional’ and that he could do so violently. The same dynamics were at work in the Abdulmutallab episode where, by the same standards, Obama failed to perform in an unambiguous way towards the seemingly unambiguous category of the terrorist and so was criticized for this ‘weakness’. What has become clear is that the President's giving precedence to legal processes could not inspire as much confidence as his taking on the warrior decision-maker stance to contain violently a terrorist threat.¶ The ‘cool and decisive’ characterization used after the killing of Osama bin Laden served to discipline all decision-makers: the iconic picture from the White House Situation Room of members of the national security team monitoring the assassination operation shows a sea of serious faces, with one of the two women, Secretary of State Hillary Clinton, covering her mouth in what appeared to be shock (see Pasetsky 2011). The image generated much speculation, and Clinton finally commented after a few days that the situation was ‘most intense’, but offered the following justification for covering her mouth: ‘I am somewhat sheepishly concerned that it was my preventing one of my early spring allergic coughs’ (Pasetsky 2011). The weight given to understanding her potentially emotional behaviour shows that retaining warrior credentials involves excluding the presence of emotions in the Situation Room.¶ After all, the ‘warrior decision-maker's’ credentials have to be earned: for Obama, a significant victory in this was won with the killing of bin Laden, whereby Obama was able to use his behaviour in this case to demonstrate ‘toughness’, with the phrase ‘ask bin Laden’ (if Obama is an ‘appeaser’/‘not prepared’) becoming somewhat of a refrain whenever his team's masculine credentials are challenged (see Epstein 2011; Memmott 2011). Similarly then, the preoccupation with assigning meaning to Clinton's potential demonstration of emotion in the Situation Room again showed that national security is to be equated with ‘manly shows of overt strength’ (Enloe 2007: 50), crucially for those, like Clinton, who are not seen to embody this. 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#### No Israel/Iran war

Walt, 12 (Stephen M., Robert and Renée Belfer professor of international relations at Harvard University, “Top ten media failures in the Iran war debate,” <http://walt.foreignpolicy.com/posts/2012/03/11/top_ten_media_failures_in_the_iran_war_debate>)

#7: Exaggerating Israel's capabilities. In a very real sense, this whole war scare has been driven by the possibility that Israel might feel so endangered that they would launch a preventive war on their own, even if U.S. leaders warned them not to. But the IDF doesn't have the capacity to take out Iran's new facility at Fordow, because they don't have any aircraft that can carry a bomb big enough to penetrate the layers of rock that protect the facilities. And if they can't take out Fordow, then they can't do much to delay Iran's program at all and the only reason they might strike is to try to get the United States dragged in. In short, the recent war scare-whose taproot is the belief that Israel might strike on its own-may be based on a mirage.