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### 1NC T

#### TOPICALITY

#### First: interpretation – restriction is distinct from conditions.

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Violation – the aff doesn’t do anything to restrict introduction into use of force, it just says that hostilities have to involve women in combat.

#### Topic education – commander and chief powers are about HOW wars are fought whereas war powers are IF they are fought. The aff avoids the central clash of the topic where da and cp ground stems from.

#### Limits – commander in chief powers blow the barn door off, Heidt evidence says it creates tiny unpredictable affs.

#### Clear limits distinction – at best the aff is a restriction on commander in chief power which is LEGALLY and SUBSTANTIVELY distinct from the topic.

Heidt 2013

Stephen, PhD candidate Georgia State University, A Memorandum on the Topic Area, http://www.cedadebate.org/forum/index.php?topic=4846.0

To summarize: War powers are enumerated in Article 1 of the Constitution. Commander in Chief power is enumerated in Article 2. The framers of the Constitution kept the two entirely distinct, on purpose, as a means for resolving the tension between the danger that a strong president would risk dictatorship and the need for unfettered power of the executive to conduct and win war. The key constitutional controversy related to war power is NOT what weapons presidents get to use or how presidents get to pursue war. It is that presidents have continuously utilized a narrow constitutional exception (defense of the nation in crisis) to engage in “acts of war” without Congressional authorization. In fact, the Congress has only formally declared war 5 times in U.S. history while the president has authorized military force at least 200 times and, by some counts, over 300 times. This is the core war powers controversy – the very thing that led to the passage of the War Powers Resolution in 1973 and the controversy the community voted for. The topic paper overrides that distinction and the topic committee would be well to heed the distinction. This distinction, if held, means that the wildest fears of tiny, unpredictable affs can only exist in a world in which Commander in Chief power is selected as the topic. That is the power presidents enjoy for running an army.

### 1NC Obama DA

#### OBAMA DA

#### Immigration reform will pass --- it’s Obama’s top priority

Eleanor Clift, 10-25-2013, “Obama, Congress Get Back to the Immigration Fight,” Daily Beast, http://www.thedailybeast.com/articles/2013/10/25/obama-congress-get-back-to-the-immigration-fight.html

But now with the shutdown behind them and Republicans on the defensive, Obama saw an opening to get back in the game. His message, says Sharry: “‘Hey, I’m flexible,’ which after the shutdown politics was important, and he implied ‘if you don’t do it, I’m coming after you.’” For Obama and the Democrats, immigration reform is a win-win issue. They want an overhaul for the country and their constituents. If they don’t get it, they will hammer Republicans in demographically changing districts in California, Nevada, and Florida, where they could likely pick up seats—not enough to win control of the House, but, paired with what Sharry calls “the shutdown narrative,” Democratic operatives are salivating at the prospect of waging that campaign. Some Republicans understand the stakes, and former vice-presidential candidate and budget maven Paul Ryan is at the center of a newly energized backroom effort to craft legislation that would deal with the thorniest aspect of immigration reform for Republicans: the disposition of 11 million people in the country illegally. Rep. Raul Labrador (R-ID), an early advocate of reform who abandoned the effort some months ago, argues that Obama’s tough bargaining during the shutdown means Republicans can’t trust him on immigration. “When have they ever trusted him?” asks Sharry. “Nobody is asking them to do this for Obama. They should do this for the country and for themselves.... We’re not talking about tax increases or gun violence. This is something the pillars of the Republican coalition are strongly in favor of.” Among those pillars is Chamber of Commerce President Tom Donahue, who on Monday noted the generally good feelings about immigration reform among disparate groups, among them business and labor. He expressed optimism that the House could pass something, go to conference and resolve differences with the Senate, get a bill and have the president sign it “and guess what, government works! Everybody is looking for something positive to take home.” The Wall Street Journal reported Thursday that GOP donors are withholding contributions to lawmakers blocking reform, and that Republicans for Immigration Reform, headed by former Bush Cabinet official, Carlos Gutierrez, is running an Internet ad urging action. Next week, evangelical Christians affiliated with the Evangelical Immigration Table will be in Washington to press Congress to act with charity toward people in the country without documentation, treating them as they would Jesus. The law-enforcement community has also stepped forward repeatedly to embrace an overhaul. House Speaker John Boehner says he wants legislation, but not the “massive” bill that the Senate passed and that Obama supports. The House seems inclined to act—if it acts at all—on a series of smaller bills starting with “Kids Out,” a form of the Dream Act that grants a path to citizenship for young people brought to the U.S. as children; then agriculture-worker and high-tech visas, accompanied by tougher border security. The sticking point is the 11 million people in the country illegally, and finding a compromise between Democrats’ insistence that reform include a path to citizenship, and Republicans’ belief that offering any kind of relief constitutes amnesty and would reward people for breaking the law. The details matter hugely, but what a handful of Republicans, led by Ryan, appear to be crafting is legalization for most of the 11 million but without any mention of citizenship. It wouldn’t create a new or direct or special path for people who came to the U.S. illegally or overstayed their visa. It would allow them to earn legal status through some yet-to-be-determined steps, and once they get it, they go to the end of a very long line that could have people waiting for decades. The Senate bill contains a 13-year wait. However daunting that sounds, the potential for meaningful reform is tantalizingly close with Republicans actively engaged in preparing their proposal, pressure building from the business community and religious leaders, and a short window before the end of the year to redeem the reputation of Congress and the Republican Party after a bruising takedown. The pieces are all there for long-sought immigration reform. We could be a few weeks away from an historic House vote, or headed for a midterm election where Republicans once again are on the wrong side of history and demography.

#### Views are entrenched-opening the debate in Congress causes a big debate and requires political energy

**Swers, Georgetown government professor, 2013**

(Michele, Women in the Club: Gender and Policy Making in the Senate Paperback, pg 226-7, ldg)

Finally, the male culture that dominates the politics of defense and the slow integration of women into the ranks of the military crates conflict over the role of women in the military. In recent years, there have been several high-profile cases of sexual harassment and rape at military bases and in the military academies. There is also conflict over the proposal as the military already faced a troop shortage in Iraq resulting in extended deployments for current service members. Heather Wilson (R-NM), an air force veteran and the only female veteran in Congress, took the lead in fighting the proposal in the House (Scully 2005a, 2005b, 2005c; Plummer 2005). To prevent the amendment from getting attached to the Senate defense authorization bill, a lobbyist for military women explained that her group was targeting members of the House and Senate Personnel subcommittees but that they also gave special attention to women legislators and legislators with military experience in their efforts to find champions for their proposals. “We sent a lot of material to Elizabeth Dole’s [R-NC] office because as a woman with a seat on the relevant sub-committee she could be a key ally. We also sought out Olympia Snow [R-ME] because she is a longtime friend to military women. When Snow was on the Armed Services Committee in the late 1990s, she took a lead role in fighting the elimination of gender-integrated training.” For Senate Armed Services Committee chair John Warner (R-VA), “this is a nickel issue, it is not a priority. If pushed on it he would probably rather not have women serving in combat positions in the military, but he is not foolish enough to want to turn back the clock, and he just does not want to have a deal with it on the authorization.” Similarly, another lobbyist said that she was targeting female senators because the issue of women in the military is “a no-dollar issue so members have to have the passion for it” if they are going to be convinced to take political capital on the issue.

#### The plan drains political capital and derails CIR

**Shane, Ohio State law school chair 2011**

(Peter, “ARTICLE: The Obama Administration and the Prospects for a Democratic Presidency in a Post-9/11 World”, 56 N.Y.L. Sch. L. Rev. 27, lexis, ldg)

The second is politics. With the country still grappling with the effects of a devastating recession, as well as the need for pressing action on healthcare, climate change, and immigration, the President might well want to avoid the appearance of diluting his focus. Moreover, since the Johnson administration, Republicans have consistently--and with some success--cowed the Democrats by portraying them as soft on national security issues. The partisan pushback against any Obama administration effort to reinvigorate the rule of law in the national security context is likely to be vicious, threatening to erode whatever modicum of goodwill might otherwise be available to accomplish seemingly more concrete and immediate objectives. This, of course, is not hypothetical. We can see it in Republican efforts to derail the closing of Guantanamo and in proposals to prohibit the trial of foreign terrorists in civilian courts n108--a practice that Republicans seemed happier to live with under George W. Bush. n109

#### Visas are key to cybersecurity preparedness

McLarty 9 (Thomas F. III, President – McLarty Associates and Former White House Chief of Staff and Task Force Co-Chair, “U.S. Immigration Policy: Report of a CFR-Sponsored Independent Task Force”, 7-8, http://www.cfr.org/ publication/19759/us\_immigration\_policy.html)

We have seen, when you look at the table of the top 20 firms that are H1-B visa requestors, at least 15 of those are IT firms. And as we're seeing across industry, much of the hardware and software that's used in this country is not only manufactured now overseas, but it's developed overseas by scientists and engineers who were educated here in the United States.¶ We're seeing a lot more activity around cyber-security, certainly noteworthy attacks here very recently. It's becoming an increasingly dominant set of requirements across not only to the Department of Defense, but the Department of Homeland Security and the critical infrastructure that's held in private hands. Was there any discussion or any interest from DOD or DHS as you undertook this review on the security things about what can be done to try to generate a more effective group of IT experts here in the United States, many of which are coming to the U.S. institutions, academic institutions from overseas and often returning back? This potentially puts us at a competitive disadvantage going forward.¶ MCLARTY: Yes. And I think your question largely is the answer as well. I mean, clearly we have less talented students here studying -- or put another way, more talented students studying in other countries that are gifted, talented, really have a tremendous ability to develop these kind of technology and scientific advances, we're going to be put at an increasingly disadvantage. Where if they come here -- and I kind of like Dr. Land's approach of the green card being handed to them or carefully put in their billfold or purse as they graduate -- then, obviously, that's going to strengthen, I think, our system, our security needs.

#### Cyber-vulnerability causes great power nuclear war

Fritz 9 Researcher for International Commission on Nuclear Nonproliferation and Disarmament [Jason, researcher for International Commission on Nuclear Nonproliferation and Disarmament, former Army officer and consultant, and has a master of international relations at Bond University, “Hacking Nuclear Command and Control,” July, <http://www.icnnd.org/latest/research/Jason_Fritz_Hacking_NC2.pdf>]

This paper will analyse the threat of cyber terrorism in regard to nuclear weapons. Specifically, this research will use open source knowledge to identify the structure of nuclear command and control centres, how those structures might be compromised through computer network operations, and how doing so would fit within established cyber terrorists’ capabilities, strategies, and tactics. If access to command and control centres is obtained, terrorists could fake or actually cause one nuclear-armed state to attack another, thus provoking a nuclear response from another nuclear power. This may be an easier alternative for terrorist groups than building or acquiring a nuclear weapon or dirty bomb themselves. This would also act as a force equaliser, and provide terrorists with the asymmetric benefits of high speed, removal of geographical distance, and a relatively low cost. Continuing difficulties in developing computer tracking technologies which could trace the identity of intruders, and difficulties in establishing an internationally agreed upon legal framework to guide responses to computer network operations, point towards an inherent weakness in using computer networks to manage nuclear weaponry. This is particularly relevant to reducing the hair trigger posture of existing nuclear arsenals. All computers which are connected to the internet are susceptible to infiltration and remote control. Computers which operate on a closed network may also be compromised by various hacker methods, such as privilege escalation, roaming notebooks, wireless access points, embedded exploits in software and hardware, and maintenance entry points. For example, e-mail spoofing targeted at individuals who have access to a closed network, could lead to the installation of a virus on an open network. This virus could then be carelessly transported on removable data storage between the open and closed network. Information found on the internet may also reveal how to access these closed networks directly. Efforts by militaries to place increasing reliance on computer networks, including experimental technology such as autonomous systems, and their desire to have multiple launch options, such as nuclear triad capability, enables multiple entry points for terrorists. For example, if a terrestrial command centre is impenetrable, perhaps isolating one nuclear armed submarine would prove an easier task. There is evidence to suggest multiple attempts have been made by hackers to compromise the extremely low radio frequency once used by the US Navy to send nuclear launch approval to submerged submarines. Additionally, the alleged Soviet system known as Perimetr was designed to automatically launch nuclear weapons if it was unable to establish communications with Soviet leadership. This was intended as a retaliatory response in the event that nuclear weapons had decapitated Soviet leadership; however it did not account for the possibility of cyber terrorists blocking communications through computer network operations in an attempt to engage the system. Should a warhead be launched, damage could be further enhanced through additional computer network operations. By using proxies, multi-layered attacks could be engineered. Terrorists could remotely commandeer computers in China and use them to launch a US nuclear attack against Russia. Thus Russia would believe it was under attack from the US and the US would believe China was responsible. Further, emergency response communications could be disrupted, transportation could be shut down, and disinformation, such as misdirection, could be planted, thereby hindering the disaster relief effort and maximizing destruction. Disruptions in communication and the use of disinformation could also be used to provoke uninformed responses. For example, a nuclear strike between India and Pakistan could be coordinated with Distributed Denial of Service attacks against key networks, so they would have further difficulty in identifying what happened and be forced to respond quickly. Terrorists could also knock out communications between these states so they cannot discuss the situation. Alternatively, amidst the confusion of a traditional large-scale terrorist attack, claims of responsibility and declarations of war could be falsified in an attempt to instigate a hasty military response. These false claims could be posted directly on Presidential, military, and government websites. E-mails could also be sent to the media and foreign governments using the IP addresses and e-mail accounts of government officials. A sophisticated and all encompassing combination of traditional terrorism and cyber terrorism could be enough to launch nuclear weapons on its own, without the need for compromising command and control centres directly.

#### Immigration reform key to solve warming-tech development and collaboration

**Herman et al., immigration and business law firm founder, 2010**

(Richard, “Why Immigrants Can Drive the Green Economy”, Immigration Policy Center <http://immigrationpolicy.org/perspectives/why-immigrants-can-drive-green-economy>, ldg)

It should come as no surprise that immigrants will help drive the green revolution. America’s young scientists and engineers, especially the ones drawn to emerging industries like alternative energy, tend to speak with an accent. The 2000 Census found that immigrants, while accounting for 12 percent of the population, made up nearly half of the all scientists and engineers with doctorate degrees. Their importance will only grow. Nearly 70 percent of the men and women who entered the fields of science and engineering from 1995 to 2006 were immigrants. Yet, the connection between immigration and the development and commercialization of alternative energy technology is rarely discussed. Policymakers envision millions of new jobs as the nation pursues renewable energy sources, like wind and solar power, and builds a smart grid to tap it. But Dan Arvizu, the leading expert on solar power and the director of the National Renewable Energy Laboratory of the U.S. Department of Energy in Golden, Colorado, warns that much of the clean-technology talent lies overseas, in nations that began pursuing alternative energy sources decades ago. Expanding our own clean-tech industry will require working closely with foreign nations and foreign-born scientists, he said. Immigration restrictions are making collaboration difficult. His lab’s efforts to work with a Chinese energy lab, for example, were stalled due to U.S. immigration barriers. “We can’t get researchers over here,” Arvizu, the son of a once-undocumented immigrant from Mexico, said in an interview in March 2009, his voice tinged with dismay. “It makes no sense to me. We need a much more enlightened approach.” Dr. Zhao Gang, the Vice Director of the Renewable Energy and New Energy International Cooperation Planning Office of the Ministry of Science and Technology in China, says that America needs that enlightenment fast. “The Chinese government continues to impress upon the Obama administration that immigration restrictions are creating major impediments to U.S.-China collaboration on clean energy development,” he said during a recent speech in Cleveland. So what’s the problem? Some of it can be attributed to national security restrictions that impede international collaboration on clean energy. But Arvizu places greater weight on immigration barriers, suggesting that national secrecy is less important in the fast-paced world of green-tech development. “We are innovating so fast here, what we do today is often outdated tomorrow. Finding solutions to alternative energy is a complex, global problem that requires global teamwork,” he said. We need an immigration system that prioritizes the attraction and retention of scarce, high-end talent needed to invent and commercialize alternative energy technology and other emerging technologies. One idea we floated by Arvizu was a new immigrant “Energy Scientist Visa,” providing fast-track green cards for Ph.D.s with the most promising energy research, as reviewed by a panel of top U.S. scientists. Arvizu enthusiastically responded, “Wow, that’s a brilliant idea.” As the recent submission of the Startup Visa Act bill suggests, there’s really no shortage of good ideas of leveraging immigration to jumpstart the economy. The challenge is getting the American people to understand that high-skill immigration creates jobs, that the current system is broken, and that action is required now.

#### Warming causes extinction

Don Flournoy 12, Citing Feng Hsu, PhD NASA Scientist @ the Goddard Space Flight Center and Don is a PhD and MA from UT, former Dean of the University College @ Ohio University, former Associate Dean at SUNY and Case Institute of Technology, Former Manager for University/Industry Experiments for the NASA ACTS Satellite, currently Professor of Telecommunications @ Scripps College of Communications, Ohio University, “Solar Power Satellites,” January 2012, Springer Briefs in Space Development, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for acatastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged inmonitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement aboutthe risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010 ).

### 1NC XO CP

#### EXECUTIVE COUNTERPLAN

#### The Executive branch of the United States federal government should issue an executive order that precludes the president from excluding women from forces introduced into hostilities, enforcement should include standing for a private cause of action.

#### Executive orders avoid politics, have the force of law, and are rarely overturned

Cooper-prof public administration Portland State- 2 [Phillip, By Order of the President: The Use and Abuse of Executive Direct Action” p.59

Executive orders are often used because they are quick, convenient, and relatively easy mechanisms for moving significant policy initiatives. Though itis certainly true that executive orders are employed for symbolic purposes, enough has been said by now to demonstrate that they are also used for serious policymaking or to lay the basis for important actions to be taken by executive branch agencies under the authority of the orders. Unfortunately, as is true of legislation, it is not always possible to know from the title of orders which are significant and which are not, particularly since presidents will often use an existing order as a base for action and then change it in ways that make it far more significant than its predecessors.¶ The relative ease of the use of an order does not merely arise from the fact that presidents may employ one to avoid the cumbersome and time consuming legislative process. They may also use this device to avoid some times equally time-consuming administrative procedures, particularly the rulemaking processes required by the Administrative Procedure Act.84 Because those procedural requirements do not apply to the president, it is tempting for executive branch agencies to seek assistance from the White House to enact by executive order that which might be difficult for the agency itself to move through the process. Moreover, there is the added plus from the agency's perspective that it can be considerably more difficult for potential adversaries to obtain standing to launch a legal challenge to the president's order than it is to move an agency rule to judicial review. There is nothing new about the practice of generating executive orders outside the White House. President Kennedy's executive order on that process specifically pro­vides for orders generated elsewhere

### 1NC Kritik

#### KRITIK

#### Using the military as a cite to contest militarism ignores the inherent masculinized violence inherent in the military industrial complex; searching for equality within it is a rigged game that can only reify patriarchy

Berlatsky 2013

Noah, correspondent for The Atlantic and author of a forthcoming book about Wonder Woman, The Feminist Objection to Women in Combat, http://www.theatlantic.com/sexes/archive/2013/01/the-feminist-objection-to-women-in-combat/272505/

This week the Pentagon altered its policy prohibiting women from serving in combat roles in the US military. This has generally been seen as a win for feminism by feminists themselves. It's also been seen as a feminist victory by conservative folks like Heather Mac Donald at National Review, who declares with hyperbolic outrage that "the only reason to pursue [the policy of women in combat] is to placate feminism's insatiable and narcissistic drive for absolute official equality between the sexes." I'm a feminist myself, and I certainly think that women should have equal access to jobs and career advancement inside the military as well as outside it. And, as the Jezebel article I linked above points out, women are already often in combat situations. Acknowledging this formally just means that they're able to get the same credit for risking their lives that men do. Still, while the change is certainly, and deservedly, a win for feminism, it is just as certainly a mixed one. On the one hand, the achievement of equality for women in the military highlights just how successful feminism in the United States has been in one of its primary goals—achieving equality. As Jean Bethke Elshtain argued in Women and War, military combat is, in some sense, the defining male role. Exclusion from combat, has, in turn, been one of the defining traits of femininity. A military policy that recognizes women's participation in, and capacity for, combat, is, then, an important assertion that people are not their gender roles. It shows that women really can, and should be allowed to, do everything and anything that men can. The problem is, feminism has never just been about equality. Many feminists have written about the need for women to have the same opportunities as men. But many have also written about the need to criticize male patriarchal values and ideals. And one of the male patriarchal values and ideals that has been consistently criticized and questioned by feminists is war. One famous works of pacifist feminism is Virginia Woolf's Three Guineas. In that book, she argues that: though many instincts are held more or less in common by both sexes, to fight has always been the man's habit, not the woman's. Law and practice have developed that difference, whether innate or accidental. Scarcely a human being in the course of history has fallen to a woman's rifle; the vast majority of birds and beasts have been killed by you, not by us; and it is difficult to judge what we do not share. How then are we to understand your problem, and if we cannot, how can we answer your question, how to prevent war? The answer based upon our experience and our psychology—Why fight?—is not an answer of any value. Obviously there is for you some glory, some necessity, some satisfaction in fighting which we have never felt or enjoyed. Complete understanding could only be achieved by blood transfusion and memory transfusion—a miracle still beyond the reach of science. Woolf is, of course, mistaken. As many women soldiers, not to mention women politicians, have shown, women can be every bit as attracted to war as men. The glory, necessity, and satisfaction of fighting is not by any means restricted to one gender. But Woolf is also right. The history of combat may not be entirely male, but it is overwhelmingly male. And that fact is not merely an inequality; it is a resource. Yes, you can look at the exclusion of women from combat and say, "This is unfair; women should be allowed to fight." But you can also look at that exclusion and say, "You know, half of humanity has been excluded from going to war. If that many people weren't fighting, maybe that means that fighting is an aberration rather than a necessity." Woolf is also correct, I think, to suggest that the glory and necessity of war is often linked to masculinity—to the need to prove one's moral worth as a man. From one perspective, that is also the reason why it's so important that women be allowed in the military and in combat. War is in many ways our standard for moral action. America's status as an ethical nation is linked to its people's willingness to fight and die in righteous wars, as Stanley Hauerwas has argued recently in War and the American Difference. If that's the case, if morality is tied to battle, then women too must fight if they are to be valued and honored as moral actors. When war is so central to our moral experience, those who are not warriors cannot be equal. This is why feminist cultural icons like Buffy Summers or Katniss Everdeen are so often warriors. And it's also why equality in the military has been such a vital goal for so many marginalized groups. Black units fighting in the Civil War were a tremendous boost for anti-racism and equality. Similarly, it will be increasingly difficult to justify discrimination against gay people now that they are openly fighting and dying for our country. Feminism, then, can draw moral force from the military. But that moral force comes at a price. That price is the moral force itself—or, more precisely, the acquiescence to war as a moral force and a moral standard. For Virginia Woolf, war was to be judged by women's experience—and found wanting. American feminism, on the other hand, seems much more comfortable judging women's experiences in relation to traditionally male standards of empowerment—of which military combat is a particularly iconic example. In popular discussions, feminist criticism of militarism and war has largely been lost. As a result, we have one fewer way to protest when our sons, and our daughters too, are sacrificed on the moral altar of war.

#### Vote negative for Conscientious objection---solves comparatively better than the aff.

Elster and Sorensen 2010

Ellen and Majken, War Resisters International, editors of Women and Conscientious Objection - An Anthology, http://www.wri-irg.org/system/files/WomenAndConscientiousObjection-AnAnthology.pdf#page=139

Military values are contradictory to feminism and the values women contributors hope to see in society. Both the stories from the US and Eritrea show how military life affects women who get involved in the army. These women tell of sexual abuse in an environment that has no respect for diversity and human life. But also, women who have never been enrolled in the military articulate arguments of why the military is not compatible with radical feminism. Their stories on why they chose to declare themselves as conscientious objectors can also be regarded as arguments against conscription of women. The Israeli contributions raise this question when they mention Alice Miller, who was one of the first to demand the same rights for women as men in the military when she wanted to become a fighter pilot. It was argued that access to the most important combat roles, often a precondition for other high-ranking positions in the military, would give women access to other influential positions in society, which again would reduce oppression of women. This question was also central in Europe in the late 1970s and during the 1980s, in fact until the so-called cold war ended. Another Alice, Alice Schwarzer from West Germany, became a symbol of the debate in Europe at the time, when she launched the idea that conscription of women was necessary in order for women to get into the highest places of power, which were completely male-dominated. Alice Schwarzer was the editor of the feminist magazine Emma, highly respected for its radicalism, and a voice for women's emancipation. Therefore her declaration came as a surprise for women in the antimilitarist movement. The WRI women's statement from 1980 took a clear stand against the incorporation of women into the military, rejecting the emancipation of women through adopting men's roles. They had seen, through history, how women had been drawn into the military and then out again, according to the needs of the military. An example of this was World War II where British women were encouraged to take the men's jobs and were even conscripted to the army, only to be sent back to the kitchen once the war was over. In an article in Spare Rib [4] in 1981 called "Equality in the Army — No Way!", Lesley Merryfinch writes that women took men's place in the munitions factories and other significant industries. Even child-minding was official war-work. Women who participated in liberation armies, for example the Eritrean liberation army, had similar experiences. The stories of Ruta Yosef-Tudia and Bisrat Habte Micael discredit arguments that military service endows a high degree of liberation for women, although women became involved in this army in the name of gender equality. Lesley Merryfinch also mentions Germany, where women were conscripted to do health-work in the military at the end of the 1970s. This inspired many actions by radical feminists protesting through demonstrations and a postcard campaign, as described in the contribution from Germany. Other voices within the feminist movement, both today and in the past, point to sexual harassment as the norm in the military. In the US, women have openly reported sexual harassment and rape by their male colleagues (5]. Introducing the US section, Joanne Sheehan noted that, while many women have had traumatic experiences of sexual assault, only very few want to talk about this — it is just too painful. Diedra Cobb writes of experiencing sexual assault, without taking the issue further. As Idan Halili argues, if women are to succeed militarily, they will have to adjust to the norm of the combat soldier, "the fighting man", and they are expected to conform to an image which is powerfully identified with stereotypical masculinity. The debate about conscription for women today continues in some countries, and the positions for and against conscription have not changed much. Tali Lerner writes about the debate in Israel. A comparable debate has been a burning issue in Norway during the past five to ten years. Men are still conscripted in Norway, although the number of professional soldiers is increasing in order to serve as part of NATO and European forces in other parts of the world. At the same time, there is a serious debate about introducing conscription for women — not because of lack of personnel (in fact only one in four of male potential conscripts serve), but in the name of gender equality. A generation gap seems to influence views on this issue. Young socialist women are pushing the argument that conscription of women is important in the name of equality. At the same time, they also declare themselves antimilitarists, and say no to NATO. They also object to the current Norwegian participation in the war in Afghanistan. Their arguments are the same as Alice Schwarzer's thirty years ago and Alice Miller's today, though there are certain nuances, as Alice Schwarzer would declare herself a conscientious objector (in the narrow sense), while Alice Miller would not. The older generation of antimilitarists in Norway reject the possibility of changing the military from within. On the contrary, they think that the idea of women "making it softer" is a contradiction. To accept conscription for men and women alike means an acceptance of the military as an institution, and militarism in general. Having more women in the military will more likely increase militarism throughout society. However, there is an openness to conscription for men and women within the broader concept of defence, which would allow for alternative peace service and training for nonviolent defence [6]. In Norway, UN Resolution 1325 on Women, Peace and Security is used to legitimise the need to recruit women into active military service, and it is argued further that men and women complement each other. The argument for recruiting women is that they are best fitted to meet traumatised women in war zones. This argument was also used by the former Minister of Defence, Anne- Crete Strem-Erichsen [7]. A Norwegian researcher on culture and language, Berit von der Lippe [8], analysed the debate by looking at the concepts used to legitimise women's participation in the military, especially abroad. She looks at words used like "human security", "moral obligations", "contributing to peace and conflict resolutions". She writes that the Ministry of Defence is legitimising the introduction of conscription of women in the name of democracy and human rights. This picture disguises what is actually happening, she argues, as war and occupation are within the totally different sphere of power-politics led by men. She thinks that conscripting women to serve in the military equalises them as aggressors who maintain a post-colonial attitude that has no perspective of the situation of women outside the West. We expect this debate to be taken up in many other countries. Although it is linked to the debate about conscription in Norway, the arguments will be the same regarding the importance of having women in a professional army. To us, it also means that women's objection to militarism will be as important as ever. We also see that the language used by the Western military disguises its real meaning by talking about the good intentions of humanitarian wars, peacekeeping armies, wars for democracy, and being against terrorism. It may be that the open aggressiveness and masculinity in the military is more visible in countries other than Norway. Cynthia Cockburn [9] writes that human wars are about violence, and violence breeds violence. The Future of Women's Conscientious Objection We find that the contributors make strong arguments as to why they declare themselves conscientious objectors. One reason why we find this kind of activism encouraging is their very clear antimilitarist stand. By adopting a term that most people define in a very narrow sense, twisting it, expanding it, and giving it a much broader definition, the women manage to explain the problem of militarism very clearly, and link it closely to patriarchy, hierarchy and violence. In our understanding, the contributors take the concept back to peace activism where it belongs. Cynthia Enloe in her preface points at how women are openly investigating patriarchy's daily operations within national and international conscientious objection movements. These movements have helped to persuade many men considering conscientious objection to seriously confront their own behaviour in particular forms of patriarchal masculinity.

### 1NC Case

#### CASE

#### Alternate cause – the reason there is backlash to women in combat is because of the violent American international subjectivity - this is their 1AC Statschowich evidence

Women’s status and gender equality in the armed forces are thus not only an outcome of recruitment conditions or domestic power relations, but also linked to a nation’s position in the global order and its interpretations of that position. Military gender relations are closely connected to the gendered notions of national identity constructed in and through foreign policy. Feminist international relations enables this broader understanding of military gender integration as interrelated with both the gendered dynamics of global politics and domestic power relations. It advocates engagement with the connections between gendered discourses, social power relations, and women’s status in national and international institutions.

#### Their argument is that greater equality in the military somehow solves worldwide patriarchy is idiotic and makes broader feminist movements impossible.

Mohanty 2003 Chandra Talpade, Professor of Women's and Gender Studies, Sociology, and the Cultural Foundations of Education – Syracuse University, “Under Western Eyes” Revisited: Feminist Solidarity through Anticapitalist Struggles, Signs: Journal of Women in Culture and Society 2002, vol. 28, no. 2 http://www2.hawaii.edu/~dasgupta/Mohantysigns.pdf

I wrote "Under Western Eyes" to discover and articulate a critique of "Western feminist" scholarship on Third World women via the discursive colonization of Third World women's lives and struggles. I also wanted to expose the power-knowledge nexus of feminist cross-cultural schol- arship expressed through Eurocentric, falsely universalizing methodol- ogies that serve the narrow self-interest of Western feminism. As well, I thought it crucial to highlight the connection between feminist schol- arship and feminist political organizing while drawing attention to the need to examine the "political implications of our analytic strategics and principles." I also wanted to chart the location of feminist scholarship within a global political and economic framework dominated by the "First World."3 \*[footnote begins] Here is how 1 defined "Western feminist" then: "Clearly Western feminist discourse and political practice is neither singular or homogeneous in its goals, interests, or analyses. However, it is possible to trace a coherence of account\* resulting from the implicit assumption of 'the West' (in all its complexities and contradictions) as the primary referent in theory and praxis. My reference to 'Western feminism\* is by no means intended to imply that it is a monolith. Rather, I am attempting to draw attention to the similar effects of various textual strategies used by writers which codify Others as non-Western and hence themselves as (implicitly) Western- (Mohaniy 1986, 334). I suggested then that while terms such as First and third World were problematic in suggesting oversimplified similarities as well as flattening internal differences, I continued to use them because this was the terminology available to us then. 1 used the terms with full knowledge of their limitations, suggesting a critical and heuristic rather than non- questioning use of the terms. I come back to these terms later in this essay. [footnote ends] My most simple goal was to make clear that cross-cultural feminist work must be attentive to the micropolitics of context, subjectivity, and struggle, as well as to the macropolitics of global economic and political systems and processes. I discussed Maria Mics's (1982) study of the laccmakcrs of Narsapur as a demonstration of how to do this kind of multilaycrcd, contextual analysis to reveal how the particular is often universally significant—without using the universal to erase the particular or positing an unbridgeable gulf between the two terms. Implicit in this analysis was the use of historical materialism as a basic framework and a definition of material reality in both its local and micro-, as well as global, systemic dimensions. I argued at that time for the definition and recognition of the Third World not just through oppression but in terms of historical complexities and the many struggles to change these op- pressions. Thus I argued for grounded, particularized analyses linked with larger, even global, economic and political frameworks. I drew inspiration from a vision of feminist solidarity across borders, although it is this vision that has remained invisible to many readers. In a per- ceptive analysis of my argument of this politics of location, Sylvia Walby (2000) recognizes and refines the relation between difference and equal- ity of which I speak. She draws further attention to the need for a shared frame of reference among Western, postcolonial. Third World feminists in order to decide what counts as difference. She asserts, quite insight- fully, that Mohanty and other postcolonial feminists arc often interpreted as arguing only for situated knowledges in popularisations of their work. In fact, Mohanty is claiming, via a complex and subtle ar- gument, that she is right and that (much) white Western feminism is not merely different, but wrong. In doing this she assumes a common question, a common set of concepts and, ultimately the possibility of, a common political project with white feminism. She hopes to argue white feminism into agreeing with her. She is not content to leave white Western feminism as a situated knowledge, comfortable with its local and partial perspective. Not a bit of it. This is a claim to a more universal truth. And she hopes to ac- complish this by the power of argument. (Walby 2000, 199) Walby's reading of the essay challenges others to engage my notion of a common feminist political project, which critiques the effects of Western feminist scholarship on women in the Third World, but within a framework of solidarity and shared values. My insistence on the spec- ificity of difference is based on a \ision of equality attentive to power differences within and among the various communities of women. I did not argue against all forms of generalization, nor was I privileging the local over the systemic, difference over commonalities, or the discursive over the material.

#### Gender is not the root cause of war.

Hillman 2004

James, psychologist, A Terrible Love of War, pp. 86-87

To imagine war to be a “man’s thing,” one more example of the abusive, self-inflating activity of “the patriarchy,” traps one in the genderist division of the cosmos: all things are either male or female, *tertium non datur*. The genderist division takes on the absolutism of a logical opposition, an either/or which allows no space for the “both” of compromise and ambivalence, and androgyny. This division then influences our fantasies of primordial societies, reducing war to an activity of violent hunter-gatherers versus gentle cultivator-weavers.  If, however, we think about war as an emanation of a god, war as an archetypal impulse, then patriarchy does not originate war but serves war to give it form and bring it to order by means of hierarchical control, ritual ceremony, art, and law.  Remember Foucault’s idea that law is a continuation of war in another form.  Patriarchy makes the forms.  Rather than the origin of war, patriarchy is its necessary result, preventing Ares from blowing up the world and leaving a few poor remnants a life that is “nasty, brutish, and short.” That this hierarchy, these forms can become tyrannical is evident enough, since cruelties of discipline are often secondary consequences of form. Nonetheless, patriarchal tyranny is not the primary cause of war; that cause is the god.

#### Turn – focus on the state as the site of politics reinscribes the public/public dichotomy.

Saloom 2006

Rachel Saloom "A Feminist Inquiry into International Law and International Relations" Roger Williams University Law Review 2006 JD Candidate UGA Lexis.

While there are additional categories of feminist thought, most gender theorists fall into one of these categories elucidated. It is problematic to speak of one unifying feminism; however, [\*164] there are some commonalities and useful points of intersection to discuss. The starting point of many feminist criticisms 28 is the state. Gender theorists criticize the state as the primary actor in international law and international relations for a myriad of reasons. The state is understood as a masculinist actor. 29 Jill Steans posits that the "identity" of the state itself is masculine. 30 When international law and international relations theorists imagine the state as an actor, this actor is identified as male. Feminists criticize the personification of the state as male. 31 Besides this abstract notion about the identity of the state, most feminists believe that the state's actions and inactions are gendered. 32 The impact of state action has different effects on men and women. 33 Because of unequal social relations, women and men have different relationships to the state. 34 For instance, one can generalize that men are not as dependent on the state as women. 35 Women are more dependent on the state because of the economic and social disparities that exist between men and women. 36 J. Ann Tickner argues that since the formation of the modern state, international relations has been gendered. 37 She argues that international relations conflates that which is human with that which is actually masculine. 38 She posits that international relations is based largely upon the experiences and ideas of men. 39 Many gender theorists point out the male- [\*165] dominated discipline of international law and international relations as a starting point for their criticisms. 40 Gender theorists also examine the realm of international law and politics, noting the disparity that exists between the number of men and women that are involved in world politics. 41 Other scholars believe that patriarchy is manifested through state action. According to Eisenstein, the state inscribes the dichotomy between the public and private. 42 This dichotomy perpetuates the marginalization of women. The state operates in the public sphere and does not interfere in the private realm and the lives of women. Peterson argues that "the state constitutes itself as the realm of political action and promotes a definition of politics that narrowly construes power relations." 43 Gender theorists argue that the public/private dichotomy acts as a veil for domestic violence. The state can justify non-interference into the lives of women and men, because the state's role is political and not personal. Feminists seek to break down the dichotomy that exists between the public and private spheres that the state upholds. The slogan, "the personal is the political" is one of the foundations of many types of feminism. 44

#### Aff can’t solve – mirrors societal problems and replicates them through military institutions and abuse

Gottfried 2013

Barbara, co-director of undergraduate studies for the Boston University Women’s, Gender, and Sexuality Studies Program, Women in Combat: A Mirror of Society? http://nation.time.com/2013/06/20/women-in-combat-a-mirror-of-society/

While I strongly support the military’s decision to allow women to hold combat and special ops positions, I am concerned that the military thinks this will substantially cut back on sexual assaults by equalizing male and female roles. Rather, sexual assaults in the military are endemic, mirroring those in the population as a whole. While women’s secondary status has historically made women vulnerable, their growing enfranchisement works to undercut assumptions of male/masculine superiority and the sanctity of previously all-male domains, fueling simmering resentments that can lead to assault. This isn’t true for all men, of course, many of whom respect women’s achievements and skills. Two competing discourses dominate pop culture today: on the one hand, that women are fully equal to men and can do anything men can do, and on the other, that “men are from Mars, women are from Venus.” Packed into this cliché, propagated by, for instance, best-selling author John Gray (Men Are from Mars, Women Are from Venus: The Classic Guide to Understanding the Opposite Sex) are notions traditionalists love to perpetuate: – That men and women are intrinsically, different, and this can never change: it is a “given” of biology; indeed, men and women are so different, it could be said that they hail from different, even diametrically opposed, planets. – That men are “naturally” bellicose, powerful and aggressive, while women are “naturally” made for love, sensual, venal (corruptible). – That it is men’s “job” to fight, women’s job to pleasure men, and so on. Built into these notions is the grounding of permission to consider women’s equal participation in the military undesirable at the very least, even deplorable, destructive of femininity (and of masculinity). Pair this pop-culture psychology with the celebration of hypermasculine performance in the media, from rap stars to action heroes, and the concomitant denigration of any whiff of effeminacy or expression of vulnerability or emotion, and with the disenfranchisement of men in a culture that no longer values or needs men’s earning power or protection (see, for instance, Susan Faludi’s Stiffed: The Betrayal of the American Man). That’s a foolproof formula for the scapegoating, harassment and/or abuse of women (and gays). Military leaders have stated that sexual assault and harassment violate and are inconsistent with core professional values and culture. Yet they refuse to confront the problem head-on, despite allegations by the many young women (and some young men) who have been assaulted that there is a “culture” of harassment and of retaliation in the military. Linking the decision to allow women to participate in combat roles and elite corps to (a then hoped for) reduction in sexual violence again sidesteps the very real issue of this endemic sexual violence. It underscores the failure of the military’s leadership to effect cultural change in their ranks. How can the issue of sexual violence against women (and some men) in the military be addressed more effectively? First and foremost, the military must openly acknowledge and take responsibility for the culture of harassment and violence that pervades the military so that it can be openly addressed. Only then will those who have been harassed feel that they can come forward without adverse consequences to their persons or their careers. Other countries, including Israel, have successfully integrated women into their militaries for generations despite a culture of machismo. America should look to Israel’s lead here: from the secretary of defense on down, a new attitude and code of conduct must be embraced. Training women for the military’s toughest missions alongside men, hopefully, will engender greater equality and respect. But ultimately the effort to inculcate real change in the military culture will require a zero-tolerance attitude toward sexual assault in the civilian world, too. That’s a battle in which all of us civilians should enlist.

#### And the military won’t account or provide legal rights to new women integrated into the military, creating a systemic culture of rape

Burke 12 (Susan, civil discrimination lawyer known for cases in which she has represented plaintiffs suing the American military, she has represented former detainees of Abu Ghraib and military translators, On Appeal from the United States District Court: APPELLANTS’ OPENING BRIEF, KORI CIOCA et al. Plaintiffs-Appellants, v. DONALD RUMSFELD et al., april 23, http://protectourdefenders.com/images/Burke\_Cicoa\_Appeal\_Brief.pdf)

It is clear that the District Court created a per se rule against servicemembers’ Bivens claims because it dismissed the lawsuit without any factfinding on whether adjudication would impact military discipline in any way, let alone in a negative way. The rape survivors allege Defendants substituted their own views on what should be done for the views of Congress. They allege former Secretaries Rumsfeld and Gates refused to cooperate with Congressional oversight and violated, among others, Public Law 105-85 and the National Defense Authorization Act for Fiscal Year 2009. They allege they were harmed by the Defendants’ intentional flouting of the Congressional rules and regulations designed to reduce unpunished rape and sexual assault in the military. J.A. 52-57 ¶¶ 319-340. The federal courts generally have a duty to adjudicate Constitutional claims, and should voluntarily abstain from such adjudication only in those rare instances when adjudication undermines, rather than strengthens, the democratic values enshrined in the Constitution. In the instant case, adjudication, not abstention, serves to ensure that the entity answerable to the electorate, Congress, controls military discipline, and that its efforts to do so are not intentionally thwarted by unelected Executive branch officials. Rapes and sexual assaults serve no military mission, as has been conclusively established by the military’s own statements. See J.A. 47¶ 304, quoting the 2009 Annual Report on Sexual Assaults in the Military: “In the armed forces sexual assault not only degrades individual resilience but also erodes unit integrity. Service members risk their lives for each other to keep fellow service members out of harm’s way. Sexual assault breaks this important bond and tears apart military units. An effective fighting force cannot tolerate sexual assault within its ranks. Sexual assault is incompatible with military culture, and the costs and consequences for mission accomplishments are unbearable.” It is for all these reasons that Congress acted, not once but repeatedly, to direct Defendants on what they should do to reduce the amount of unpunished sexual predation in the military. Yet Secretaries Rumsfeld and Gates intentionally violated these directives, and instead ushered in an era of an ever-greater number of unpunished rape and sexual assaults. Holding Defendants accountable for intentionally violating Congressional rules and regulations cannot possibly negatively impact military discipline. To the contrary, allowing wrongdoing to flourish at the very highest level of the military, and allowing Defendants to ignore the civilian control required by the Constitution, undermines not only military discipline but the Constitution itself. Our democracy has never elevated the military to a special status outside the reach of Congress and its laws. Yet these two men persuaded the District Court, and seek to persuade this Court, that they should be considered above the law of the land. This Court should reject this cynical and democracy-destroying effort, and hold that a jury of Americans should decide whether these two men should pay damages to the individuals irreparably harmed by their misconduct. The District Court erred by adopting a per se rule and concluding without any fact finding that permitting the rape survivors to bring Bivens claims would impair military discipline or impede a military mission. Such a per se rule contradicts, not adheres to, the Supreme Court’s Chappell decision. Permitting the rape survivors to seek Bivens damages from the former military leaders who viewed themselves as beyond the reach of Congressional rules and regulations will send a clear message of accountability and civilian control over the military.

#### More evidence – integration will only reify patriarchy through a lack of accountability on sexual assault

Banner-prof law Phoenix-13

ARTICLE: IMMORAL WAIVER: JUDICIAL REVIEW OF INTRA-MILITARY SEXUAL ASSAULT CLAIMS

17 Lewis & Clark L. Rev. 723

In 2011, governmental officials estimate that approximately 19,000 sexual assaults took place in the United States military. 2 The vast majority of reported assaults were committed against enlisted personnel. 3 Fewer than 200 persons were convicted of crimes of sexual violence, and only 122 were discharged upon conviction. 4 Currently, two pending class [\*725] action lawsuits, Cioca v. Rumsfeld 5 and Klay v. Panetta, 6 seek to impose institutional accountability for sexual violence committed by servicemembers against fellow servicemembers. The lawsuits allege that, despite an official "zero tolerance" policy and repeated efforts to remedy the problem, sexual assault remains widespread across all branches of the military and military academies, fostered by a culture that rewards overt, ritualized displays of hyper-masculinity and severely penalizes victims for reporting incidents of sexual misconduct. 7 The plaintiffs in Cioca and Klay face a Sisyphean battle due to two significant and interrelated obstacles. The most prominent are the Feres 8 principles, which have been interpreted to bar actions by service personnel against military officials for torts committed "incident to service." Since the 1950s, Feres has been expansively interpreted to bar justiciability of claims by military personnel against superior officers not only for negligence and intentional torts, but also for blatant violations of constitutional rights. 9 Despite the strong disapproval of several Supreme Court justices and countless district and appellate courts, the Court has denied certiorari in recent cases challenging application of the doctrine, thus further entrenching it. 10 The other substantial obstacle to these lawsuits is the normative but no less significant specter of "judicial activism" and its mirror, "military deference," the reluctance of the judiciary to usurp Congressional responsibility for the conduct of military affairs. Signing up for the military has been interpreted by the courts to mean that plaintiffs can be administered psychotropic drugs, 11 exposed to toxic chemicals, 12 and sexually assaulted, 13 all without their consent and devoid of meaningful remedy beyond recourse available via the Uniform Code of Military [\*726] Justice (UCMJ) 14 and the chain of command. No matter how profound the injustice or disenfranchised the plaintiff, in case after case, courts are reluctant to disregard what they believe to be established precedent baring judicial review of intra-military claims. This hands-off position in regard to all things military is part and parcel of what other scholars have categorized as the Rehnquist and Roberts Courts' overarching "anti-litigation" stance. 15 As Chief Justice Roberts tellingly observes of the Court: "It is not our job to protect the people from the consequences of their political choices." 16 "Inactivist conduct" by the highest court has, in turn, led to a hands-off attitude in the appellate courts: "Judges are human, we might reasonably expect that some will take advantage of the increased opportunities to avoid decisions that they would prefer not to make." 17 When it comes to constitutional claims stemming from intra-military sexual assaults, this minimalist approach results in profound injustice. The first of the class actions to be filed, Cioca v. Rumsfeld, was dismissed by the district court in December 2011 18 and currently is on appeal to the U.S. Court of Appeals for the Fourth Circuit. 19 The dismissal is premised on the commonly accepted ground that precedent leaves no place for the judiciary in the resolution of intra-military claims. Although the vast majority of courts share this interpretation of Feres as barring the plaintiffs' claims for constitutional torts, the blind application of outdated caselaw in these cases is legally and morally unsound. Over the years, the Court has identified three core principles underlying Feres: (1) respect for supervisory decisions made in the context of intra-military supervision (the "incident to service" exception); (2) presence of an alternative compensation scheme that provides soldiers with a "generous" alternative to recovery in tort; and, (3) perhaps foremost, the belief that, were soldiers permitted to file lawsuits against superior officers in civilian courts, the military disciplinary structure [\*727] would be undermined. 20 None of these justifications suffice to waive the judiciary's obligation to resolve the Klay and Cioca plaintiffs' constitutional claims. Feres was decided just after World War II, a historical moment that differed dramatically from the one we now inhabit. Congress recently had enacted the Federal Tort Claims Act (FTCA), creating causes of action against federal officials for negligence. 21 While Congress may not have intended to subject itself to tort claims from every soldier injured in the line of duty, 22 when read against the current legal and political environment, the expansion of the doctrine to bar all claims by servicemembers against military officials does not make sense. Further, the judicial branch that advocated deference to military affairs in what have become seminal cases on constitutional separatism - Rostker v. Goldberg, 23 Goldman v. Weinberger, 24 United States v. Shearer 25 - faced a vastly different world than the judiciary faces today. This is not our grandparents' military, in which nearly 10% of the population volunteered or were drafted into service. 26 We inhabit the era [\*728] of the citizen-soldier. Forty percent of troops deployed to Iraq and Afghanistan are National Guard and Reserve volunteers. 27 Nearly half of these reservists suffer from issues such as post-traumatic stress disorder (PTSD), military sexual trauma (MST), or other psychological trauma and have difficulty accessing adequate treatment for these conditions. 28 The actions of "the troops" are not separate from those of civilians; the troops committing and suffering from sexual assaults are civilians. Unconvicted military perpetrators ultimately are released into the civilian population, are not subjected to sex offender registries, and are free to reoffend. 29 Perpetrators and victims return home to a system ill-equipped to offer redress for their grievances, contributing to concerning rates of divorce, 30 domestic violence, 31 even suicide. 32 Although soldiers comprise the heartland of America, military decisionmaking has been severed from civilian accountability. 33 The biggest hurdle to resolution of the Cioca and Klay plaintiffs' claims is the idea that battle readiness depends on autonomy in military decisionmaking, that civilian intervention will weaken the institution of [\*729] the U.S. military. However, there is a much greater threat of erosion of the military command structure if sexual violence is permitted to continue unabated. 34 The DoD itself admits that the "costs and consequences [of sexual assault] for mission accomplishment are unbearable." 35 As I discuss herein, the selfsame rhetoric of unit cohesion and combat readiness was deployed by the military to discourage judicial review of the discriminatory "Don't Ask, Don't Tell" (DADT) 36 policy. The result of judicial review in those cases? A stronger military. 37 In the case of serious, widespread, and unremedied constitutional violations, the biggest threat to democracy is not judicial intervention but judicial complacency. Chief Justice Earl Warren famously cautioned that "our citizens in uniform may not be stripped of basic rights simply because they have doffed their civilian clothes." 38 However, this is precisely what is happening today in the case of victims of military sexual assault. As Jonathan Turley profoundly observes: There remains a striking discontinuity in the duty of our servicemembers to defend liberties and rights with which they are only partially vested... . When servicemembers encounter ... dangers, they do so as citizen-soldiers. It is the significance of the first part of the term citizen-soldier that demands greater attention from those of us who are the beneficiaries of the second part. 39 Turley observes, further, that the most essential time for civilians to step in and protect the rights of servicemembers is when they are "engaged in a new struggle against a hidden and dangerous enemy." 40 The "hidden and dangerous" enemy to which Turley refers is international terrorism, but the same can be said of the domestic and endemic issue of sexual assault. [\*730] As I describe below, and as Turley and Diane Mazur elsewhere have argued, what has become a widely accepted "doctrine" of constitutional separatism is in fact no more than a flexible policy created by the Court as a reflection of changing political times. 41 A close reading of precedent reveals that in assessing matters of constitutional concern, the caselaw does not mandate blanket non-intervention in military affairs but that the Court balance the harm of intervention against the injustice being perpetrated. Feres, which considered the narrow issue of military sovereign immunity from mere negligence claims, has been extended to the point of unrecognizability. The doctrine applied today is a policy of judicial deference that has been widely criticized as unjust by judge after judge, believing they are mandated to apply it. 42 In the field of history, scholars have identified what they label "conjunctures," periods in which competing narratives are made visible and the time is particularly ripe for change. 43 In recent decisions in favor of plaintiffs challenging the discriminatory DADT policy, Witt v. Department of the Air Force 44 and Log Cabin Republicans v. United States, 45 the [\*731] federal courts in the Ninth Circuit showed themselves willing to fulfill their role as constitutional arbiter when individual rights are infringed as a result of inaction by the other two branches. Rather than interpreting precedent to mandate a hands-off approach to the military, the Ninth Circuit reinterpreted existing caselaw as a call for judicial intervention where constitutional rights were circumscribed. The courts determined in those cases that the egregiousness of discriminatory practices under DADT and the obvious attenuation between the policy and unit cohesion, outweighed potential negative effects of intercession in military affairs. 46 In light of the harm that can result from the glacial pace of legislative action, judicial decisionmaking proved itself a vital engine of social change. According to the military's own statistics, thousands more servicemembers are sexually assaulted in one year than were discharged under the whole of the DADT policy. 47 Congress and the military have tried and failed for a quarter century to remedy the problem of intra-military sexual assault. 48 The only way to end intra-military rape is to radically alter the system of reporting, investigation, and prosecution of sexual assault claims. 49 The emphatic and relatively unanimous disapproval of the Feres doctrine by lower courts suggests that the question is not if the Court will revisit the doctrine, but when. With the filing of Cioca and Klay, the moment is ripe for the Supreme Court to revisit what has become an outdated and unworkable doctrine. Further, these cases provide an important opportunity for the Court to signal that it will not abdicate its responsibility to adjudicate worthy constitutional claims, particularly claims that otherwise are foreclosed. 50 [\*732] Part Two of this Article discusses the issue of military-on-military sexual violence, focusing on the class actions currently pending, Cioca v. Rumsfeld and Klay v. Panetta. Part Three of the Article focuses on the policy of military deference and the Feres principles, examining the historical origins and continued expansion of these judge-made doctrines. Part Four of the Article makes three primary arguments in support of judicial resolution of constitutional claims resulting from intra-military sexual assault. First, I argue that the defense that intra-military rape is a hazard of service is unsupported, not only by Supreme Court caselaw but by the government's own admission. Military officials currently are permitted to take the paradoxical position of framing gender-based violence against civilians as a private crime and intra-military violence as incident to service. Second, I challenge the argument that the military provides adequate remedies in cases of sexual assault, particularly in regard to female servicemembers. Lastly, I argue that constitutional separatism is a creature of judicial policymaking that at long last is ripe for revision. I explore the DADT repeal cases as a roadmap for resolution of constitutional claims resulting from assault, and I conclude by outlining the normative reasons why the judiciary must take an active role in these cases in order to preserve confidence in not only the military, but the judiciary as well. II. Klay and Cioca: "Zero Tolerance," Moral Waivers, Institutional Responsibility Thirty-six plaintiffs in Cioca v. Rumsfeld and Klay v. Panetta seek recognition of the liability of military and executive officials for the constitutional harms they suffered as a result of being raped, assaulted, and harassed while serving in the military and the retaliation they experienced as a result of reporting the crimes. 51 They allege that, not only were their Fifth Amendment rights to bodily integrity violated when they suffered sexual assaults, but officials impeded the plaintiffs' exercise of their due process rights and First Amendment rights by unfairly terminating and otherwise mistreating them because they had reported the violence. Further, the suits allege equal protection violations, as government officials "subjected [the] Plaintiffs to a pattern of ... assault, and ... harassment ... on the basis of gender; and encouraged a culture of sexism and misogyny." 52 Kori Cioca chronicles a typical experience of escalating harassment, culminating in rape by a fellow servicemember. 53 Over the course of several months, Cioca's direct supervisor in the Coast Guard subjected her to numerous incidents of sexual harassment, culminating in his [\*733] sneaking into Cioca's room and masturbating and forcing her to touch his penis and physically assaulting her when she refused. Despite the fact that Cioca and two other women who witnessed the harassment promptly reported the assault, military command did not respond on any official basis. However, a different superior officer took her to his church, where he and other officers "prayed for her safety." 54 Shortly after this incident, Cioca was dragged into a closet and raped by the supervisor who had been harassing her. Command eventually transferred Cioca; however, they told her if she continued to pursue allegations of rape, she would be court-martialed for lying. 55 She was ordered to sign a paper stating she had an inappropriate consensual relationship with her attacker. Despite a promise of confidentiality, commanders openly discussed the incident. She was harassed at her new post, and eventually discharged on the basis that she had a "history of inappropriate relationships." 56 Two months shy of completing her service obligation at the time of discharge, Cioca is unable to obtain benefits for a chronic injury sustained during the assault. Her attacker faced no sanction. 57 Ariana Klay tells a similar story of escalating incidents and retaliation for reporting. Klay alleges she was sexually harassed by numerous superior officers while serving at the Marine Barracks in Washington D.C., an extremely prestigious post situated just a mile from the Capitol. The complaint chronicles Klay's harassment by not one but numerous high ranking Marine officials, including a major, a captain, and a lieutenant colonel. The captain spread numerous rumors, including that Klay had been involved in a "gang bang." She regularly was referred to as "slut," "whore," and "WM," for "walking mattress." Upon reporting what she deemed "pervasive hostility," she was told to "deal with it." In 2010, a senior officer and his civilian friend entered her residence without permission, where both raped Lieutenant Klay. 58 When Klay reported the incident, she was told she must have welcomed the attack, because she wore regulation issue skirts and makeup and exercised in tank tops. 59 One of the rapists was court-martialed; however, he was convicted of the much lesser crimes of adultery and indecent language. Klay lost a promising career. At least one of her harassers was promoted. 60These complaints chronicle not only individual harms but a "systemic failure to stop rape and sexual assault." 61 The ways in which the [\*734] military tacitly 62 and overtly promotes a culture of sexual assault begins with the recruitment process. Faced with a crisis in securing personnel in the face of impending wars, under Secretary of Defense Rumsfeld, the military instituted a policy of granting moral waivers, accepting recruits who had been arrested or convicted of offenses, including domestic assault, aggravated assault, and rape. 63 Between 2004 and 2007, over 125,000 recruits with criminal histories enlisted in the various branches. 64 In 2006, more than 10% of soldiers in the Army had criminal pasts. 65 A 2010 study of incoming recruits conducted on behalf of the Navy to evaluate the effectiveness of potential sexual assault prevention programs found that between 13% and 15% of new recruits self-reported perpetrating or attempting rape, more than three times the statistics estimated for the population in general. 66 The researchers who conducted the study caution that these numbers are likely low, as any [\*735] self-reporting study likely inspires respondents to under-report. 67 Commentators suggest that sexual predators are likely to be attracted to the armed forces in part because the service also recruits individuals who are particularly vulnerable to sexual assault. 68 "[A] startling number of women and men enlist in the military to escape abuse. Among army soldiers and marine recruits, half of the women and about one-sixth of the men report having been sexually abused as children, while half of both say they were physically abused[,]" much higher rates than among the civilian population. 69 The Cioca appeal chronicles repeated instances of former Secretaries of Defense Rumsfeld and Gates failing to comply with congressional mandates to remedy issues of sexual predation, assault, and harassment. 70 Under their watch, reported sexual assaults in the military increased by 25%, particularly in combat zones. 71 Until very recently, the DoD response to rising rates of sexual assault has been to engage in "soft" approaches, such as advertising campaigns and lighthearted presentations, including "Sex Signals" and "Can I Kiss You?" 72 Campaigns such as "Ask Her When She's Sober," 73 "What Rapists [\*736] Look Like," 74 and "Bystander Intervention" 75 perpetuate the perception that most sexual assaults occur in a "he said/she said" situation in which anyone could cross a line. "(Primarily male) troops are not encouraged to cease sexually pursuing (primarily female) co-workers but to become better at recognizing the "signals' those co-workers are sending." 76 As Helen Benedict notes, when confronted by the problem of sexual assault, many servicemembers respond that prostitution is not as widely available in Iraq and Afghanistan as it was in prior wars, characterizing rape as a crime of desire versus a crime of power and exploitation. 77 This portrayal of rape as a product of "pent-up lust," encouraged by the Sexual Assault Prevention and Response Office (SAPRO) itself, plays into an "anyone can rape" myth that is both inaccurate and dangerous. It also ignores the vital fact that, as pointed out in one recent Navy study, "men who have previously engaged in sexual aggression are likely to do so again." 78 The failure of recent institutional tactics to stem the tide of sexual assaults is evidenced by the fact that so few perpetrators in the military are convicted of crimes of sexual violence. 79 When one examines only reported offenses, fewer than 15% of those accused are prosecuted for rape or sexual assault versus 40% of the accused in the civilian community. 80 An attorney who has served in the Judge Advocate General's corps and former military criminal investigators describe a culture in which accusers regularly are interrogated and threatened with charges for giving false statements and where rape cases routinely are given to male military police officers to investigate, as women are deemed "too sympathetic." 81[\*737] Rather than being court-martialed, offenders frequently are penalized under Article 15 of the UCMJ, which permits non-judicial penalties, or Article 134, adultery. 82 Although SAPRO is in the process of implementing a centralized database to track incidents of sexual assault, to date, the military has been exceedingly lax in reporting such data. 83 Among plaintiffs, reports of incidents almost uniformly lead to derivation of opportunities for advancement, overt retaliation, or even death. 84 One-third of the 36 plaintiffs in the Klay and Cioca cases were officially reprimanded, sanctioned, or discharged in retaliation for making complaints. 85 Others resigned after having been ordered to continue to serve under direct command of alleged rapists or their friends and [\*738] protectors. 86 Many perpetrators were promoted, one was even featured in a Marine Corps calendar. 87 The experiences of Ariana Klay and Kori Cioca are not unique. In the past 30 years, numerous, similar cases have been brought in district courts around the United States, alleging a wide range of claims against military officials in connection with sexual assault and harassment. 88 Most have been dismissed based on the courts' application of the Feres principles. Last year, the District Court for the Eastern District of Virginia predictably dismissed Cioca's complaint on the grounds that, although the plaintiffs' complaints were "troubling," the "unique disciplinary structure of the military establishment" was a "special factor" that counseled against judicial intrusion. 89 Judge Liam O'Grady was apologetic in his dismissal. 90 Like his colleagues, he wanted to hear these cases, but believed precedent tied his hands. In Part Three, I delve more deeply into the stated grounds for dismissal, arguing that the law is not as cut and dried as the courts believe. Contributing to Diane Mazur's and Jonathan Turley's recent work, I hope to lay a foundation for the judiciary to re-evaluate the adherence to military deference in the context of claims of sexual assault. III. "Troubling," "Egregious," Dismissed "The humblest seaman or marine is to be sheltered under the aegis of the law from any real wrong, as well as the highest in office." 91 The ability of Cioca and Klay to bring their suits is located in Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics. 92 Bivens involved an alleged Fourth Amendment violation, whereby several federal agents conducted a warrantless search of Bivens's apartment and subsequently [\*739] subjected him to a strip search. The Court held that, even if no specific statute provided it, a violation of the Constitution by a federal employee could provide a cause of action against that employee for money damages. 93 Bivens has been interpreted to provide causes of action for employment discrimination under the Fourteenth Amendment Due Process Clause and the Eight Amendment's prohibition on cruel and unusual punishment. 94 In Bivens, the Court "recognized the tremendous capacity for causing harm that one possesses when acting under the authority of the United States government." 95 In the context of suits by and against military personnel the ability of plaintiffs to obtain money damages under Bivens has been severely limited by the separate but interrelated principles propounded by the Court in Feres v. United States. 96 Feres involved three cases in which executors of estates of active duty military personnel sued military officials for damages based on negligence under the FTCA. 97 The Court held that, although the FTCA provided some causes of action against the military, the Act was not meant to create new causes of action but only to right "remediless wrongs - wrongs which would have been actionable if inflicted by an individual or a corporation but [are] remediless solely because their perpetrator was an officer or employee of the Government." 98 In the Feres plaintiffs' cases, because each harm was suffered in the course of active duty and there was no liability "under like circumstances" for private claims, the Court unanimously held that the suits were not justiciable. 99 Feres created an opportunity for Congress to clarify application of the FTCA and articulate the scope of its application [\*740] to service personnel. 100 However, Congress has not taken the opportunity to amend the statute.

#### Their 1AC Haring evidence says the culture of the military matters and produces sexual abuse , and it will backlash to integration. Critical mass takes time so in the short term women will seek to leave the military

#### Women fight in combat now-fully integrated by 2016 AND if they are excluded it is not because the president’s war power authority

**Briggs et al., NBC News, 2013**

(Bill, “Women in combat: Could special ops be the next stop?”, 6-17, <http://usnews.nbcnews.com/_news/2013/06/17/19008258-women-in-combat-could-special-ops-be-the-next-stop>, ldg)

The Pentagon has moved beyond merely talking about placing women into combat and is actively mapping how, when and where servicewomen eventually will be assigned to far more dangerous duties — including, perhaps, special forces operations, senior U.S. defense officials tell NBC News. While the blueprint for dual-gender U.S. combat units continues to be sketched — and remains subject to change — military brass are contemplating a stunning first: allowing women to begin training as Army Rangers and Navy SEALS by 2016, Pentagon officials said on Monday. The branches have been studying how best to deploy women in combat roles since Jan. 24, when then-Defense Secretary Leon Panetta cleared the way for women to serve in some of the military's 237,000 combat-related positions, ending a 20-year prohibition. Initially, branch commanders were given until May 15 to tell Defense Secretary Chuck Hagel how they will integrate women into combat by 2016. The latest strategy discussions signal that servicewomen soon may be handed vocational roadmaps to complete full combat careers. But Pentagon officials are quick to add that as their internal study proceeds, the services can, at any time, request "exceptions" to admitting women into specific combat categories. Further, the strenuous physical standards required for entry into special-forces jobs and combat-infantry assignments will not be lowered for anyone, they say. In fact, the immediate focus among military leaders involves opening certain positions for women in combat-support roles — as soon as possible, U.S. defense sources tell NBC News. That could include jobs like communications, intelligence and mechanics in forward combat deployments. Women already are deployed as combat pilots and flight crews for the Army, Navy and Air Force. Women now comprise about 14 percent of the armed forces. From Capitol Hill to the female-veteran community, some observers lauded the branches' work to zero in on female-combat jobs as a move toward a more robust American force — with one frequent Pentagon critic, Sen. Kirsten Gillibrand, calling it "another step in the right direction." "Women are already fighting and dying for our country, shoulder-to-shoulder with their brothers in uniform on the front lines, but without the formal recognition that is essential for them to advance and obtain the benefits they have earned," said Gillibrand, a New York Democrat who led and lost a recent fight to reform the military justice system as a way to stem a rape epidemic in the ranks.

#### Proximal impacts must come first

Martain 90 (Brain, Awesome guy, “Uprooting War,” http://www.uow.edu.au/~bmartin/pubs/90uw/uw13.html)

In this chapter and in the six preceding chapters I have examined a number of structures and factors which have some connection with the war system. There is much more that could be said about any one of these structures, and other factors which could be examined. Here I wish to note one important point: attention should not be focussed on one single factor to the exclusion of others. This is often done for example by some Marxists who look only at capitalism as a root of war and other social problems, and by some feminists who attribute most problems to patriarchy. The danger of monocausal explanations is that they may lead to an inadequate political practice. The ‘revolution’ may be followed by the persistence or even expansion of many problems which were not addressed by the single-factor perspective.The one connecting feature which I perceive in the structures underlying war is an unequal distribution of power. This unequal distribution is socially organised in many different ways, such as in the large-scale structures for state administration, in capitalist ownership, in male domination within families and elsewhere, in control over knowledge by experts, and in the use of force by the military. Furthermore, these different systems of power are interconnected. They often support each other, and sometimes conflict. This means that the struggle against war can and must be undertaken at many different levels. It ranges from struggles to undermine state power to struggles to undermine racism, sexism and other forms of domination at the level of the individual and the local community. Furthermore, the different struggles need to be linked together. That is the motivation for analysing the roots of war and developing strategies for grassroots movements to uproot them.

#### Analyzing existential risks is essential for survival

Bostrom 02, Professor of Philosophy at Oxford University and Director of the Future of Humanity Institute, ’2 (Nick, March, “Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards” Journal of Evolution and Technology, Vol 9, http://www.nickbostrom.com/existential/risks.html)

9.6 Maxipok: a rule of thumb for moral action Previous sections have argued that the combined probability of the existential risks is very substantial. Although there is still a fairly broad range of differing estimates that responsible thinkers could make, it is nonetheless arguable that because the negative utility of an existential disaster is so enormous, the objective of reducing existential risks should be a dominant consideration when acting out of concern for humankind as a whole. It may be useful to adopt the following rule of thumb for moral action; we can call it Maxipok: Maximize the probability of an okay outcome, where an “okay outcome” is any outcome that avoids existential disaster. At best, this is a rule of thumb, a prima facie suggestion, rather than a principle of absolute validity, since there clearly are other moral objectives than preventing terminal global disaster. Its usefulness consists in helping us to get our priorities straight. Moral action is always at risk to diffuse its efficacy on feel-good projects[24] rather on serious work that has the best chance of fixing the worst ills. The cleft between the feel-good projects and what really has the greatest potential for good is likely to be especially great in regard to existential risk. Since the goal is somewhat abstract and since existential risks don’t currently cause suffering in any living creature[25], there is less of a feel-good dividend to be derived from efforts that seek to reduce them. This suggests an offshoot moral project, namely to reshape the popular moral perception so as to give more credit and social approbation to those who devote their time and resources to benefiting humankind via global safety compared to other philanthropies. Maxipok, a kind of satisficing rule, is different from Maximin (“Choose the action that has the best worst-case outcome.”)[26]. Since we cannot completely eliminate existential risks (at any moment we could be sent into the dustbin of cosmic history by the advancing front of a vacuum phase transition triggered in a remote galaxy a billion years ago) using maximin in the present context has the consequence that we should choose the act that has the greatest benefits under the assumption of impending extinction. In other words, maximin implies that we should all start partying as if there were no tomorrow. While that option is indisputably attractive, it seems best to acknowledge that there just might be a tomorrow, especially if we play our cards right.

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### AT: Cause of Action

#### Their evidence doesn’t assume the counterplan that creates an explicit cause of action for private enforcement

Ostrow-GW law review-87 55 Geo. Wash. L. Rev. 659, \*

55 Geo. Wash. L. Rev. 659

NOTE: ENFORCING EXECUTIVE ORDERS: JUDICIAL REVIEW OF AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT. \*

Even if an executive order has the force and effect of law, courts will not recognize a private cause of action against the government under the executive order unless there is evidence of presidential intent to create a cause of action. 32 For example, in Acevedo v. Nassau County, 33 members of low-income minority groups brought a class action alleging that the General Services Administration had violated an executive order 34 by planning a federal office building without considering the adequacy of low-income housing in the area. 35 The Second Circuit affirmed the district court's dismissal on the ground, inter alia, that the executive order created no right of action, either express or implied. 36 The court found that the order did not expressly grant a cause of action and that the obligations imposed by the order were "so broad and vague" that inferring a private cause of action might engender protracted lawsuits by persons with little at stake. 37 If presidential intent is not explicit, courts frequently will look to the history of the executive order or the administrative scheme established by the order to determine whether there exists an implied right of action. Using this analysis, some courts refuse to allow a cause of action under an executive order based on an "exclusivity [\*666] of remedy" rationale. 38 The Fifth Circuit in Farkas v. Texas Instrument, 39 for example, held that there was no right of action under an executive order because the administrative remedies prescribed by the order were intended to be the exclusive mode of enforcement. 40 Plaintiff asserted that he was discharged in violation of an executive order 41 that forbade government contractors from discriminating against employees or applicants on the basis of national origin. 42 Plaintiff had unsuccessfully pursued his administrative remedies under the order by seeking relief before the President's Committee on Equal Employment Opportunity. 43 The court concluded that the Committee's refusal to grant relief was final and that the President did not contemplate a private cause of action directly under the order "[i]n light of the Order's emphasis on administrative methods of obtaining compliance with the required contractual provisions." 44 It therefore affirmed the district court's dismissal of the discrimination claim for failure to state a cause of action. 45 These decisions illustrate the formidable barriers that plaintiffs must overcome to assert a cause of action directly under an executive order. Courts have been extremely reluctant to infer rights of action when, as is frequently the case, the orders are silent on the subject of private enforcement and establish their own administrative remedial schemes. 46 Instead of looking exclusively to the executive order for a cause of action, courts should look to the APA as an alternative basis for judicial review of an agency's violation of an order.

#### Executive orders can explicitly create judicial review

Ostrow-GW law review-87 55 Geo. Wash. L. Rev. 659, \*

55 Geo. Wash. L. Rev. 659

NOTE: ENFORCING EXECUTIVE ORDERS: JUDICIAL REVIEW OF AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT. \*

Professor Noyes has proposed a similar analysis of congressional intent in the context of inferring rights of action against private defendants. Noyes, supra note 4, at 862-78. He suggests that the courts, in deciding whether an executive order creates a private right of action, should rarely rely on presidential intent alone. Id. at 838, 876-77. Rather, they should examine the language and legislative history of any statute(s) upon which an executive order is based for evidence of congressional intent to provide a private remedy for violation of an order. Id. at 838, 863-75. Noyes posits that presidential intent is relevant only when Congress has delegated to the President the authority to create a right of action. Id. at 864-65, 876-77. Interestingly, he also suggests that the President has the power, at least theoretically, to create private rights of action for violations of constitutionally authorized executive orders. Id. at 860-62. The inquiry into presidential intent may be justified for such constitutionally based executive orders.

#### Judicial review of executive order solves accountability and enforcement issues

Ostrow-GW law review-87 55 Geo. Wash. L. Rev. 659, \*

55 Geo. Wash. L. Rev. 659

NOTE: ENFORCING EXECUTIVE ORDERS: JUDICIAL REVIEW OF AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT. \*

Despite this difficulty, courts should not search an executive order for presidential intent to preclude review. If judicial review could be denied by executive order, "the President could avoid the review of agency action of the type that Congress intended to be reviewable." 142 Congress ordinarily establishes administrative bodies with lawmaking powers and decides whether to insulate those offices from judicial oversight. 143 As previously discussed, agency action is presumptively reviewable unless it is "committed to agency discretion by law" or unless Congress expressly or impliedly intended to preclude review. 144 The language of section 701(a) suggests that preclusion of review is solely a legislative function. 145 The basic presumption in favor of review would be seriously undermined if the President could simply preclude judicial review by executive order. Such presidential action conflicts with Congress's declared policy in favor of review of administrative action. Justice Jackson, concurring in Youngstown Sheet & Tube Co. v. Sawyer (the Steel Seizure Case), 146 examined the executive's largely undefined authority and identified three degrees of presidential power: When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate . . .When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain . . . When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the [\*684] subject. 147 Using Justice Jackson's analysis, an executive order's preclusion of review should probably be regarded as ineffective because it is contrary to the will of Congress as expressed in the APA and many substantive statutes. 148 Through the APA's "generous review provisions," Congress has mandated that an aggrieved person's right to judicial review of final agency action ordinarily cannot be cut off. 149 The President's power in this circumstance is at its "lowest ebb." 150 As Justice Jackson warned, such a claim to presidential power "must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system." 151 Indeed, presidential preclusion of judicial review of agency compliance with executive orders undermines the system of checks and balances embodied in the Constitution. The separation of powers principle entails not only a governmental system based on separated powers, but also one of shared, mutually limiting powers. 152 Yet, if an executive order could insulate certain governmental conduct from judicial review, there would be no effective way for the judiciary to oversee these actions by executive departments in order to enforce the requirements of an order. Executive preclusion may thus deny private litigants an effective and sometimes exclusive remedy against noncomplying agencies, such as when alternative administrative remedies established by the order are inadequate or nonexistent. 153 Absent judicial review of administrative [\*685] action pursuant to an executive order, "the only practical restraint [on agency discretion] would be the self-restraint of the executive branch." 154 The focus by courts on presidential intent to create a cause of action 155 is also largely erroneous. As previously demonstrated, the APA already provides a right of judicial review of an agency's violation of an executive order. Moreover, by examining presidential intent, courts implicitly recognize the President's authority to confer a cause of action by executive order. Yet the power to grant rights of action is primarily, if not exclusively, a legislative function that rests with Congress, not the President. 156 Courts therefore should look behind an executive order to its authorizing statute to determine whether Congress intended to provide a cause of action for violation of an order. 157 Judicial inquiry into presidential intent may be warranted only if Congress delegated [\*686] to the President the authority to create a right of action in an executive order. In such a case, courts could search an executive order for express or implied presidential intent to confer a right to relief. 158 This approach remains theoretical because Congress has yet to delegate to the President the power to create a cause of action by executive order. 159 Furthermore, Congress's power to delegate such authority to the President is questionable under the separation of powers doctrine. 160 Courts need not address this difficult delegation issue, however, because of the availability of judicial review under the APA. Given the APA's presumption of review, courts should look to the statutory basis of the executive order to decide whether Congress, either expressly or by implication, intended to preclude judicial review of agency action taken under the order. 161 If the court finds that Congress did not intend to preclude review of the particular administrative action, then plaintiffs should be able to challenge the agency's violation of the order under sections 701 through 706 of the APA. 162 [\*687] Conclusion APA review of administrative action against the standards imposed by an executive order is a viable alternative to the largely futile practice of inferring rights of action directly under a presidential order. APA review properly takes into account the legislative nature of a presidential order issued pursuant to statutory authority. Such orders have the force and effect of law and, like statutes, should be enforced by courts. Present theories of judicial review must accommodate the legislative nature of executive orders. By ensuring that government officials comply with executive orders, APA review discourages the arbitrary exercise of power by federal agencies and promotes administrative accountability. 163 In this manner, APA review comports with the principle of separation of powers. 164 Such judicial oversight of agency action [\*688] pursuant to an executive order is especially crucial today in light of the far-reaching effects of the contemporary use of the executive order as "presidential legislation."

### AT: rollback

#### ---Political barriers check – new, stronger constituencies

Branum-Associate Fulbright and Jaworski- 2

Tara L, Associate, Fulbright & Jaworski L.L.P, “President or King? The Use and Abuse of Executive Orders in Modern Day America” Journal of Legislation 28 J. Legis. 1

Congressmen and private citizens besiege the President with demands  [\*58]  that action be taken on various issues. [n273](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n273) To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. [n274](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n274) Many were controversial and the need for the policies he instituted was debatable. [n275](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n275) Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. [n276](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n276) A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

#### ---Future administrations rarely overturn previous executive orders

Washington Times 8/23/99

“Clinton’s Executive Orders are Still Packing a Punch: Other Presidents Issued More, but His are Still Sweeping” Frank Murray [http://www.questia.com/library/1G1-55543736/clinton-s-executive-orders-still- are-packing-a-punch](http://www.questia.com/library/1G1-55543736/clinton-s-executive-orders-still-%20are-packing-a-punch)

Clearly, Mr. Clinton knew what some detractors do not: Presidential successors of the opposite party do not lightly wipe the slate clean of every order, or even most of them. Still on the books 54 years after his death are 80 executive orders issued by Franklin D. Roosevelt. No less than 187 of Mr. Truman's orders remain, including one to end military racial segregation, which former Joint Chiefs of Staff Chairman Colin Powell praised for starting the "Second Reconstruction." "President Truman gave us the order to march with Executive Order 9981," Mr. Powell said at a July 26, 1998 ceremony marking its 50th anniversary. Mr. Truman's final order, issued one day before he left office in 1953, created a national security medal of honor for the nation's top spies, which is still highly coveted and often revealed only in the obituary of its recipient.

#### Executive Orders spillover to legislation-avoids politics DA

LeRoy, Professor for the University of Illinois, 96

Michael LeRoy, Associate Professor for the Institute of Labor & Industrial Relations and College of Law, University of Illinois, “Presidential Regulation of Private Employment: Constitutionality of Executive Order 12954 Debarment of Contractors who Hire Permanent Striker Replacements”

37 B.C. L. Rev 229

Second, many of these orders served as models for legislation. As a result of their experimentation, they occasionally provided Congress with blueprints for workable and politically feasible legislation. This explains in part why Congress initially focused on race discrimination in enacting the 1964 Civil Rights Act. Presidential orders had focused on this form of discrimination since 1941 and therefore developed a lengthy track record. It is notable that every employment discrimination law regarding race, gender, age, and disability followed rather than preceded a related executive order.

### AT: No Signal

#### --Presidential action is perceived globally

Sunstein-prof law, Chicago- 95 [Cass, Karl N. Llewellyn Professor of Jurisprudence, University of Chicago Law School and Department of Political Science, “An Eighteenth Century Presidency in a Twenty-First Century World” Arkansas Law Review, 48 Ark. L. Rev. 1, Lexis]

With the emergence of the United States as a world power, the President's foreign affairs authority has become far more capacious than was originally anticipated. For the most part this is because the powers originally conferred on the President have turned out - in light of the unanticipated position of the United States in the world - to mean much more than anyone would have thought. The constitutionally granted authorities have led to a great deal of unilateral authority, simply because the United States is so central an actor on the world scene. The posture of the President means a great deal even if the President acts clearly within the scope of his constitutionally-granted power. Indeed, mere words from the President, at a press conference or during an interview, can have enormous consequences for the international community.

#### The president is the focal point of American politics – everyone perceives executive action

Fitts-prof law, Penn-96 [Michael, Professor of Law @ UPenn Law School, “The Paradox Of Power In The Modern State”, University of Pennsylvania Law Review, 144 U. Pa. L. Rev. 827, Lexis]

The Presidency A. The Modern Presidency What is the nature of the presidency in the modern state? Numerous political scientists and legal academics claim that our recent chief executives have inherited a "modern presidency," [33](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n33" \t "_self) which began to develop with Franklin Roosevelt and is structurally distinct from earlier regimes. [34](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n34" \t "_self) Of course, the balance of power among the president, Congress, and the agencies is exceedingly complex, since the amount of bureaucratic activity and legislative oversight has increased greatly over the years. Nevertheless, "the resources of modern presidents [are thought by many to] dwarf those of their predecessors." [35](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n35" \t "_self) Commentators point to three related changes that centralize greater formal power in the institution and increase the informal political assets at the president's command. The first change, which is to some extent considered the most important and defining quality of the modern presidency, is the increased visibility of the president as an individual within the electoral process. Prior to the Roosevelt Administration, the president was viewed more as a member of both a party and a complicated and elite system of government. He was also relatively distant from the population. The modern presidents, in contrast, are elected increasingly as individuals in the primary and general elections on the basis of direct public exposure in the media. This [\*842] evolution, which has occurred over a number of years, is a result of social forces, such as the decline of political parties [36](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n36" \t "_self) and the rise of the media, as well as legal changes, such as the ascendancy of primaries. [37](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n37" \t "_self) Second, once in power, modern presidents have increasingly attempted to take greater formal and informal control of the executive branch, through policy expansion of the OMB and the Executive Office of the President and increased oversight of agencies under Executive Order 12,291 [38](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n38" \t "_self) and its successor orders. Indeed, every president since Roosevelt has attempted to centralize power in the White House to oversee the operations of the executive branch and to make its resources more responsive to his policy and political needs. [39](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n39" \t "_self) [\*843] Finally, and relatedly, the modern presidency has become more centralized and personalized through its public media role - that is, its "rhetorical functions." [40](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n40" \t "_self) Given changes in the press and the White House office, the president has become far more effective in setting the agenda for public debate, sometimes even dominating the public dialogue when he chooses. [41](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n41" \t "_self) Economists would probably attribute the president's ability to "transmit information" to the centralized organization of the presidency - an "economy of scale" in public debate. [42](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n42" \t "_self) At the same time, the president can establish [\*844] a "focal point" around preferred public policies. [43](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n43" \t "_self) This proposition can also be stated somewhat differently. As an institution embodied in a single individual, the president has a unique ability to "tell" a simple story that is quite personal and understandable to the public. As a number of legal academics have shown, stories can be a powerful mode for capturing the essence of a person's situated perspective, improving public comprehension of particular facts, and synthesizing complex events into accessible language. [44](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n44" \t "_self) Complex institutions, such as Congress, have difficulty [\*845] assembling and transmitting information as part of a coherent whole; they represent a diversity - some would say a babble - of voices and perspectives. In contrast, presidents have the capacity to project a coherent and empathetic message, especially if it is tied to their own life stories. In this sense, the skill of the president in telling a story about policy, while sometimes a source of pointed criticism for its necessary simplicity, [45](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n45" \t "_self) may greatly facilitate public understanding and acceptance of policy. [46](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n46" \t "_self) B. The Theory of the Unitary Presidency This picture of the modern presidency is quite consistent with those parts of the legal and political science literatures exploring the advantages of presidential (as opposed to legislative) power and advocating a more unitary or centralized presidency. According to this view, [47](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n47" \t "_self) power and accountability in government and in the executive branch should be moved more toward the top, giving the [\*846] president and his staff greater ability to make decisions themselves or to leave them, subject to oversight, in the hands of expert agency officials. In the legal literature, this position is usually associated with support for strengthening the president's directorial powers over the agencies, unfettered presidential removal authority, and Chevron deference to agency regulations [48](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n48" \t "_self) reviewed by the White House. Similarly, political scientists emphasize the plebiscitarian president's growing informal influence with the agencies and the public, as well as the association between a strong president and the "national" interest. [49](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n49" \t "_self) To be sure, legal proponents of a strong unitary presidency usually do not outline a comprehensive policy defense of the legal position but rely more on doctrinal justifications and related policy arguments. [50](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n50" \t "_self) By synthesizing and integrating the interrelated legal and policy rationales in the legal and political science literatures, however, one can sketch the outlines of a common theory. This analysis suggests that the structure of a more unitary, centralized presidency should enhance the power, legitimacy, and effectiveness of the office, especially as compared to Congress, in three different but related ways. [\*847] First, with respect to the administration of the executive branch, centralized power, or at least the opportunity for the exercise of centralized power, is thought to facilitate better development and coordination of national programs and policies. Because federal government programs interrelate in countless ways, a centralized figure or institution such as the president is seemingly in a good position to recognize and respond to the demands of the overall situation. [51](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n51" \t "_self) For similar reasons, as social and political change accelerates, the president may be well-situated to foresee and implement adaptive synoptic changes - that is, to engage in strategic planning. One of the rationales for the existence of the federal government is the national effect of its policies, which under this view can be reconciled most easily at the top. [52](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n52" \t "_self) To the extent that the president is successful in putting together such programs, he should receive political credit, which would redound to his political strength. [53](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n53" \t "_self) Second, centralized power facilitates greater political accountability by placing in one single individual the public's focus of government performance. If the public had to evaluate electorally the activities of hundreds of different officials in the executive branch, its information about the positions, actions, and effects of government behavior would be extraordinarily limited. [54](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n54" \t "_self) Only those most [\*848] interested in a particular function would be likely to have information about its behavior or attempt to influence that behavior through election, lobbying, or litigation. This is the standard concern with New Deal agencies captured by the so-called iron triangle of Washington politics. [55](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n55" \t "_self) By contrast, placing overall political responsibility in one individual is thought to facilitate broader political accountability. While this oversight can have mixed effects depending on presidential performance, it has the potential for strengthening the president's political support and influence. [56](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n56" \t "_self) Because he is more likely to approximate the views of the median voter, [57](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n57" \t "_self) a unitary president is thought to enjoy a clear majoritarian mandate, as the only elected representative of all "The People." This democratic legitimacy should be, in turn, a major source of his political strength. [58](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n58" \t "_self) As one commentator has [\*849] argued: "Every deviation from the principle of executive unitariness will necessarily undermine the national majority electoral coalition." [59](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n59" \t "_self) Finally, on an elite political level, the existence of a single powerful political actor serves a political coordination function. [60](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n60" \t "_self) A dispersed government with a decentralized political structure has a great deal of difficulty in reaching cooperative solutions on policy outcomes. Even if it does reach cooperative solutions, it has great difficulty in reaching optimal results. Today, there are simply too many groups in Washington and within the political elite to reach the necessary and optimal agreement easily. [61](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n61" \t "_self) A central and visible figure such as the president, who can take clear positions, can serve as a unique focal point for coordinating action. [62](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n62" \t "_self) With the ability to focus public attention and minimize information costs, [63](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n63" \t "_self) [\*850] a president can also be highly effective in overcoming narrow but powerful sources of opposition and in facilitating communication (that is, coordination and cooperation) between groups and branches. [64](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n64" \t "_self) In technical terms, he might be viewed as the "least cost avoider." [65](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n65" \t "_self) The budget confrontation between Clinton and Congress is only the most recent example of the president's strategic abilities. [66](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n66" \t "_self) In this regard, it is not surprising that most studies have found that the president's popularity is an important factor in his ability to effectively negotiate with Congress. [67](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n67" \t "_self)

### AT: Links to Politics

#### Legislation is the link—has to pass too many hurdles—the president has nothing to do with it

Paul Light, Founder of the Brookings Institution Center for Public Service, 1999 (The President’s Agenda, p53-4)

Congressional Limits. Presidents face several structural limits on agenda size, but the congressional calendar involves the greatest institutional restrictions. Though Congress can act quickly during a crisis, most legislation must pass through a series of decision points en route to enactment. According to John Kennedy, the process contains a number of hurdles: It is very easy to defeat a bill in the Congress. It is much more difficult to pass one. To go through a subcommittee… and get a majority vote, the full committee and get a majority vote, go to the Rules Committee and get a rule, go to the Floor of the House and get a majority, start all over in the Senate, subcommittee and full committee, and in the Senate there is unlimited debate, so you can never bring a matter to a vote if there is enough determination on the part of the opponents, even if they are a minority, to go through the Senate with the bill. And then unanimously get a conference between the House and Senate to adjust the bill, or if one member objects, to have it go back through the Rules Committee, back through the Congress, and have this done on a controversial piece of legislation where powerful groups are opposing it, that is an extremely difficult task (transcript of television interview, in *Public Papers of The Presidents, 1963*, pp 892, 894) Kennedy’s complaint came long before the rise of subcommittee government and the increased complexity within the legislative process. Past Presidents and their staffs generally have been sensitive to the demands of the congressional process. “The liaison office always walks a tight line,” one Nixon officer suggested. “If you press too hard, you’re likely to anger the committees. They have a heavy work load and won’t take too much White House pressure. But if you don’t press hard enough , the Congress will put your agenda on the back burner.”

#### Executive action avoids politics and are fast

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

### 2NC CP Illegitimate (Agent CPs/Object Fiat)

#### E. Literature makes the counterplan germane and predictable-The Executive order counterplan is key to topic education

Rudalevige ‘12

[Rudalevige, A. (March 2012). The contemporary presidency: executive orders and presidential unilateralism.  Presidential Studies Quarterly, 42, 1. p.138(23). ETB]

In the last decade or so, students of the American presidency have renewed their interest in the formal authorities and unilateral possibilities of presidential power, driven both by methodological logic and by events. On the theoretic side, scholars working within the broad framework of the "new institutionalism," especially its rational choice variant, have made a case that the formal, legal, and organizational aspects of the presidency--and the incentives and constraints for presidential behavior these implied--had been too long neglected in favor of impressionistic accounts of the "personal presidency." A focus on the formal powers that underlay the presidential office, and the way these could be used to enhance an incumbent's influence, was needed to fill that gap (e.g., Howell 2003; Kelley 2007; Moe 1985, 1993; Moe and Howell 1999). After all, as Kenneth Mayer argued (2001, 11), "in most cases, presidents retain a broad capacity to take significant action on their own, action that is meaningful both in substantive policy terms and in the sense of protecting and furthering the president's political and strategic interests."¶ The assertive--even "imperial"--stance taken by recent presidents provided empirical grist for this mill. President George W. Bush was particularly notable in acting aggressively to expand his office's powers vis-a-vis other political actors (Cooper 2002; Goldsmith 2007; Rudalevige 2005, 2010; Savage 2007). Redressing the perceived constriction of the presidential office after the Watergate/Vietnam years provided a new rationale for unilateral command--even before the terrorist attacks of September 11, 2001. Barack Obama, while disavowing some of his predecessor's rationales, has acted in a similar manner in a number of areas. The assassination of American citizens acting with al-Qaeda in Yemen; the evasion of the War Powers Resolution in Libya; the use of the state secrets act in fending off judicial inquiry--all these suggest a continuing approach to presidential authority that overrides shifts in the incumbent's personality.¶ From either direction, the upshot has been important recent work on a presidential administrative toolkit that includes appointments (Lewis 2008), signing statements (Evans 2011; Kelley and Marshall 2010; Korzi 2011), executive agreements (Krutz and Peake 2009), proclamations (Rottinghaus and Bailey 2010; Rottinghaus and Maier 2007), rulemaking and guidance (Graham 2010; Kerwin and Furlong 2010), and especially executive orders (Gibson 2009; Howell 2003; Mayer 1999, 2001; Rodrigues 2007; Warber 2006; Wigton 1996). Indeed, at this point it is safe to say that a standard textbook in the field could not--as it did even after Watergate--exclude "executive orders" and "signing statements" from the index (Koenig 1975). The study of the contemporary presidency thus requires serious attention to that office's executive authority.

### \*\*\* Case

#### It is DOD policy not war power authority that’s the problem-either the status quo will be sufficient or the plan doesn’t solve

**McGrath, Army major, 2012**

(Amy, “Women in Combat: The Bogus Old Arguments Rise Again (A Rebuttal)”, November, <http://www.mca-marines.org/gazette/article/women-combat-bogus-old-arguments-rise-again-rebuttal>, ldg)

Twenty years ago a major debate ensued on the national stage about the role of women in the Armed Forces. The Service Chiefs at the time mostly advocated for the continued ban on women serving in combat positions. When it came to the issue of women serving in combat aviation, the prevailing argument was that women did not have the physical strength required to fly certain airframes. They speculated that women could not pull the G-forces required and would be unable to make it through the rigorous training. Nevertheless, Congress rescinded the “combat exclusion law,” and the Services opened some previously barred positions to women, including aviation and most naval ships. We have reached another time period of debate and change. Now is the time for the Marine Corps to embrace the opportunity to open more positions to women. The basis for excluding women from ground combat positions lies in Department of Defense (DoD) policy, not in statute, thus the DoD holds the power to change the policy. From a legal perspective, DoD must simply inform Congress of any change to its existing policy. In the Marine Corps, application of the ground combat exclusion policy results in women being denied the opportunity to serve in the infantry, artillery, tanks, and assault amphibious vehicle (AAV) MOSs. Despite being only 8 percent of MOSs in the Corps, these four MOSs consist of almost 25 percent of the total positions Marines fill.1 Clear “frontlines” on the battlefield in the past 10 years have not existed, and arguably all MOSs, including those with females, will continue to be in harm’s way. In addition, new critical skills have placed many women front and center in the wars in Afghanistan and Iraq causing the restrictions placed on women in traditional ground combat positions to be reassessed.

#### All jobs will be open by 2016-any exclusion is based off merits not war power authority which doesn’t trigger the impact-opportunity is sufficient

**Abramson, NPR, 2013**

(Larry, “Women In Combat: Obstacles Remain As Exclusion Policy Ends”, 5-15, <http://www.npr.org/2013/05/15/184042652/women-in-combat-obstacles-remain-as-exclusion-policy-ends>, ldg)

Wednesday's deadline for the Army, Navy, Air Force and Marines to submit plans for ending the policy that keeps women from serving in ground combat positions will open up more than 200,000 positions in the military to them. But the change won't end questions about the role of women in the armed forces. The Pentagon announced the end of the combat exclusion in January. Now comes the hard part: developing gender-neutral standards so women can qualify for all jobs, including combat infantry. In this video, Marine Sgt. Maj. Michael P. Barrett left no doubt how he expects his Marines to react when women show up in combat units: But the Marines in particular face many questions about how they will integrate more women in the next three years — all of the forces still have until 2016 before they must fully open positions. Anne Coughlin, a law professor at the University of Virginia, filed suit against the exclusion before the Pentagon decided to drop it. "There is the prospect not only of the process being slow, but at the end of the process, there may well be some jobs that remain closed to women," Coughlin says. The Pentagon has indicated that some specialties may not open up right away, or ever — but the presumption is that positions must be open unless there's a good reason to keep them closed. Coughlin says she's also concerned about statements indicating that the military may want to wait for a "critical mass" of qualified women, and may not want individuals to serve as the only woman in a unit. "My question to that is: Why not? If she's fit, and she's capable, and she wants to make the ultimate sacrifice, we may well need her there," she says. "And I argue equality principles demand it as well." The big challenge for the services is scrutinizing thousands of job descriptions. Gender can no longer be the decisive factor, but physical strength can be. Former Marine Capt. Greg Jacob, who is with the Service Women's Action Network, says strength is key to many infantry jobs. The group backs the end of the combat exclusion. "For example, the effective casualty radius of a hand grenade is 15 meters. I mean, that doesn't change," Jacob says. "So in order to be able to employ a hand grenade without blowing yourself up, you have to be able to throw it 15 meters." If a requirement like that keeps women out, Jacob says, that's OK — as long as women have the opportunity to volunteer and a chance to train up. The Pentagon promises that re-examining job requirements will not lead to weaker standards. But some say lower standards are inevitable. "Women have done wonderful jobs in the military in many things. I just don't think they are necessary in the infantry," says Mac Owens, who teaches at the Naval War College. He says having women in combat will also erode "unit cohesion." "Cohesion, I think, is based on mutual trust," he says. "Sexual tensions and things like that which are possible can undermine that cohesion." Those who challenged the combat exclusion point out that women have served in harm's way in Afghanistan and other wars for many years; the end of the combat exclusion means that in the future they will finally get credit they deserve. But clearly, it will take a special kind of courage to be the first women in any combat unit. Former Marine Capt. Zoe Bedell served alongside a combat unit in Afghanistan but never received the same recognition as her male counterparts. She says she faced skepticism at first. "Our experience was that once they saw that we could perform, they treated us just like other Marines," she says.

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### 2NC – Recruiting Link

#### 2. Recruiting The aff means the military will recruit and exploit poor black women.

Elster and Sorensen 2010

Ellen and Majken, War Resisters International, editors of Women and Conscientious Objection - An Anthology, http://www.wri-irg.org/system/files/WomenAndConscientiousObjection-AnAnthology.pdf#page=139

From the United States Stephanie Atkinson and Diedra Cobb give us their personal stories of how they got recruited into the military, and how they developed their refusal. Both of them realised that something was not quite right soon after their entry into the military, but getting out of the US military is much more difficult than joining it. Although Stephanie Atkinson points out very clearly that she does not consider herself a conscientious objector, she left the service for reasons of conscience by going absent without leave (AWOL). We also present three short statements from three other American women, Tina Garnaez, Anita Cole and Katherine Jashinski. Tina Garnaez points out that military recruiters in US high schools especially target minority students who see the military as the only way out of poverty. They also recruit aggressively among the working class, religious groups, agrarian and conservative communities. Stephanie Atkinson tells us that she speaks on behalf of young people who have no direction in life and limited economic opportunity, who experience emotional problems and who are in homes with a single parent or with stepfathers or stepmothers. The five women’s paths to conscientious objection are very personal. Anita Cole joined the military because she wanted to serve her country and not for economic reasons. Her refusal developed over time, but the turning point was when she was urged on during weapons practice by an officer saying, “Come on, you’re a killer”.

### Alt Solvency – 2NC Must Read

#### Military indoctrination causes patriarchy not lack of integration-opposing military culture from the outside solves better.

**Belkin, San Francisco State political science professor, 2013**

(Aaron, “Combat exclusion RIP. Will patriarchy’s demise follow?”, <http://aaronbelkin.org/pdfs/articles/Combat%20Exclusion%20RIP.pdf>, ldg)

During the first week of its new term in office, the administration of President Barack Obama not only surprised but also thrilled many progressives when the Pentagon rescinded its long-standing ban on women’s involvement in combat. While the removal of combat exclusion will open up important professional opportunities for women serving in uniform, questions remain about whether patriarchy will continue to plague US military culture. Could formally allowing women to serve in combat diminish sexism or compel military men to treat women equally? Or is patriarchy likely to prevail within the ranks despite the expansion of women’s professional roles? I suspect that patriarchy’s entrenchment does not depend on whether women are present or even whether they hold high ranks or serve in prestigious combat roles. Rather, patriarchy reflects the gendered ways in which the armed forces socialize warriors (cf Belkin 2012). To the extent that Pentagon training methods remain the same, patriarchy will not disappear. Experts on military culture have demonstrated that pervasive sexism can play out, even in integrated environments, via subtle but powerful micro-practices. When Stacie Furia completed Army boot camp for her doctoral research, she learned that calorie counts in military meals are tailored to the kind of (mostly men’s) bodies that are presumed to be there. When women recruits did not finish their food, they were scolded for wasting it. When they completed their meals, they were disciplined for gaining weight (Furia 2010). Furia identified many such examples, and even though her superiors used politically correct language during training, she told me that the rhetoric behind the rule not to behave in sexist ways was justified not by a sense that sexism is wrong, but that it might offend women in the ranks…[T]he implication was always that sexism should not and does not bother men, and that it isn’t necessarily wrong, just in bad form to express in front of women. Patriarchy’s entrenchment is no accident, and reflects the gendered way in which the military teaches recruits how to behave violently. During training and beyond, the military removes service members’ inhibitions against killing by brutalizing and feminizing them, and then inducing them to transfer feminization that has been instilled into them onto targets of violence that they imagine annihilating. As one male instructor explained to his all-male unit in the 1970’s, ‘Unless you women get with the program, straighten out the queers, and grow some balls of your own, you best give your soul to God, because your ass is mine and so is your mother’s on visiting day.’ Following the warning, the recruits knocked an under-performing unit member to the ground and kicked and punched him. He never returned to the unit. Surely, a subsequent step in this unit’s training involved converting contempt for the feminine into disdain for the enemy. Would a drill instructor use such explicit language today given the repeal of ‘don’t ask, don’t tell’ and the elimination of the combat exclusion rule? Probably not. But even as the rhetoric of recruit training becomes more politically correct, the military likely will continue to train service members to feminize targets of violence. In turn, those moments when the troops internalize the gendering of the enemy are the same moments when opportunities for overcoming sexism and patriarchy disappear. It is not realistic for male service members, trained to feminize those who they might have to kill, to treat women equally in other contexts. To be sure, women must be allowed to take on new roles and responsibilities that enable them to advance to the highest echelons of the armed forces. But patriarchal aspects of military culture are not about whether women are allowed to engage in combat, but rather about how the military manipulates ideas about gender as it teaches men and women how to kill.

### 2NC – Alt/A2 Perm

#### Conscientious objection solves but the aff coopts.

Elster and Sorensen 2010

Ellen and Majken, War Resisters International, editors of Women and Conscientious Objection - An Anthology, http://www.wri-irg.org/system/files/WomenAndConscientiousObjection-AnAnthology.pdf#page=139

Many of the writings in this book argue for a broad understanding of conscientious objection because they see militarism as a contrast to feminist values and a contradiction to women's interests in society. Not everyone uses the word "feminist" or "feminism", but they clearly use their identity as women for their arguments against militarism — Barbro Alvins is such a case, n Israel we see a development of the reasons for being a conscientious objector from religion, conscience, then politics and now including a feminist stand, like Shani Werner and Idan Halili. Idan Halili was the first woman in Israel openly refusing on feminist grounds, which led to a prison-sentence. Her argument was that the feminist approach clashes with violent ways of solving problems. The military system harms women both within the army and in society at large. She claims that enlistment means agreeing to be part of a system that is based on relations of power and control. It systematically perpetuates the exclusion of women from the public sphere and constructs their place in society as secondary to men. She doesn't want to serve "just like a man", since she is not looking for a kind of equality which reinforces the privileges enjoyed by men. Idan Halili does not want to participate in an organisation which is fundamentally and by definition not equal, and which is in sharp contrast to her ideological principles and conscience. As a feminist, Idan Halili declares that it is her obligation to build civil alternatives to the army through which she and other feminists can make their contribution to society, which includes striving to reduce the influence of the army. Although Idan Halili and the other Israeli women are in a special situation since they in fact are conscripted, we still think that she speaks for many of the other women in this book. Even if their background and situation vary greatly, they all link the culture of the military with the current hierarchical power structure and patriarchy. They take a broad stand against militarism, pointing at the damage it does to women and society as a whole. It is reflected in the statement from 1980 where women declared themselves as total resisters, stating that emancipation had nothing to do with militarism. The French women in 1991 point at the army's male domination, which reproduces the patriarchal model in society. In Turkey, Ferda Ulker describes the traditional view of women in relation to the military only as mothers, sisters, wives, and girlfriends of the boys who will become soldiers. Hilal Demir adds that there's a risk of becoming "masculinised", with the effect that the feminist perspective is overlooked in the mixed conscientious objection movement. This has to be seen in the context of Turkish society which is highly militarised, and where women are clearly marginalised. This is also the case in Korea. Moving to Latin America, the Paraguayan and Colombian women describe their societies and their reasons for declaring themselves as conscientious objectors in the same way, seeing the armed forces as promoting the violent culture of their society, by preserving militarism, patriarchy, machismo, submission and outright war. The military also uphold the structures of injustice, human rights abuse and exploitation of resources that result in poverty for the majority of people. Women within the conscientious objection movement in Colombia propose alternatives to war from a broad perspective, understanding the complexity of Colombian reality. Andrea Ochoa argues that women are the ones who have most power to call people to take part in public actions.

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### 1NR Impact Overview

#### War turns structural violence but not the other way around

Joshua Goldstein, Int’l Rel Prof @ American U, 2001, War and Gender, p. 412

First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, “if you want peace, work for justice.” Then, if one believes that sexism contributes to war one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices.9 So,”if you want peace, work for peace.” Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to “reverse women’s oppression.” The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book’s evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.

#### No one root cause to our impacts – prefer our specific and nuanced claims over their sweeping accusations

Claude, 1988 (Inis, Ph.D., Professor Emeritus of Government and Foreign Affairs at the University of Virginia, States and the Global System)

Our tendency to exaggerate the power of states owes a great deal to our dread of war. Although we overestimate the competence of states in all respects, it is their power to make war that most concerns us. The notion that the state has vast military potential leads directly to the proposition that the state is incorrigibly warlike; the myth of the almighty state has as its correlate the myth of the bloodthirsty state. Every sophisticated student of international politics must begin with Thucydides, Machiavelli and Hobbes. He can hardly avoid emerging from all that with the shrewd conviction that the international arena is the scene of the war of all against all. States have a lust for dominance, a ruthless disregard for any value except success in the endless struggle for power, and an ineradicable bellicosity. A system of states is a war system; it can be nothing else. Thus, we develop a picture of the state as a military machine, straining for action, itching for a fight, watching for an opportunity to demolish its rivals. One may associate this image especially with Realists, those inveterate and dedicated pessimists who can bear to confront a fact or a circumstance only if it is grim and foreboding. Indeed, Realists have delighted in assuring us that the struggle for power is the name of the only possible game in a multistate system, and many a young person has rested a pretension of intellectual superiority on his precocious understanding that domestic life is a rat-race and international life is a dog-fight. Naive cynicism of this sort, however, is no more typical of Realists than of Idealists. In undertaking to justify and to spread to others their zeal for reforming or for effecting the revolutionary transformation of the multistate system, Idealists vie with Realists in asserting the belligerent propensities of states in the existing system. The two groups have different views as to what can and should be done about the situation, but their depictions of the working of the international system as a war system are often indistinguishable. Most of us, in fact, whatever our labels, operate on the supposition that states are fundamentally warlike entities. Note the general acceptance of deterrence theory, with its underlying presumption that states are likely to attack each other unless strong incentives for restraint are created and conspicuously displayed. Let me suggest that the state as Roaring Tiger is frequently less in evidence than the state as Pussy Cat. Trigger-happiness shares the international stage with gun-shyness. Bellicosity is matched by various shades of pacifism. Clearly, these qualities vary from state to state, from time to time and from circumstance to circumstance. Some wars seem almost inevitable and will occur unless effective means are adopted to prevent them. Other wars are almost inconceivable and will not occur unless some extraordinary cause intrudes. Make no mistake about it: warlike tendencies are sufficiently widespread and strong to make the problem of maintaining world order a crucial one for us all, but we will not promote the solution of that problem by misstating the character of the states that constitute the global system.

### 1NR A2: Uniqueness

#### Their Berman evidence says the House isn’t taking up the Senate bill, but our Clift evidence says Obama will eschew the Senate bill to cooperate and compromise on piecemeal reform – solves their no deal argument – and the House will take up a vote – your evidence is just political maneuvering

Sargent-Washington Post-10/25/13

http://www.washingtonpost.com/blogs/plum-line/wp/2013/10/25/immigration-reform-is-dead-or-maybe-it-isnt/

For what it’s worth, Democratic aides and immigration reform advocates don’t believe House GOP leaders have made any decision to kill reform or on whether to hold votes this year. They think leaks are meant to buy maneuvering room while the various proposals – Eric Cantor’s Kids Act, which only gives citizenship to the DREAMers, or the piecemeal legalization proposal being worked on — take shape. This maneuvering room would also allow pro-reform Republicans time to bring other GOP lawmakers who are open to reform but are still steamed by the shutdown defeat — such as Raul Labrador — back into the fold.

#### Uniqueness and Internal Link-Obama has switched strategies on immigration and is willing to negotiate with House republicans---Limited time of the docket means Obama must stay focused and leverage his political capital to secure a comprehensive set of reforms.

Los Angeles Times 10/25/13

HEADLINE: Obama softens tone on border reform;

He indicates that he would consider a package of smaller GOP bills that include a path to citizenship.

After months of insisting the House should take up the comprehensive immigration bill that passed the Senate in June, President Obama changed tactics Thursday and said he might consider GOP proposals to overhaul separate parts of the immigration system. The White House is hoping that public anger at the 16-day government shutdown has so badly damaged the GOP that House Republican leaders will consider immigration reform as a way to improve their popularity with moderate voters. Obama's aides also are intent on showing the president is willing to compromise, partly to counter GOP charges that he was inflexible during the bitter shutdown standoff. In remarks at the White House, Obama hinted that he was no longer tied to the Senate bill, the elaborate product of months of intense bipartisan negotiations, to achieve what he has called a major priority for his second term. Obama instead signaled that he might consider a package of smaller bills, if necessary, as long as they provide a path to citizenship for the estimated 11 million people in the country without legal status. "If House Republicans have new and different additional ideas on how we should move forward, then we want to hear them. I'll be listening," Obama told several dozen pro-reform activists from labor, business and religious groups. White House spokesman Jay Carney echoed the shift, telling reporters there are "a variety of ways that you can reach the ultimate goal" of a bill that Obama could sign into law. "The House's approach will be up to the House," Carney said. "There is a comprehensive bill the House Democrats have put together that is similar to the Senate bill and reflects the president's principles. But the means by which we arrive at our destination is in some ways of course up to the lawmakers who control the houses of Congress." The White House effort to resuscitate a bill that seemed all but dead in the House before the shutdown still faces steep and perhaps insurmountable odds. But the jockeying Thursday raised at least some hope that compromise remains possible. "I hope President Obama meant what he said today about listening to new and different ideas presented by House Republicans," House Judiciary Committee Chairman Robert W. Goodlatte (R-Va.) said in a statement. "The president should work with Congress, including House Republicans, to achieve immigration reform, and not against us." In recent weeks, GOP leaders have worked behind the scenes to craft legislative proposals that might pass muster with rank-and-file Republicans and -- if joined with a legalization program -- could appeal to the White House. Majority Leader Eric Cantor and other House Republicans have met in small groups to write bills that would change parts of the immigration system. GOP proposals include adding high-tech visas, revamping farm and low-skilled immigrant labor programs, and ramping up border security. "I expect us to move forward this year in trying to address reform and what is broken about our system," Cantor said on the House floor Wednesday. Whether the House will go as far as the Senate, and include a 13-year pathway to citizenship for qualified immigrants, is far from clear. Republicans seemed unwilling to accept the entire Senate bill, which includes $46 billion over 10 years for extra border security and other programs, as well as numerous legal reforms. On Thursday, House Speaker John A. Boehner's office said the House would not consider "massive, Obamacare-style legislation that no one understands," referring to the Senate bill. "Instead, the House is committed to a common-sense, step-by-step approach that gives Americans confidence that reform is done the right way." In his comments Thursday, Obama offered some unsolicited advice to House Republicans, who took the brunt of the blame for the bruising budget and debt battles of recent weeks. "Good policy is good politics in this instance," Obama said. "If folks are really that consumed with the politics of fixing our broken immigration system, they should take a closer look at the polls, because the American people support this." Outside analysts and advocates say Obama needs to gain support from House Republicans who might be tempted to support immigration reform but are wary of supporting a bill he has embraced. Simply urging the House to pass the Senate bill may antagonize them. "He has zero credibility," said Rep. Mario Diaz-Balart (R-Fla.), who has worked for months on a House bill that would increase border security and make it possible for some immigrants without legal status to pay a penalty and eventually apply for legal status. "If he wants to be helpful on immigration reform, he has to do what he has been doing for the past five years, which is nothing." Rep. Luis V. Gutierrez (D-Ill.), who asked the president in a meeting at the White House earlier this year to step back from negotiations in Congress for fear his involvement would spook Republicans, thought Obama struck the right tone Thursday. "He didn't say, 'It's my way or the highway,' " said Gutierrez, who is involved in discussions with House Republicans on immigration proposals. Gutierrez wants Obama to step up his involvement in crafting a deal, including bringing together both sides for a face-to-face meeting. "Camp David is a nice place in the fall," Gutierrez said. The bigger problem may be time. The House is only in session for five more weeks before the Christmas break. With other business stacked up due to the government shutdown, that leaves scant floor time to debate and pass a complex package of proposals. Motorola Solutions Inc. Chairman Greg Brown, who heads the Business Roundtable Select Committee on Comprehensive Immigration Reform, saw room for compromise. "We agree with Speaker Boehner and the president that the time is now to fix our broken immigration system," he said in a statement. "Our economy needs a boost, and immigration reform will help." Frank Sharry, the head of America's Voice, an immigration reform advocacy group, said he thought the president's comments "signaled openness."

### 1NR A2: Link Uniqueness

Debt victory gives Obama a surge in political capital-small window to use it

Milbank-Washington Post-10/22/13

The Pottsville Republican & Evening Herald (Pennsylvania)

The gloating was a bit unseemly, but the president is entitled to savor a victory lap. The more important thing is that Obama maintain the forceful leadership that won him the budget and debt fights. In that sense, the rest of Obama's speech had some worrisome indications he was returning to his familiar position in the rear. The agreement ending the shutdown requires Congress to come up with a budget by Dec. 13. It's a chance - perhaps Obama's last chance - to tackle big issues such as tax reform and restructuring Medicare. The relative strength he gained over congressional Republicans during the shutdown left him in a dominant negotiating position. If he doesn't use his power now to push through more of his agenda, he'll lose his advantage. George W. Bush adviser Karl Rove called it the "perishability" of political capital.

#### And obama’s agenda isn’t dead on arrival – he won on the debt ceiling

Sydney Morning Herald (Australia) 10/19/13

HEADLINE: The buck stopped, almost

BYLINE: Tom Allard and Philip Wen

The Republican retreat this week in Congress has been widely viewed in the US as a scarifying defeat. The narrative that the party and its Tea Party wing held the nation - and the world - hostage in a mad attempt to cruel Obama's health- care reforms has resonated. Polling is dreadful for the Republicans and there are upcoming mid-term congressional elections. It would suggest Obama has some political capital to play with.

### 1NR A2: Link

#### The plan forcing women into combat causes a huge fight-the consensus is for merit based testing

**Maze, Army Times staff writer, 2013**

(Rick, “Congress wants say in women in combat debate”, 1-30, <http://www.armytimes.com/article/20130130/NEWS/301300305/Congress-wants-say-in-women-in-combat-debate>, ldg)

Two efforts are underway to give Congress a say in lifting the combat exclusion for military women. Sen. James Inhofe, R-Okla., proposes to specifically bar women from permanent assignments to some specialties, such as special operations units, through legislation he likely will try to attach to the 2014 defense authorization bill. Inhofe, the ranking Republican on the Senate Armed Services Committee, seeks to limit by law the scope of changes underway as a result of the Jan. 24 Defense Department announcement that combat exclusion polices have been repealed. A different idea is brewing in the House. Iraq and Afghanistan veteran Rep. Duncan Hunter, R-Calif., no advocate for opening direct combat jobs to women, is considering what could be bipartisan legislation that would not ban women from any assignments, but would require gender-neutral standards for all military specialties, with those standards required to guarantee the most effective fighting force. Hunter, a member of the House Armed Services Committee, isn't ready to talk about details. "In the end, when all is said and done, the primary objective of maintaining the highest quality and most effective force won't change," he said in a statement responding to questions about his plans. "Regardless of where anybody is on the policy, there seems to be consensus far and wide that standards need to stay neutral," Hunter said. "It is about the individual and the job they train to do, and especially for combat specialties. It's important that we continue maintaining high quality standards.

#### Their own Washington Post evidence concludes the plan saps capital

Washington Times, 13 (Few women will qualify for land combat: report. http://www.washingtontimes.com/news/2013/feb/24/report-few-women-will-qualify-for-land-combat-loop/?page=all)

A new report to Congress predicts that relatively few women will be able to perform land combat tasks on the same level as men, and it says the Pentagon’s pledge to maintain “gender-neutral” physical standards has a loophole. Meanwhile, the Marine Corps, viewed as the service most resistant to opening the infantry to women, will test male and female troops together in strength and endurance to determine how women can perform ground warfare, according to an internal memo obtained by The Washington Times. The congressional report and the Marine Corps memo come as pro-defense conservatives are exploring ways to ensure that the Obama administration does not ease rigorous standards as a way to make sure women qualify for direct combat jobs. When Defense Secretary Leon E. Panetta last month removed the policy prohibiting women from serving in direct combat units — infantry, armor and special operations — he vowed not create two standards, citing the 1993 Gender-Neutral Occupational Performance Standards as the guide.

#### **Plan’s a perceived loss – that saps capital and collapses unity**

Loomis 7 Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

### 1NR A2: Conflated Threats

#### Cybersecurity threats aren’t conflated – our kline evidence says there have already been multiple attacks because of a lack of evolutionary checks against viruses in our military systems – the threat is conflated because the impact is extinction, if anything, we wouldn’t justify endless war because there are multiple checks against it

**Gray 7**—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration”, <http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf>)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

#### And our predictions are good because they’re rooted in conditions for miscalculation and conflict

Dipert 6 (Randall, PhD, Professor of Philosophy, University at Buffalo, Buffalo, “Preventive War and the Epistemological Dimension of the Morality of War,” https://www.law.upenn.edu/live/files/1291-dipert-preventive-war)

We have seen a number of reasons why some preventive wars are morally justified. Nevertheless, this justification hinges on what I have called an epistemic threshold. This threshold is the minimum amount of ‘objective certainty’ about the enemy’s intentions, bellicosity, and present and future military resources necessary to justify preemptive or preventive war. It is not merely a subjective certainty in feeling strongly about the extent of evidence for these factors. To be morally justified, one must have, and appreciate, extensive evidence for these factors and the other usual criteria for Just War except Just Cause; one must lack substantial evidence that goes against one of these factors, after a reasonable effort to acquire such evidence. A ‘second order’ objective certainty is also necessary: one must be justified in believing that one’s past record of judging intentions, resources and so on, from the information sources one is now using (e.g., satellite imagery), has usually been correct. It may be instructive here to reflect on the 2003 Iraq War.27 The fact that Iraq turned out not to have weapons of mass destruction, and did not even have quickly constructable facilities to produce them, shows that the Bush administration did not have knowledge of the weapons or facilities. It does not, however, alone entail that it was not objectively certain to the extent required by the epistemic threshold criterion for preventive war. In fact I believe that it was highly rational to believe, and in Grotius’ words was ‘morally certain’, that Iraq had chemical weapons despite what would prove to be its falsehood. (This is a consequence of permitting defeasible or nonabsolutely-certain justification or warrant for knowledge that is now almost universally accepted by epistemologists.) This is debatable, to be sure. However, I am not totally convinced that having chemical weapons of the kind Iraq was reasonably believed to possess alone posed a sufficient threat to justify preventive war. The case for morally justifying preventive war with regard to biological or nuclear weapons almost certainly did not meet the epistemic threshold. This is not to suggest that there were not other morally sufficient reasons, or that there might be some accumulative effect of arguments that are separately, in various respects, weak. Grotius, for one, diminishes the importance of intent, and allows one to change intents in midwar, while retaining its morally justified character. Especially in the recent 2003 Iraq War, there was a constant refrain about the need to acquire international moral approval of the coalition efforts.28 Intuitively, some international assent, especially by sympathetic nations if not the Security Council of the UN, is desirable. Yet it is very difficult to see how this fits into the moral theory of the permissibility of war. However, this reasoning, contrary to our intuitions, seems to leave no place at all for ‘internationalism’ in the moral justification of war (at least as regards its moral permissibility). I would propose that considering the epistemological dimension of morally justified war does give a proper place to our internationalistic inclinations. As is now all too well known, political discussions of the conditions of just war are prone to being blinded by already firm geopolitical worldviews, as well as by past political rhetoric that tend to chain politicians to certain views for the sake of ‘consistency’. The facts of the case, such as intelligence on WMDs, are likewise prone to a certain institutional conformist tendencies\*/and this tendency was well known long before the supposed influences of neoconservatives on the US, and apparently also on foreign intelligence services. For example, when critical policy decisions rest on intelligence, the legendary Sherman Kent,29 proposes that we critically examine existing intelligence, and apply in my terminology ‘second order’ principles, explicitly attaching the probability that various truths are mistaken, based on past incidents of the type of information from such sources. International approval, plays a role in the moral justification of war primarily in this epistemological dimension. I do not think approval of the oddly chosen UN Security Council30 is necessary for a morally justified war, even if it is desirable and should often be sought (for various prudential reasons). The moral criteria must be independent of the Security Council, since they have to reason by some principles and presumably these are the pure moral principles\*/they cannot appeal to a still higher authority. But now suppose that these pure moral principles that the Security Council should use, applied to a single nation’s situation, permits it to go to war. However, the Security Council does not agree to this (perhaps because of a veto) or even prohibits the nation’s action. Rather, the underlying principle is something like this: a failure to persuade numerous like-minded nations of both the relevant facts (e.g., the existence of WMDs), when these nations preferably have some independent intelligence capability, or failure to persuade them of the relevant moral principle embodied in a policy (e.g., that if a nation is as chronically belligerent as Iraq, and has such a WMD capacity, then it can be attacked in advance of its attack), is strong evidence against one’s having met the epistemological threshold for anticipatory war. In the recent situation, the opposition of Russia and France, especially Germany and Mexico, and the unenthusiastic acquiescence of China gave prima facie evidence against having met this threshold; the support of the UK, Italy, Spain, and Poland were, however, probably sufficient to meet my condition. In any case, it is in this epistemological dimension of the philosophy of war, and not anywhere else, that international or international-organization approval plays a role in moral justification.31 It might appear difficult to say much about what precisely this epistemic threshold is. It need not be ‘warrant’ as it is used by epistemologists when discussing conditions for knowledge. 32 Roughly, I think that the evidence at hand both for bellicosity and for the enemy’s possession of military resources constituting, or soon to constitute, a threat (and of their probable offensive nature) must be overwhelming and ‘all but certain’. I do not think that ‘manifest preparations’ for an attack (in Walzer’s terms) are necessary, whatever this means.33 Additionally, our second-order assessment of this evidence must be such that we have good reason to believe that it constitutes good evidence: this source has not mislead us in the past, etc. A second-order assessment is our reasonable estimate of the probability of evidence for our first-order assessment of harm, bellicosity, etc., being correct. The military resources must be such that they are likely, if used in a first-strike, to endanger our nation itself or to pose a severe threat of incapacitating our own military resources. It seems to me\*/although I have not studied this matter at all thoroughly\*/that chemical and biological weapons are indeed terrifying, but are unlikely to be serious in this precise sense. Their dispersal problems as well as the existence of countermeasures tend to lessen their military danger. Nuclear weapons, including dirty bombs, are almost certainly in the ‘severe threat’ category. Several factors raise and lower this threshold. One is the seriousness of the threat. Another is the amount of time until these military resources pose this threat. Still another is a kind of proportionality: minimizing civilian and even military deaths. The epistemic threshold never gets so low that, for example, one may launch a preventive war based on evidence of a nation’s bellicosity or resources that is ‘somewhat likely’.

#### Err Negative --- Climate securitization is categorically distinct and transformative.

Trombetta 2008

Maria Julia, Environmental security and climate change: analyzing the discourse, Cambridge Review of International Affairs, 21:4, 585-602

The possibility of transforming into a threat something that has not yet materialized and allowing it to bring about the practices suggested by the Copenhagen School in the case of securitization presents a grim perspective. The possible adoption of a precautionary approach to security issues has been criticized on the grounds that it can justify preventive military actions, extensive surveillance measures, the inversion of the burden of proof or actions decided on the worst case scenario (Aradau and van Munster 2007). In the case of the environment, it is possible that the securitization of climate change would result in confrontational politics, with states adopting politics to protect their territory against sea-level rising and immigration; with the Security Council adopting resolutions to impose emission targets, and even military action against polluting factories; and surveillance systems to monitor individual emissions. This possibility, however, depends on taking for granted a security logic based on enemies and extraordinary measures. What is at stake in the climate security discourse is the possibility of introducing mechanisms to prevent emergencies within a system that tends to rely, on the one hand, on governing through emergencies and, on the other hand, on insurance and compensation. The securitization of climate is an attempt to evoke the symbolic power of an environmental discourse based on interdependence and prevention to establish a framework for security and energy governance at the global level. It is about renegotiating the spaces in which risk management and market mechanisms prevail, and those in which intervention and regulations are legitimated. Securitization remains a very political moment. Its implications largely depend on what is securitized and what means are employed to provide security.

### 1NR A2: No Cybersecurity Impact

**Cyber-attack is coming ---actors are probing weaknesses**

**Reed 12** John, Reports on the frontiers of cyber war and the latest in military technology for Killer Apps at Foreign Policy, "U.S. energy companies victims of potentially destructive cyber intrusions", 10/11, killerapps.foreignpolicy.com/posts/2012/10/11/us\_energy\_companies\_victims\_of\_potentially\_destructive\_cyber\_attacks

Foreign actors are probing the networks of key American companies in an attempt to gain control of industrial facilities and transportation systems, Defense Secretary Leon Panetta revealed tonight.¶ "We know that foreign **cyber actors are probing America's critical infrastructure networks**," said Panetta, disclosing previously classified information during a speech in New York laying out the Pentagon's role in protecting the U.S. from cyber attacks. "They are targeting the computer control systems that operate chemical, **electricity** and water plants, and those that guide transportation thorough the country."¶ He went on to say that the U.S. government knows of "specific instances where intruders have gained access" to these systems -- frequently known as Supervisory Control and Data Acquisition (or SCADA) systems -- and that "they are seeking to create advanced tools to attack these systems and cause panic, destruction and even the loss of life," according to an advance copy of his prepared remarks.¶ The secretary said that **a coordinated attack on enough critical infrastructure could be a "cyber Pearl Harbor" that would "cause physical destruction and loss of life, paralyze and shock the nation, and create a profound new sense of vulnerability.**"¶ While there have been reports of criminals using 'spear phishing' email attacks aimed at stealing information about American utilties, Panetta's remarks seemed to suggest more sophisticated, nation-state backed attempts to actually gain control of and damage power-generating equipment. ¶ Panetta's comments regarding the penetration of American utilities echo those of a private sector cyber security expert Killer Apps spoke with last week **who said that the networks of American electric companies were penetrated, perhaps in preparation for a Stuxnet-style attack**.¶ Stuxnet is the famous cyber weapon that infected Iran's uranium-enrichment centrifuges in 2009 and 2010. Stuxnet is believed to have caused some of the machines to spin erratically, thereby destroying them.¶ "**There is hard evidence** that there has been penetration of our power companies, and given Stuxnet, that is a staging step before destruction" of electricity-generating equipment, the expert told Killer Apps. Because uranium centrifuges and power turbines are both spinning machines, "**the attack is identical -- the one to take out the centrifuges and the one to take out our power systems is the same attack**."¶ "If a centrifuge running at the wrong speed can blow apart" so can a power generator, said the expert. "If you do, in fact, spin them at the wrong speeds, you can blow up any rotating device."¶ Cyber security expert Eugene Kaspersky said two weeks ago that one of his greatest fears is someone reverse-engineering a sophisticated cyber weapon like Stuxnet **-- a relatively easy task** -- and he noted that Stuxnet itself passed through power plants on its way to Iran. "Stuxnet infected thousands of computer systems all around the globe, I know there were power plants infected by Stuxnet very far away from Iran," Kaspersky said.

#### status quo cyber defense fails

RT 13 – RT, January 11th, 2013, "United States ill-prepared for skyrocketing cyberattacks against critical infrastructure " rt.com/usa/cert-dhs-cyber-monitor-814/

Compared to recent years, **the cyberassaults waged during 2012 demonstrate an** alarming trend. While ICS-CERT identified 198 incidents last year, in 2009 that number was only nine.¶ "I believe that **people will not truly get this until they see the physical implications of a cyberattack**," former FBI cybercrime official Shawn Henry said last year, as quoted by CNN. "We knew about Osama bin Laden in the early '90s. After 9/11, it was a worldwide name. I believe that type of thing can and will happen in the cyber environment."¶ Leading figures in Washington have warned just as much, **equating an eventual assault on the United States’** cyber-grid **as being on par with national tragedies of historic proportions.** In October, Defense Secretary Leon Panetta said the country was at risk of facing a “Cyber Pearl Harbor.” In December, former National Security Agency Director Mike McConnel said a “Cyber 9/11” should be imminent.¶ "We have had our 9/11 warning. Are we going to wait for the cyber equivalent of the collapse of the World Trade Centers?" McConnell told Financial Times in an interview published last month.¶ **"All of a sudden, the power doesn't work, there's no way you can get money, you can't get out of town, you can't get online, and banking, as** a function to make the world work, starts to not be reliable**,"** McConnell said. "Now, that is a cyber-Pearl Harbor, and it is achievable."

### 1NR A2: Warming Inevitable

#### Warming not inevitable – tech solves

The Independent 10 (da: 7-2-2011, dw: 9-27-2010, Climate change crisis 'can be solved by oil companies', proquest, lido)

Climate change can be solved in a snap by making oil, gas and coal companies take responsibility for burying all the carbon dioxide emitted by the fossil fuel products they sell, one of Britain's leading young climate scientists said yesterday. Government attempts to try to get millions of people to change their behaviour through taxes and incentives were doomed to fail, said Dr Myles Allen, head of the Climate Dynamics Group at the University Oxford, and an increasingly influential voice in the climate debate. It would be much more efficient, he said, simply to make all producers of carbon-based fuels accountable for the disposal of the carbon dioxide their fuels ultimately give off, as a condition of remaining in business. Successful climate change policy would involve less government, not more. Dr Allen put his proposal forward in a debate on the politics of climate change at the Sustainable Planet forum in Lyon, the environmental conference co-sponsored by The Independent and the French newspaper Liberation, where he was sparring with the former French Environment Minister and leader of the French Green Party, Dominique Voynet. The three days of presentations and debates have been attended by 27,000 people, with thousands more following online; several of Britain's leading environmental thinkers have taken part, including the former green adviser to Tony Blair, Jonathon Porritt, the former head of Friends of the Earth Tony Juniper, the Government adviser and green analyst Tom Burke, the organic food and farming campaigner Lord Melchett, the green economy strategist Andrew Simms and Britain's first Green MP and leader of the Green Party, Caroline Lucas. But it was Dr Allen who put forward the most radical solution to keeping the planet sustainable, by suggesting responsibility for the problem should be taken, not by governments, but by the carbon producers themselves, in disposing of their waste products. Disposing of CO2 by burying it in the ground, known as carbon capture and storage (CCS), is now regarded as essential for tackling climate change,

yet the technology is in its infancy.