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XO: Aspec Shell

1. Interpretation—aff must specificy their agent
2. Violation—They don’t
3. Reasons to prefer
4. Solvency—vote negative on presumption

Richard Elmore 1980

The emergence of implementation as a subject for policy analysis coincides closely with the discovery by policy analysts that decisions are not self-executing. Analysis of policy choices matters very little if the mechanism for implementing those choices is poorly understood. In answering the question, "What percentage of the work of achieving a desired governmental action is done when the preferred analytic alternative has been identified?" Allison estimated that, in the normal case, it was about 10 percent, leaving the remaining 90 percent in the realm of implementation. Hence, in Nelson's terms, "the core of analysis of alternatives becomes the prediction of how alternative organizational structures will behave over . .. time."6 But the task of prediction is vastly complicated by the absence of a coherent body of organizational theory, making it necessary to posit several alternative models of organization.7

1. 2. Counterplan Ground—specifying your agent is critical to negative counterplan ground. This is especially true when dealing with police presence—or military contractors.
2. 3. Crushes solvency debates—never debate what the best actor to do the plan is. These debates are critical to education about the federal government and how it works.
3. 4. Moving target—lack of severance proves the plan is conditional—they can sever out of all offense—leaves us with statism which destroys education.
4. D. Voting issue for all the reasons above—also, 2ac is too late

XO CP Shell

Observation 1. Text: The President of the United States should <insert the plan>

Observation 2. Solvency

Presidents have traditionally used their executive authority to control military redeployment.

Cooper 2 (Phillip, Prof of Public Administration @ Portland State, By Order of the President: The Use and Abuse of Executive Direct Action)

The deployment of troops has presented presidents with a range of political and military issues that involve measures from sending troops into harm's way in existing conflicts to low-intensity wars that had the potential to grow.95 More often, the administrations worked with various constellations of positioning troops and their equipment in strategically important or tactically advantageous locations. Such deployments have also been used to project force as well as to prepare for possible action, as in the case of President Kennedy's buildup of troops in Europe as conflict with the USSR over Berlin grew.96 As a number of recent presidents have, learned, one of the more complex aspects of deployment can be extricating the troops from difficult situations. Thus, President Reagan's NSDD 123 laid out the plan for withdrawal of U.S. forces from Lebanon in the midst of continued fighting.97 National security directives have also been used both to launch military action and to direct combat operations. One of the more significant examples of such action was President Bush's NSD 54 that launched the Desert Storm attack on Iraq in 1.991:98 Pursuant to my responsibilities and authority under the Constitution as President and Commander in Chief, and under the laws and treaties of the United States, and pursuant to H.J. Res. 77 (1991), and in accordance with the rights and obligations of the United States under international law, including UN Security Council Resolutions 660, 661, 662, 664, 666, 667, 670, 674, 677, and 678, and consistent with the inherent right of the collective self-defense affirmed in Article 51 of the United Nations Charter, I hereby authorize military actions designed to bring about Iraq's withdrawal from Kuwait. These actions are to be conducted against Iraq and Iraqi forces in Kuwait by U.S. air, sea and land conventional military forces, in coordination with the forces of our coalition partners, at a date and time I shall determine and communicate through the National Command Authority channels.99 The next day, Desert Storm was launched. The order defines the purposes of the attack and the cautions to be observed during the battle. Interestingly, President Bush reserved the right to escalate hostilities and to target Saddam. Hussein directly if Iraq should seek to destroy Kuwait's oil fields. In such a case, the NSD announces, "it shall become an explicit objective of the United States to replace the current leadership of Iraq. I also want to preserve the option of authorizing additional punitive actions against Iraq?, mo Iraq did set the fields on fire, and the United States did not "replace the current leadership of Iraq." Bush knew that his authority was limited both domestically, in terms of his dealings with the Congress, and internationally, in terms of holding the coalition together. To be sure, this was not the first time that NSDs had been used for such a purpose. President Reagan had issued NSDD 110 in fall 1983, setting in motion the invasion of Grenada.ml

Observation 3 Net Benefits

A. XO’s preserve political capital

Executive Orders avoid Congressional battles-helps avoid legislative defeats

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 90, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

Since **executive orders are a unilateral presidential tool, presidents may use them to compensate for congressional opposition.** **This theme arises from histories of the civil rights orders, which have maintained that Democratic presidents used executive orders because they knew that Congress would refuse to pass legislation.** **Presidents may also use executive orders to preempt legislation or undercut Congress in other ways.** **When faced with the certain prospect of legislation imposing sanctions on South Africa in 1985, President Reagan successfully fractured a veto-proof coalition of Democrats and moderate Republicans by imposing weaker sanctions by executive order. In doing so, he “managed to avoid a major legislative defeat and the further embarrassment of an almost inevitable veto override,**” although Congress overrode Reagan's veto of sanction legislation the following year. Presidents have restructured the intelligence community through executive orders, in part to undermine congressional efforts to reorganize the community via statute. **For the same reasons, presidents who have low levels of public approval may be more likely to resort to executive orders. Doing so offers a way of getting around other institutional actors who might be emboldened in their opposition to what they perceive as a weak White House, and also provides presidents with a method of position-taking, framing policy questions, or delivering on promises made to key constituencies.**

B. Presidential Powers

First, Presidential power is decreasing under Obama

The Gazette (Montreal), March 14, 2009 Saturday , Obama's rule of law; Breaks with Bush's 'enemy combatant'

The Obama administration dropped the term "enemy combatant" and incorporated international law yesterday as its basis for holding terrorism suspects at Guantanamo prison while it works to close the facility.

The U.S. Justice Department said it had filed court papers outlining its break from Bush administration detention standards, and said only those who provided "substantial" support to Al-Qa'ida or the Taliban would be considered detainable.

"As we work toward developing a new policy to govern detainees, it is essential that we operate in a manner that strengthens our national security, is consistent with our values, and is governed by law," U.S. Attorney-General Eric Holder said. "The change we've made today meets each of those standards and will make our nation stronger."

Unlike under former president George W. Bush, who greatly sought to expand presidential powers during his term, the new detention policy does not rely on the president's powers as military commander in chief to hold terrorism suspects at Guantanamo.

Instead, the Justice Department said: "It draws on the international laws of war to inform the statutory authority conferred by Congress."

Second, must increase Presidential Power to secure hegemony

Paul 98 (Joel, Professor at University of Connecticut School of Law, California Law Review, “The Geopolitical Constitution: Executive Expediency and Executive Agreements”, http://www.jstor.org/stable/3481139) CBC

**The United States could not exercise world leadership without a shift in power from Congress to the executive. "Other governments must know, if they are to be willing to undertake indispensable joint commitments, that the United States can so act to implement integrated and responsible policy."** In McDougal and Lans' view, **a foreign policy led by a powerful executive unhampered by Congress best served democracy. In the new world environment, the values of efficiency, flexibility, and secrecy took precedence over the deliberative process: Executive officers, who are charged with the task of conducting negotiations with other governments, must be able to treat the national body politic as a whole and must be able to canvass it promptly and efficiently as a whole for the majority will, without being subjected to delays, obstructions, and disintegrating efforts by minorities**... A leisurely diplomacy of inaction and of deference to dissident minority interests supposedly characteristic of past eras when economic and political change proceeded at a slower pace and the twin ocean barriers gave us an effortless security is no longer capable, if it ever was, of securing the interests of the United States.

XO Solvency: Controls Nuke

The President can control the use and deployment of nuclear weapons with executive authority

Cooper 2 (Phillip, Prof of Public Administration @ Portland State, By Order of the President: The Use and Abuse of Executive Direct Action)

Although attention has been focused in recent years on such activities as peacekeeping operations and what the Reagan White House dubbed "low-intensity conflict," the specter of nuclear weapons has loomed over the domestic and international scene throughout the life of the NSC. Certainly, the management and control of nuclear weapons and nuclear power as well as other peaceful uses of nuclear energy have been directed by presidential use of NSDs. As strange as it may seem, much of this activity has been treated as relatively routine work. It is usually carried on under the strictest security rules, but significant portions of enough of these orders have been declassified over the years to demonstrate the patterns. Primarily, NSDs are used to (1) control nuclear stockpiles and develop or update procedures for their use;m5 (2) deploy weapons and delivery systems;1°6 (3) manage the development and testing of nuclear weapons;I°7 and (4) make policy for and manage nuclear technology assistance to other countries, with a simultaneous concern for nonproliferation

President has unrestrained authority over nuclear weapons

**Garcia 3** [Michael, JD Georgetown Law, A Necessary Response: The Lack of Domestic and International Constraints Upon a U.S. Nuclear Response to a Terrorist Attack” Georgetown Journal of Public Law and Policy 1 Geo. J.L. & Pub. Pol'y 515, Lexis]

Although international law offers little, if any legal (as opposed to political), constraints upon U.S. policymakers' decisions regarding the use of force, domestic law provides definitive limits upon such actions. The U.S. system relies upon "checks and balances" to ensure that no branch of government can become overly powerful--a system that is particularly critical in times of war. The Framers recognized the need for executive control over warfare; the nature of warfare requires quick and uniform decision making and is far better served by the executive than by a large, deliberative legislature. [n24](http://www.lexisnexis.com.ezproxy1.lib.asu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.306641.133006925&target=results_DocumentContent&reloadEntirePage=true&rand=1248978085551&returnToKey=20_T7064327617&parent=docview" \l "n24) However, the Framers believed that the President should not be given unchecked authority to declare and make war; they feared that absolute power of the executive in war matters might lead presidents to use war on behalf of personal objectives such as revenge, military glory, or personal or partisan aggrandizement. [n25](http://www.lexisnexis.com.ezproxy1.lib.asu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.306641.133006925&target=results_DocumentContent&reloadEntirePage=true&rand=1248978085551&returnToKey=20_T7064327617&parent=docview" \l "n25) Therefore, the Framers placed two critical war powers in the hands of Congress. Although the President would have the power as Commander in Chief of the nation's armed forces to conduct armed hostilities in the manner he deemed appropriate, [n26](http://www.lexisnexis.com.ezproxy1.lib.asu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.306641.133006925&target=results_DocumentContent&reloadEntirePage=true&rand=1248978085551&returnToKey=20_T7064327617&parent=docview" \l "n26) the power to declare war and fund the military was granted to Congress. [n27](http://www.lexisnexis.com.ezproxy1.lib.asu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.306641.133006925&target=results_DocumentContent&reloadEntirePage=true&rand=1248978085551&returnToKey=20_T7064327617&parent=docview" \l "n27) Additionally, the power of impeachment provided Congress with another potential  [\*520]  means of limiting the President's control over warfare. [n28](http://www.lexisnexis.com.ezproxy1.lib.asu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.306641.133006925&target=results_DocumentContent&reloadEntirePage=true&rand=1248978085551&returnToKey=20_T7064327617&parent=docview" \l "n28) Yet, despite these checks, the Executive Branch's control of nuclear weapons remains unconstrained. Congress's cutting military funds or attempting to impeach the President after a nuclear weapon has been launched does nothing to rectify the damage that has already been done. Furthermore, longstanding executive practices [n29](http://www.lexisnexis.com.ezproxy1.lib.asu.edu/us/lnacademic/frame.do?tokenKey=rsh-20.306641.133006925&target=results_DocumentContent&reloadEntirePage=true&rand=1248978085551&returnToKey=20_T7064327617&parent=docview#n29) suggest that a President might not wait for a congressional declaration to authorize a nuclear attack, especially if it is in response to an attack on the United States. Because of the legitimate possibility that the United States will be subject to additional terrorist attacks, possibly more destructive than those of September 11, the dangers of unfettered executive authority over nuclear weapons loom particularly large.

All nuclear issues are under the purview of the president

Cooper 2 Phillip J. Cooper, By Order of the President: The Use and Abuse of Presidential Direct Action, 2002

Although attention has been focused in recent years on such activities as peacekeeping operations and what the Reagan White House dubbed "low-intensity conflict," the specter of nuclear weapons has loomed over the do­mestic and international scene throughout the life of the NSC. Certainly, the management and control of nuclear weapons and nuclear power as well as other peaceful uses of nuclear energy have been directed by presidential use of NSDs. As strange as it may seem, much of this activity has been treated as relatively routine work. It is usually carried on under the strictest security rules, but significant portions of enough of these orders have been declassi fied over the years to demonstrate the patterns. Primarily, NSDs are used to (1) control nuclear stockpiles and develop or update procedures for then use;105 (2) deploy weapons and delivery systems;106 (3) manage the devel opment and testing of nuclear weapons;107 and (4) make policy for and man age nuclear technology assistance to other countries, with a simultaneous concern for nonproliferation.108

President can unilaterally decrease amount of warheads in arsenal

UCS 8

Union of Concerned Scientists, Toward True Security- Ten Steps the Next President Should Take to Transform U.S. Nuclear Weapons Policy, February 2008, <http://www.ucsusa.org/nuclear_weapons_and_global_security/nuclear_weapons/policy_issues/toward-true-security-ten.html>

To prevent more nations—and eventually terrorists—from acquiring nuclear weapons, the United States should drastically reduce the role that nuclear weapons play in its security policies. Toward True Security outlines 10 unilateral steps the next president should take to transform U.S. nuclear policy, which would strengthen national security and put the world on a path to eventually banning nuclear weapons. By taking this leadership role, the United States would also demonstrate to the rest of the world that it is serious about addressing what remains one of the gravest threats to human civilization. The United States need not wait for bilateral or multilateral agreements; it should take unilateral steps to begin the process. These steps would make the United States safer, whether or not the eventual goal of a worldwide ban is ever achieved. The greatest nuclear dangers to the United States are an accidental, unauthorized or mistaken Russian nuclear attack, the spread of nuclear weapons to more nations, and the acquisition of nuclear materials by terrorists. U.S. nuclear weapons policy, the report concludes, fails to adequately address these risks and too often exacerbates them. By taking these 10 unilateral steps, the next president would bring U.S. nuclear weapons policy into line with today’s political realities, and demonstrate to the rest of the world that the United States is serious about addressing what remains one of the gravest threats to human civilization: 1. Declare that the sole purpose of U.S. nuclear weapons is to deter and, if necessary, respond to the use of nuclear weapons by another country. Making it clear that the United States will not use nuclear weapons first would reduce the incentive for other nations to acquire these weapons to deter a potential U.S. first strike. 2. Reject rapid-launch options by changing U.S. deployment practices to allow the launch of nuclear forces within days instead of minutes. Increasing the amount of time required to launch U.S. weapons would ease Russian concerns about the vulnerability of its nuclear weapons and in turn give it the incentive to take its weapons off alert, reducing the risk of an accidental or unauthorized Russian launch on the United States. 3. Eliminate preset targeting plans, and replace them with the capability to promptly develop a response tailored to the situation if nuclear weapons are used against the United States, its armed forces, or its allies. 4. Promptly and unilaterally reduce the U.S. nuclear arsenal to no more than 1,000 warheads, including deployed and reserve warheads. There is no plausible threat that justifies maintaining more than a few hundred survivable nuclear weapons, and no reason to link the size of U.S. nuclear forces to those of any other country. The United States would declare all warheads above this level to be in excess of its military needs, move them into storage, begin dismantling them in a manner transparent to the international community, and begin disposing—under international safeguards—of all plutonium and highly enriched uranium beyond that required to maintain these 1,000 warheads. By making the end point of this dismantlement process dependent on Russia’s response, the United States would encourage Russia to reciprocate.

XO Solvency: Control Deployments

Presidents can withdrawal troops with XO—they are used to manipulate military deployments empirically

Cooper 2 (Phillip, Prof of Public Administration @ Portland State, By Order of the President: The Use and Abuse of Executive Direct Action)

Among the standard executive orders issued by each administration is a variety of actions concerning military personnel, including adjustments of rates of pay and allowances for the uniformed services83 and amendments to the Manual for Courts-Martia1.84 Particularly during periods of heightened national security activity, orders are regularly used to transfer responsibility, people, or resources from one part of the government to the military or the reverse. Many orders have been used to manage public lands, but it is often not recognized that frequently the lands are parts of military reservations or sites. In fact many of the orders issued by presidents in times of war or national emergency are very focused actions of this sort. Even in peacetime there are manifold organizational issues too detailed for statutes but that require action beyond the Department of Defense. President Clinton's order of succession of officers to act as secretary of the army is a typical example

XO Solvency: Rules of Engagement

The president can control rules of engagement with executive orders

Cooper 2 (Phillip, Prof of Public Administration @ Portland State, By Order of the President: The Use and Abuse of Executive Direct Action)

Notwithstanding Panama, Grenada, and Iraq, full-scale military attacks are the exception rather than the rule. However, there are other contexts in which combat is waged, often on a limited scale or where troops are placed in positions in which the likelihood of hostilities is high. In such situations, the White House has often sought, in the contemporary period, to be directly involved with the management of those forces because of the political volatility of the situation. One of the more common ways in which this has been done using NSDs is by the issuance of rules of engagement. Though many people have heard debates in the media over whether the rules of engagement were sufficiently robust to protect American forces or were too loose, permitting politically unintended clashes, few have actually seen such orders. President Reagan issued these rules of engagement to U.S. forces in Lebanon in early 1984: The Rules of Engagement (ROE) governing the defense of the official American presence in Lebanon will remain in effect. Specifically, U.S. Naval and tactical air power will be employed to destroy sources of hostile fire directed at the American Embassy compound, the Ambassador's residence and other U.S. personnel or facilities in Lebanon. As in previous practice, fire will be returned at organizationally associated targets if response to the source of fire is precluded. In view of the sudden and proximate threat to the Ambassador's residence which would be posed by a breakthrough at Suk al Gharb, the ROE for support to the LAF at that point is reaffirmed. To permit effective and timely responses to hostile fire in the situations described above, the Secretary of Defense will ensure that adequate technical means are available so as to determine the source of hostile fire directed at American personnel in greater Beirut.102 The establishment of rules of engagement can also be important in instances where the U.S. assigns military advisers or trainers, as in the Bush administration's Andean Initiative in 1989 intended to help address threats from the Sender° Luminoso (Shining Path) rebels and to suppress the drug trade.103 The continuing debates over such issues has expanded as the United States has become increasingly involved in what are called peacekeeping forces but that are often actually peacemaking forces. There have been many debates over a range of issues, from mission to command and control to preparation for possible hostilities, that have been high visibility issues in the years since the attack on the Marine barracks in Lebanon, exacerbated by the debacle in Somalia. In response to the Somalia experience, the Clinton administration issued PDD 25 in May 1994:

XO Solvency: Intelligence Gathering

The president can issue an executive order to control intelligence operations abroad

Cooper 2 (Phillip, Prof of Public Administration @ Portland State, By Order of the President: The Use and Abuse of Executive Direct Action)

Beyond the obvious realities of its operations, the well-established cultures of organizations from the Department of State through the Central Intelligence Agency (CIA) present special challenges for the chief executive. The flexibility and relative simplicity of the executive order make it a useful tool that can target the special problems of particular postings abroad. This category also includes management of intelligence agencies. While control of the operations of these organizations is also handled through national security directives, the executive order provides a more or less public way to provide information On the structure, operation, and governance of intelligence agencies. This was a particular theme during the Carter administration in the post-Vietnam period.86 Yet even the Carter approach did not always mean the imposition of new restrictions on the agencies. Thus, he issued E.O. 12139, setting forth the authority of a range of officials to approve foreign intelligence electronic surveillance.87

Executive Orders and Presidential Powers key to U.S. intelligence

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 163, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

**Executive orders proved useful as the primary means of controlling intelligence**, for two reasons. The first was the close proximity of intelligence to core executive powers. The second was that most presidential decisions about the way the intelligence community should operate involved the coordination of intelligence functions across departments. As such**, executive orders, a recognized tool of administrative organization and procedural change, were a natural source of authority.** **The intelligence function already existed within various agencies, and because of the wartime environment in which it initially expanded, Congress was in no position to object. Postwar presidents used executive orders to move the authority from one organization to another**. **After 1945, the World War II emergency that had played such an important role in congressional deference on security issues was replaced by the cold war, which rendered Congress similarly unwilling to challenge presidential ascendancy**. Here, too, presidential authority was less open to question, and once the precedent of executive control was firmly established it was that much harder for Congress to assert its own powers to control the organizations that emerged. Finally, **the secrecy of the organizations and powers subverted congressional control. Since Congress cannot oversee activities about which it knows nothing, presidents have successfully used their ability to control information dissemination to avoid before-the-fact congressional participation in sensitive intelligence operations**. Intelligence coordination thus stood at the intersection of individual presidential powers, with the combination proving a potent instrument of executive autonomy.

**President can control intelligence agencies**

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 170, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

**Presidents have consistently opposed congressional restrictions on their ability to conduct intelligence functions, an opposition based more on broad separation of powers issues and a desire to maintain control rather than on the substance of any proposed legislation**. **Presidents have repeatedly and successfully preempted congressional efforts to impose a formal statutory framework on the intelligence agencies, and most of the legislation** ultimately **enacted has represented**, at best, **marginal reforms. Even when Congress has passed legislation, presidents have responded by using their organizational flexibility to outmaneuver congressional attempts to control—or even look into—intelligence activities.**

XO Solvency: Commander in Chief

Executive key to control the military

Greener 3-19

Richard Greener: The Commander-In-Chief Test: Failed?, <http://www.huffingtonpost.com/richard-greener/the-commander-in-chief-te_b_506120.html>, 3-19-2010

The American Revolution was inspired and led by civilians, not by Generals. Later, our Constitution was likewise conceived and written by civilians. We have no history of military control over our political institutions. The Founders entrusted the President with the power to command the entire military of the United States because they realized it was - and always would be - essential to a free representative republic that there be absolute civilian control of the violent potential of the state. This ideal separated the new United States from all past empires and all contemporary Great Powers of the Eighteenth Century. A President leading armies in the field was never the vision of the Constitution. But a republic free from the threat of tyranny required a heavy civilian hand hard upon the neck of the armed forces. The primary responsibility of the Commander-in-Chief is to lend weight to that hand, to firmly apply pressure, never giving the beast a chance to run wild.

The president has supreme constitutional authority over the military

Yoo 1 (John, deputy assistant attorney general in the Office of Legal Counsel at the U.S. Department of Justice, research fellowships from the University of California, Berkeley, the Olin Foundation and the Rockefeller Foundation, MEMORANDUM OPINION FOR THE DEPUTY COUNSEL TO THE PRESIDENT)

The President's constitutional power to defend the United States and the lives of its people must be understood in light of the Founders' express intention to create a federal government "cloathed with all the powers requisite to [the] complete execution of its trust." The Federalist No. 23, at 122 (Alexander Hamilton) (Charles R. Kesler ed., 1999). Foremost among the objectives committed to that trust by the Constitution is the security of the Nation. (1) As Hamilton explained in arguing for the Constitution's adoption, because "the circumstances which may affect the public safety are [not] reducible within certain determinate limits, . . . it must be admitted, as a necessary consequence that there can be no limitation of that authority which is to provide for the defense and protection of the community in any matter essential to its efficiency." Id. (2) "It is 'obvious and unarguable' that no governmental interest is more compelling than the security of the Nation." Haig v. Agee, 453 U.S. 280, 307 (1981) (citation omitted). Within the limits that the Constitution itself imposes, the scope and distribution of the powers to protect national security must be construed to authorize the most efficacious defense of the Nation and its interests in accordance "with the realistic purposes of the entire instrument." Lichter v. United States, 334 U.S. 742, 782 (1948). Nor is the authority to protect national security limited to actions necessary for "victories in the field." Application of Yamashita, 327 U.S. 1, 12 (1946). The authority over national security "carries with it the inherent power to guard against the immediate renewal of the conflict." Id. We now turn to the more precise question of the President's inherent constitutional powers to use military force. Constitutional Text. The text, structure and history of the Constitution establish that the Founders entrusted the President with the primary responsibility, and therefore the power, to use military force in situations of emergency. Article II, Section 2 states that the "President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States." U.S. Const. art. II, § 2, cl. 1. He is further vested with all of "the executive Power" and the duty to execute the laws. U.S. Const. art. II, § 1. These powers give the President broad constitutional authority to use military force in response to threats to the national security and foreign policy of the United States. (3) During the period leading up to the Constitution's ratification, the power to initiate hostilities and to control the escalation of conflict had been long understood to rest in the hands of the executive branch. (4) By their terms, these provisions vest full control of the military forces of the United States in the President. The power of the President is at its zenith under the Constitution when the President is directing military operations of the armed forces, because the power of Commander in Chief is assigned solely to the President. It has long been the view of this Office that the Commander-in-Chief Clause is a substantive grant of authority to the President and that the scope of the President's authority to commit the armed forces to combat is very broad. See, e.g., Memorandum for Honorable Charles W. Colson, Special Counsel to the President, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Re: The President and the War Power: South Vietnam and the Cambodian Sanctuaries (May 22, 1970) (the "Rehnquist Memo"). The President's complete discretion in exercising the Commander-in-Chief power has also been recognized by the courts. In the Prize Cases, 67 U.S. (2 Black) 635, 670 (1862), for example, the Court explained that, whether the President "in fulfilling his duties as Commander in Chief" had met with a situation justifying treating the southern States as belligerents and instituting a blockade, was a question "to be decided by him" and which the Court could not question, but must leave to "the political department of the Government to which this power was entrusted." (5)

Congressional war powers do NOT apply to troop movements, Constitutional texts and Framers intent prove.

Yoo 1 (John, deputy assistant attorney general in the Office of Legal Counsel at the U.S. Department of Justice, research fellowships from the University of California, Berkeley, the Olin Foundation and the Rockefeller Foundation, MEMORANDUM OPINION FOR THE DEPUTY COUNSEL TO THE PRESIDENT)

Some commentators have read the constitutional text differently. They argue that the vesting of the power to declare war gives Congress the sole authority to decide whether to make war. (6) This view misreads the constitutional text and misunderstands the nature of a declaration of war. Declaring war is not tantamount to making war - indeed, the Constitutional Convention specifically amended the working draft of the Constitution that had given Congress the power to make war. An earlier draft of the Constitution had given to Congress the power to "make" war. When it took up this clause on August 17, 1787, the Convention voted to change the clause from "make" to "declare." 2 The Records of the Federal Convention of 1787, at 318-19 (Max Farrand ed., rev. ed. 1966) (1911). A supporter of the change argued that it would "leav[e] to the Executive the power to repel sudden attacks." Id. at 318. Further, other elements of the Constitution describe "engaging" in war, which demonstrates that the Framers understood making and engaging in war to be broader than simply "declaring" war. See U.S. Const. art. I, § 10, cl. 3 ("No State shall, without the Consent of Congress . . . engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."). A State constitution at the time of the ratification included provisions that prohibited the governor from "making" war without legislative approval, S.C. Const. art. XXVI (1776), reprinted in 6 The Federal and State Constitutions 3247 (Francis Newton Thorpe ed., 1909). (7) If the Framers had wanted to require congressional consent before the initiation of military hostilities, they knew how to write such provisions. Finally, the Framing generation well understood that declarations of war were obsolete. Not all forms of hostilities rose to the level of a declared war: during the seventeenth and eighteenth centuries, Great Britain and colonial America waged numerous conflicts against other states without an official declaration of war. (8) As Alexander Hamilton observed during the ratification, "the ceremony of a formal denunciation of war has of late fallen into disuse." The Federalist No. 25, at 133 (Alexander Hamilton). Instead of serving as an authorization to begin hostilities, a declaration of war was only necessary to "perfect" a conflict under international law. A declaration served to fully transform the international legal relationship between two states from one of peace to one of war. See 1 William Blackstone, Commentaries \*249-50. Given this context, it is clear that Congress's power to declare war does not constrain the President's independent and plenary constitutional authority over the use of military force.

Executive decisions such as military action are vested in the president by article 2 of the constitution

Yoo 1 (John, deputy assistant attorney general in the Office of Legal Counsel at the U.S. Department of Justice, research fellowships from the University of California, Berkeley, the Olin Foundation and the Rockefeller Foundation, MEMORANDUM OPINION FOR THE DEPUTY COUNSEL TO THE PRESIDENT)

Constitutional Structure. Our reading of the text is reinforced by analysis of the constitutional structure. First, it is clear that the Constitution secures all federal executive power in the President to ensure a unity in purpose and energy in action. "Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number." The Federalist No. 70, at 392 (Alexander Hamilton). The centralization of authority in the President alone is particularly crucial in matters of national defense, war, and foreign policy, where a unitary executive can evaluate threats, consider policy choices, and mobilize national resources with a speed and energy that is far superior to any other branch. As Hamilton noted, "Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks." Id. at 391. This is no less true in war. "Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand." Id. No. 74, at 415 (Alexander Hamilton). (9) Second, the Constitution makes clear that the process used for conducting military hostilities is different from other government decisionmaking. In the area of domestic legislation, the Constitution creates a detailed, finely wrought procedure in which Congress plays the central role. In foreign affairs, however, the Constitution does not establish a mandatory, detailed, Congress-driven procedure for taking action. Rather, the Constitution vests the two branches with different powers - the President as Commander in Chief, Congress with control over funding and declaring war - without requiring that they follow a specific process in making war. By establishing this framework, the Framers expected that the process for warmaking would be far more flexible, and capable of quicker, more decisive action, than the legislative process. Thus, the President may use his Commander-in-Chief and executive powers to use military force to protect the Nation, subject to congressional appropriations and control over domestic legislation. Third, the constitutional structure requires that any ambiguities in the allocation of a power that is executive in nature - such as the power to conduct military hostilities - must be resolved in favor of the executive branch. Article II, section 1 provides that "[t]he executive Power shall be vested in a President of the United States." U.S. Const. art. II, § 1. By contrast, Article I's Vesting Clause gives Congress only the powers "herein granted." Id. art. I, § 1. This difference in language indicates that Congress's legislative powers are limited to the list enumerated in Article I, section 8, while the President's powers include inherent executive powers that are unenumerated in the Constitution. To be sure, Article II lists specifically enumerated powers in addition to the Vesting Clause, and some have argued that this limits the "executive Power" granted in the Vesting Clause to the powers on that list. But the purpose of the enumeration of executive powers in Article II was not to define and cabin the grant in the Vesting Clause. Rather, the Framers unbundled some plenary powers that had traditionally been regarded as "executive," assigning elements of those powers to Congress in Article I, while expressly reserving other elements as enumerated executive powers in Article II. So, for example, the King's traditional power to declare war was given to Congress under Article I, while the Commander-in-Chief authority was expressly reserved to the President in Article II. Further, the Framers altered other plenary powers of the King, such as treaties and appointments, assigning the Senate a share in them in Article II itself. (10) Thus, the enumeration in Article II marks the points at which several traditional executive powers were diluted or reallocated. Any other, unenumerated executive powers, however, were conveyed to the President by the Vesting Clause. There can be little doubt that the decision to deploy military force is "executive" in nature, and was traditionally so regarded. It calls for action and energy in execution, rather than the deliberate formulation of rules to govern the conduct of private individuals. Moreover, the Framers understood it to be an attribute of the executive. "The direction of war implies the direction of the common strength," wrote Alexander Hamilton, "and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority." The Federalist No. 74, at 415 (Alexander Hamilton). As a result, to the extent that the constitutional text does not explicitly allocate the power to initiate military hostilities to a particular branch, the Vesting Clause provides that it remain among the President's unenumerated powers.

The president is the key actor in foreign affairs, any other interpretation cripples the executive and the constitution

Yoo 1 (John, deputy assistant attorney general in the Office of Legal Counsel at the U.S. Department of Justice, research fellowships from the University of California, Berkeley, the Olin Foundation and the Rockefeller Foundation, MEMORANDUM OPINION FOR THE DEPUTY COUNSEL TO THE PRESIDENT)

Fourth, depriving the President of the power to decide when to use military force would disrupt the basic constitutional framework of foreign relations. From the very beginnings of the Republic, the vesting of the executive, Commander-in-Chief, and treaty powers in the executive branch has been understood to grant the President plenary control over the conduct of foreign relations. As Secretary of State Thomas Jefferson observed during the first Washington Administration: "the constitution has divided the powers of government into three branches [and] has declared that the executive powers shall be vested in the president, submitting only special articles of it to a negative by the senate." Due to this structure, Jefferson continued, "the transaction of business with foreign nations is executive altogether; it belongs, then, to the head of that department, except as to such portions of it as are specially submitted to the senate. Exceptions are to be construed strictly." Thomas Jefferson, Opinion on the Powers of the Senate (1790), reprinted in 5 The Writings of Thomas Jefferson, at 161 (Paul L. Ford ed., 1895). In defending President Washington's authority to issue the Neutrality Proclamation, Alexander Hamilton came to the same interpretation of the President's foreign affairs powers. According to Hamilton, Article II "ought . . . to be considered as intended . . . to specify and regulate the principal articles implied in the definition of Executive Power; leaving the rest to flow from the general grant of that power." Alexander Hamilton, Pacificus No. 1 (1793), reprinted in 15 The Papers of Alexander Hamilton, at 33, 39 (Harold C. Syrett et al. eds., 1969). As future Chief Justice John Marshall famously declared a few years later, "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. . . . The [executive] department . . . is entrusted with the whole foreign intercourse of the nation . . . ." 10 Annals of Cong. 613-14 (1800). Given the agreement of Jefferson, Hamilton, and Marshall, it has not been difficult for the executive branch consistently to assert the President's plenary authority in foreign affairs ever since. In the relatively few occasions where it has addressed foreign affairs, the Supreme Court has agreed with the executive branch's consistent interpretation. Conducting foreign affairs and protecting the national security are, as the Supreme Court has observed, "'central' Presidential domains." Harlow v. Fitzgerald, 457 U.S. 800, 812 n.19 (1982). The President's constitutional primacy flows from both his unique position in the constitutional structure, and from the specific grants of authority in Article II that make the President both the Chief Executive of the Nation and the Commander in Chief. See Nixon v. Fitzgerald, 457 U.S. 731, 749-50 (1982). Due to the President's constitutionally superior position, the Supreme Court has consistently "recognized 'the generally accepted view that foreign policy [is] the province and responsibility of the Executive.'" Department of the Navy v. Egan, 484 U.S. 518, 529 (1988) (quoting Haig v. Agee, 453 U.S. at 293-94). "The Founders in their wisdom made [the President] not only the Commander-in-Chief but also the guiding organ in the conduct of our foreign affairs," possessing "vast powers in relation to the outside world." Ludecke v. Watkins, 335 U.S. 160, 173 (1948). This foreign affairs power is exclusive: it is "the very delicate, plenary and exclusive power of the President as sole organ of the federal government in the field of international relations - a power which does not require as a basis for its exercise an act of Congress." United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320 (1936). Conducting military hostilities is a central tool for the exercise of the President's plenary control over the conduct of foreign policy. There can be no doubt that the use of force protects the Nation's security and helps it achieve its foreign policy goals. Construing the Constitution to grant such power to another branch could prevent the President from exercising his core constitutional responsibilities in foreign affairs. Even in the cases in which the Supreme Court has limited executive authority, it has also emphasized that we should not construe legislative prerogatives to prevent the executive branch "from accomplishing its constitutionally assigned functions." Nixon v. Administrator of General Servs., 433 U.S. 425, 443 (1977).

Presidents have extensive control over foreign policy, concessions by congress and political structure allow them to act unilaterally

Moe and Howell 99 (Terry and William, William Bennett Munro Professor of Political Science Senior Fellow at the Hoover Institution Ph.D., University of Minnesota, Sydney Stein Professor in American Politics Co-Director, Program on Political Institutions Professor, Department of Political Science and the College, the presidential power of unilateral action)

Presidents have been even more assertive in exercising their powers of unilateral action in foreign policy. The founders intended for presidents to play pivotal roles in foreign affairs and gave them special powers, notably as commander in chief; to promote their leadership in that realm Congress was not expected to recede into the background md was given the power to declare war' and to regulate international trade. But over the years the inclination of Congress to make broad delegations to presidents has been even more pronounced in foreign policy than in domestic policy. The reasons are straightforward and probably unavoidable, having to do with the need for expertise, continuity, speed, flexibility, and so on, especially in an age of interdependence, complexity, and nuclear technology. There is some evidence that, with the end of the Cold War and the rising importance of international trade, which is more closely connected to constituency Congress may be entering a new era in which it is less willing to delegate. On the whole, though, the constitutional and statutory governing structure in foreign affairs has long been extremely favorable to unilateral action by presidents, and still is (e.g., Silverstein, 1997) Precisely for this reason, presidents have traditionally seen foreign policy as a more attractive arena than domestic policy for demonstrating their leadership. In foreign affairs, moreover, they have continually taken advantage of the ambiguity of the governing structure to lay claim to powers not explicitly granted them, and to carry out their policy agendas in whatever ways they could They have been especially successful at doing so, as we noted above, during times of war and emergency, when their unilateral actions have ranged from military operations to the creation of new agencies to the mobilization of domestic industries to the imposition of wage-price controls. It is worth noting, however, just how presidentialized international conflicts of all sorts have become, and what this has meant for presidential powers of unilateral action Since World War II, Congress has not declared war once. Yet the nation has beau involved in extended wars in Korea and Vietnam, a brief war in the Persian Gulf, and a number of conflicts, for example, the invasions of Panama and Granada, and the bombing of Libya. All of these were exercises in presidential leadership from beginning to end, with Congress-despite its constitutional war powers- playing a distinctly secondary role, if that. Presidents have largely been acting on their own (Fisher, l997; Cronin and Genovese, 1998).

XO Solvency: SOFA’s

We solve the case—XO’s can establish time limits of occupation through the use of Status of forces Agreements

Mason 9

R. Chuck Mason, Legislative Attorney, June 18, 2009, Status of Forces Agreement (SOFA):What Is It, and How Has It Been Utilized?, <http://www.fas.org/sgp/crs/natsec/RL34531.pdf>,

The last group of SOFAs discussed are agreements entered as sole executive agreements without a specified activity or exercise. These agreements contain broad language of applicability. Some of the agreements apply to U.S. personnel “present” in a country, others apply to U.S. personnel “temporarily present” in a country. In addition to time limitations, most of the agreements contain language which attempts to frame the scope of activities. The activities described may be as broad as “official duties” or specific to a particular class of activities (i.e., humanitarian, exercises, and/or training).

SOFA’s are done as executive agreements

Mason 9

R. Chuck Mason, Legislative Attorney, June 18, 2009, Status of Forces Agreement (SOFA):What Is It, and How Has It Been Utilized?, <http://www.fas.org/sgp/crs/natsec/RL34531.pdf>,

The United States has been party to multilateral and bilateral agreements addressing the status of U.S. armed forces while present in a foreign country. These agreements, commonly referred to as Status of Forces Agreements (SOFAs), generally establish the framework under which U.S. military personnel operate in a foreign country, addressing how the domestic laws of the foreign jurisdiction shall be applied toward U.S. personnel while in that country.

Formal requirements concerning form, content, length, or title of a SOFA do not exist. A SOFA may be written for a specific purpose or activity, or it may anticipate a longer-term relationship and provide for maximum flexibility and applicability. It is generally a stand-alone document concluded as an executive agreement. A SOFA may include many provisions, but the most common issue addressed is which country may exercise criminal jurisdiction over U.S. personnel. Other provisions that may be found in a SOFA include, but are not limited to, the wearing of uniforms, taxes and fees, carrying of weapons, use of radio frequencies, licenses, and customs regulations.

SOFAs are often included, along with other types of military agreements, as part of a comprehensive security arrangement with a particular country. A SOFA itself does not constitute a security arrangement; rather, it establishes the rights and privileges of U.S. personnel present in a country in support of the larger security arrangement. SOFAs may be entered based on authority found in previous treaties and congressional actions or as sole executive agreements.

XO Solvency: Generic

Executive Orders are a tool of the presidency-no real boundaries

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 65, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

**Executive orders are a potent instrument of presidential authority**. **Their importance stems from the** ambiguities of the **president's constitutional powers, the deference to the president shown by the judiciary, and both legal doctrines and political realities that give the president a significant edge in disputes with Congress**. **No one is quite sure how far the executive power reaches; although the broad boundaries are clear enough, it has proved impossible to construct precise guideposts along those boundaries that allow us to predict with any certainty whether a president is about to step over the line.** But what we do know—or should recognize—is that **executive orders provide a window into the exercise of presidential power. Presidents think about them; staffers wrangle over them; executive branch officials worry about them**. It makes sense, then, to survey the landscape in more detail to analyze how presidents have used them.

The president has the power to issue executive orders on anything

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 11, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

**The politics of the presidency is about getting control of the institutions that create and implement policy.** Rational choice institutionalism permits a framework that more closely tethers presidential behavior to statutory and constitutional origins, at the same time that it introduces a dynamic element into the evolution of presidential power. **In the struggle for institutional control the president has two main advantages, both of which stem from** the president's unique **legal powers. The first of these presidential advantages is the formal vestment of executive authority in the office,** something far more important than most studies of the presidency have allowed.“ **The simple fact that presidents are the nation's chief executives endowed by the Constitution and stature with certain formal powers, is of great consequence**. For **those powers enable them to make** lots of **important structural choices *on their own* without going through the legislative process…. They can organize and direct the presidency as they see fit, create public agencies, reorganize them, move them around, coordinate them, impose rules on their behavior, put their own people in top positions, and otherwise place their structural stamp on the executive branch.” The importance of executive power is enhanced by its inherent ambiguity, and by an increasing level of congressional delegation to the executive branch. Together, these give the president the ability to interpret his responsibilities flexibly and also to shape how statutes are implemented and enforced. In this way executive power is akin to what economists call residual decision rights, which in the private sector “are rights an actor may possess under a contract or governing arrangement that allow him to take unilateral action at his own discretion when the formal agreement is ambiguous or silent about precisely what behaviors are required.** **Since statutes inevitably leave discretion to the executive, often by design, the president has many opportunities to exercise this residual authority.**

XO Presidential Powers: Uniqueness

Congress is working to limit presidential power to prevent another Bush-era of executive control

Greenwald 10, (Glenn, Staff Writer, Salon.com Congress takes first step to impose limits on Obama's executive powerTHURSDAY, FEB 12, [http://www.salon.com/ news/opinion/glenn\_greenwa ld/2009/02/12/state\_secrets](http://www.salon.com/%20news/opinion/glenn_greenwa%20ld/2009/02/12/state_secrets)) WDK

What we need far more than a benevolent and magnanimous President is a re-assertion of Congressional authority as a check on executive power.  Even if Obama decided unilaterally to refrain from exercising some of the powers which the Bush administration seized, that would be a woefully insufficient check against future abuse, since it would mean that these liberties would be preserved only when a benevolent ruler occupies the White House (and, then, only when the benevolent occupant decides not to use the power).  Acts of Congress -- along with meaningful, enforced oversight of the President -- are indispensable for preventing these abuses.  And that's true whether or not one believes that the current occupant of the Oval Office is a good, kind and trustworthy ruler.

Congress checking executive power

Greenwald 10, (Glenn, Staff Writer, Salon.com Congress takes first step to impose limits on Obama's executive powerTHURSDAY, FEB 12, [http://www.salon.com/ news/opinion/glenn\_greenwa ld/2009/02/12/state\_secrets](http://www.salon.com/%20news/opinion/glenn_greenwa%20ld/2009/02/12/state_secrets)) WDK

A President who seeks to aggrandize his own power through wildly expansive claims of executive authority ought to be vigorously criticized.  But the ultimate responsibility to put a stop to that lies with the Congress (and the courts).  More than anything else, it was the failure of the Congress to rein in the abuses of the Bush presidency (when they weren't actively endorsing those abuses) that was the ultimate enabling force of the extremism and destruction of the last eight years.

XO Net Benefits: XO’s key to Presidential Powers

Obama’s presidential power will only increase with executive orders

**Zelizer 9** [Julian, professor of history and public affairs at Princeton University's Woodrow Wilson School “Commentary: Can Obama and Congress Share Power?” CNN Online, January 5, http://www.cnn.com/2009/POLITICS/01/05/zelizer.power/index.html]

Obama must be held responsible as well. While presidents don't like to give up power, maybe this president will be different. At a minimum, Obama should avoid the techniques used so often in recent years to circumvent legislative will. It is not enough to reverse Bush's executive orders -- the **crucial** **question** is whether Obama uses such orders as frequently himself. If the nation can create a better balance between the executive and legislative branches, the country will benefit. The New Deal proved when both branches work together, the nation can produce some of its finest and most effective programs.

Unilateral executive action expands presidential power

Kenneth **Mayer**, **2001**: [Kenneth Mayer, professor of political science at the University of Wisconsin, “With the Stroke of a Pen.” 2001, pg. 56. ]

Much of the time, analyses of the president’s constitutional power rely on historical evidence of how individual presidents viewed that power and how they put it into practice. Practice matters because of the importance of precedent to the expansion of presidential power, because the parameters of presidential authority have often been shaped by case-by-case judicial review, and because presidents have used their authority (often through executive orders\_) in order to shape institutional patterns and processes that in turn enhance their ability to exercise administrative control. Each time a president relies on executive prerogative to take some type of action, it makes it easier for a future president to take the same (or similar) action. “The boundaries between the three branches of government are…strongly affected of custom or acquiescence. When one branch engages in a certain practice and the other branches acquiesce, the practice gains legitimacy and can fix the meaning of the Constitution.

XO Net Benefits: Presidential Powers solve WOT

Presidential powers key to fighting the war on terror

Pauly and Lansford 3 (Robert and Tom, adjunct professor of history and political Science at Norwich University and assistant professor of political science, University of Southern Mississippi, American Diplomacy, “National Security Policy and the Strong Executive: The French and American Presidents and the War on Terror”, http://www.unc.edu/depts/diplomat/archives\_roll/2003\_04-06/lansfordpauly\_exec/lansfordpauly\_exec.html) CBC

In addition to the explicit constitutional and legal foundations of presidential security powers, a variety of factors, including tradition, necessity and interpretations of the Supreme Court have expanded the boundaries of executive authority. The traditional freedom given to U.S. presidents to use military force without a congressional declaration of war has come to be seen as a manifestation of executive privilege.[14](http://www.unc.edu/depts/diplomat/archives_roll/2003_04-06/lansfordpauly_exec/lansfordpauly_exec_notes.html#note14) Furthermore, **American foreign policy is rooted in the notion of the “sole organ theory” which holds that the president is the “sole” source of foreign and security policy**.[15](http://www.unc.edu/depts/diplomat/archives_roll/2003_04-06/lansfordpauly_exec/lansfordpauly_exec_notes.html#note15) **This theory has served as the underpinning for the dramatic twentieth-century expansion of executive power.** For instance, the Supreme Court decision United States v. Curtiss-Wright Corporation (1936) gave executive agreements the weight of law (and thereby bypassed the senatorial approval required of treaties), while Goldwater v. Carter (1979) confirmed the ability of the president to withdraw from international treaties without congressional consent.[16](http://www.unc.edu/depts/diplomat/archives_roll/2003_04-06/lansfordpauly_exec/lansfordpauly_exec_notes.html#note16) T**he result of this concentration of power has been the repeated presidential use of the U.S. military throughout the nation’s history without a formal congressional declaration of war and an increased preference by both the executive and the legislature for such actions**.[17](http://www.unc.edu/depts/diplomat/archives_roll/2003_04-06/lansfordpauly_exec/lansfordpauly_exec_notes.html#note17) **One feature of this trend was consistency in U.S. foreign policy**, especially during the Cold War era. **Even during periods when the United States experienced divided government, with the White House controlled by one political party and all or half of the Congress controlled by the party in opposition, the executive was able to develop and implement foreign and security policy with only limited constraints.**[**18**](http://www.unc.edu/depts/diplomat/archives_roll/2003_04-06/lansfordpauly_exec/lansfordpauly_exec_notes.html#note18) **Given the nature of the terrorist groups that attacked the United States on 11 September 2001, such policy habits proved useful since a formal declaration of war** was seen as problematic in terms of the specific identification of the foe and the ability of the Bush administration to expand combat operations beyond Afghanistan to countries such as Iraq.

XO Politics Net Benefits: Not Perceived

Executive Orders can be used to send a political signal to a constituency or to an ally in congress

Cooper 2 (Phillip, Prof of Public Administration @ Portland State, By Order of the President: The Use and Abuse of Executive Direct Action)

There is little question that presidents use executive orders in the face of strikes for public relations purposes as well as out of concern for the impact of the work stoppages themselves. Many presidents have employed executive orders to build or protect their image. President Clinton took several such actions as he came to office. His decision to make the first action of his presidency (even before leaving Capitol Hill after inauguration) the signing of an executive order on ethics, 44 his order calling for the elimination of one hundred thousand public service positions,45 and his order mandating elimination of one-half of all executive branch internal regulations46 are classic examples of the tactic. The signing of such orders is often done with great flourish as a media event, as when President Clinton and Vice President Gore crossed the White House lawn to stand between two forklifts laden with what were presumably federal documents to sign the order calling for elimination of half the government's internal regulations. Of course, what the president did not say was that he was not taking action to reduce the number of executive orders that imposed significant burdens on the ability of executive branch agencies to carry out their duties. Not only did Clinton retain the orders imposed by his predecessors, but he even added to the requirements agencies had to meet, forcing, among other things, more of the mountains of paper that the White House lawn ceremony decried. Paying Debts, Rewarding Supporters, Answering Critics, and Sending Signals Often presidents issue executive orders in what may appear to be a public relations event for reasons other than those announced when the order is issued. Presidential orders can be effective devices for paying political debts, demonstrating action for a constituency, responding to adversaries, or sending political signals—real or symbolic. Orders that are largely symbolic rewards for support often make strong statements of policy but provide no new resources. They typically call for awareness by federal authorities of some concern and frequently create interagency or advisory committees for consultation, but they rarely require much beyond consultation and reporting. They also commonly contain clauses serving notice that the order establishes no legally cognizable rights that would justify judicial review.

Executive Orders are not perceived

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 10, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

**Despite the apparent importance of executive orders, the political science literature has paid scant attention to them**. **This position is especially clear within** the subfield of **presidency studies, which has been dominated by a research paradigm that emphasizes the president's leadership skills and strategic acumen, not the legal basis of presidential power, as the keys to political success**. With few exceptions, [45](http://www.questiaschool.com/read/103283201) existing research on executive orders either has been descriptive or has addressed the consequences of particularly important orders. [46](http://www.questiaschool.com/read/103283201) Similarly**, the public administration literature “virtually ignores executive orders and proclamations**.” [47](http://www.questiaschool.com/read/103283201)

More to the point, **most of the studies that do exist have minimized the significance of executive orders, viewing them as useful only for routine administrative tasks**. **The executive order is “limited in its scope and possibilities”;** [**48**](http://www.questiaschool.com/read/103283201) **“not customarily viewed as a viable tool for major policy initiatives”;** [**49**](http://www.questiaschool.com/read/103283201) **and “a very limited and temporary alternative for policy initiatives**.” [50](http://www.questiaschool.com/read/103283201) Mark Peterson argues that **although presidents can often use their statutory authority to get at least part of what they want when Congress is uncooperative, “the potential for unilateral action of this kind is limited.”** [**51**](http://www.questiaschool.com/read/103283201)

XO Politics Net Benefits: Circumvent Congress

Executive orders are the easiest way for a president to enact his policies and can circumvent congress

Cooper 2 (Phillip, Prof of Public Administration @ Portland State, By Order of the President: The Use and Abuse of Executive Direct Action)

Executive orders are often used because they are quick, convenient, and relatively easy mechanisms for moving significant policy initiatives. Though it is 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 sometimes 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.

XO Solvency: Force of Law

XO’s are Law

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 4-5, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

**Working from their position as chief executive and commander in chief, presidents have used executive orders to make momentous policy choices, creating and abolishing executive branch agencies, reorganizing administrative and regulatory processes, determining how legislation is implemented, and taking whatever action is permitted within the boundaries of their constitutional or statutory authority. Even within the confines of their executive powers, presidents have been able to “legislate” in the sense of making policy that goes well beyond simple administrative activity**. Yale Law School professor E. Donald Elliot has argued that many of the thousands of **executive orders “plainly ‘make law’ in every sense,”** [7](http://www.questiaschool.com/read/103283198) and Louis Fisher finds that despite **the fact that the Constitution unambiguously vests the legislative function in Congress, “the President's lawmaking role is substantial, persistent,** and in many cases disturbing.”

A2: Congress will rollback

The president has the power to move first-this checks Congressional rollback

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 26, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

**The second presidential advantage in the institutional setting is the ability to act first, leaving it up to other institutions to reverse what presidents have done.** Whether presidents have effective plenary executive authority or not (an open question**), there is no doubt that they can take action faster and more efficiently than either Congress or the courts. Congress as a collective organization takes definitive action through the legislative process, which is cumbersome, difficult to navigate, and characterized by multiple veto points**. **Even when Congress can create and sustain majorities at the subcommittee, committee, floor, and conference stages, the president can use the veto power to raise the bar from a simple majority to a two-thirds majority necessary to enact legislation over the president's objection. The president, at the same time, “has a trump card of great consequence in his struggle against Congress for control of government. He can act unilaterally in many matters of structure.”** [**118**](http://www.questiaschool.com/read/103283206) **The president, in effect, can often make the first move in these disputes, forcing Congress to take positive action to undo what the president has created.**

The XO will not be overturned by Congress or by the Courts

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 26, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

Similarly, **the judiciary can overturn executive actions**  **but must wait for controversies to come to it, and definitive resolution can take years**. Moreover**, even after the judicial decision, enforcement is a matter for the president**. The president's ability to win by default is, like his residual authority, reinforced by judicial doctrines that make it more difficult to challenge presidential action. The so-called *Chevron* rule determines how judges referee presidential-legislative disputes over statutory interpretation, and the rule provides clear advantages to the president. In *Chevron U.S. A v. National Resources Defense Council,* 467 U.S. 837 (1984), the Supreme Court ruled that an agency interpretation of a statute is “controlling unless Congress has spoken to the ‘precise question at issue.’” [119](http://www.questiaschool.com/read/103283206) **Once the president, through the executive branch, has interpreted a statute, Congress can only override that determination through narrow, explicit legislation on the exact point in question. This requirement places a heavy burden on Congress in confronting unilateral presidential action, given that body's collective nature and inherent bias toward not changing the status quo.**

Congress won’t rollback-fear of giving the President more power prevents

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 24, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

Moreover, **efforts to check presidential power through legislative restrictions often have** had **the counterproductive effect of legitimizing the very powers that Congress has tried to limit**. I treat this problem in more detail in chapter two, but two **examples highlight the problem that Congress faces. When Congress tried to limit the president's ability to carry out covert intelligence operations by imposing reporting requirements in the Hughes-Ryan amendments to the Foreign Assistance Act and the Intelligence Oversight Act in 1980, it inadvertently provided legislative recognition of the president's covert operations authority.** **The mere fact that Congress required the president to report on such activities was read by the courts as a congressional recognition of the president's right to conduct them.“So once again,**” concludes Gordon Silverstein,c **“Congress' attempt to control the executive's actions in foreign policy only provided fresh and unprecedented explicit authorization for executive prerogative**.” **A similar dynamic occurred in 1977** **when Congress tried to limit the way in which presidents exercised emergency economic powers.** Since 1917, when Congress passed the Trading with the Enemy Act (TWEA), the president has had the legal authority to regulate aspects of foreign trade in emergency or wartime circumstances. **Over the years, presidents had relied on the act to give them an ever-expanding range of authority to exercise control over more and more; Congress played a part in the president's expanding authority by modifying the law to, for example, extend the president's authority to certain domestic situations as well (which it did in** March **1933**). Between 1933 and 1968, **a congressional investigation found, presidents had issued dozens of executive orders and proclamations under the act, with some far removed from what was originally intended**: examples included FDR's proclamations closing the nation's banks and prohibiting the removal of gold from the country, FDR's executive orders freezing the assets of enemy nationals, Johnson's executive order restricting capital transfers abroad, and a Nixon executive order continuing certain export restrictions.

**Congress won’t rollback-empirically proven**

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 121, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

In 1954 Richard Neustadt described the expansion of central clearance this way: “**For more than thirty years now,** central clearance has persisted, its history marked by a long series of ‘accidental,’ unforeseen accretions. Nothing once absorbed has been wholly displaced; each new element somehow encompasses the old … overall, here is a record of great growth, successful adaptation—this under six successive Presidents, through every variation in national and governmental circumstance since Harding's term of office.” [57](http://www.questiaschool.com/read/103283224) The presidential budget and growth of BoB power illustrates the pattern: societal and political pressures serve as the impetus for a new government capability; **Congress and the president compete over the question of control; the president prevails and uses the new capability in unanticipated ways to develop even more power, and Congress can do little to stop him.** **Over time, the new powers—once so controversial—become institutionalized as a routine and accepted part of the presidency. The pattern has played out in a number of situations, across presidents and eras, and has less to do with specific presidential initiative than the motivations and incentives, relative positions, and inherent institutional qualities of Congress and the presidency.**

A2: Courts will rollback

Courts won’t rollback-they side with the President

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 56, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

**The relative institutional capabilities of the presidency and Congress to adapt and respond have also played a role, as have long-standing judicial doctrines that give the president important advantages**. **In the past few decades the judiciary has through various decisions created a presumption that favors presidential initiative. Unless a presidential act contravenes a clear and explicit statutory or constitutional prohibition that directly addresses the action, the courts are likely to side with the president**. **In a series of decisions in the 1980s that expanded the scope of executive power, the Supreme Court indicated a willingness to validate executive action in the absence of an explicit congressional prohibition (which must take legislative form), to find implicit congressional consent in legislation that provides authority to the president in tangential policy areas, and to uphold executive interpretations of ambiguous statutes** unless Congress has spoken precisely to the issue in point. **These patterns hold true in domestic as well as in foreign policy, but take on additional weight in foreign affairs when combined with the traditional deference to presidential action in that arena**. Much of the time, analyses of the president's constitutional power rely on historical evidence of how individual presidents viewed that power and how they put it into practice.

The courts will not rollback XO’s

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 11, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

In making this argument about the importance of executive power, **I recognize that our “separated system” puts both formal and informal limits on what presidents can do.** [**52**](http://www.questiaschool.com/read/103283201) **Presidents come to office in widely varying electoral and political contexts that shape their ability to transform their formal powers into action. Checks and balances were built into institutional structures of the federal government from the beginning, and presidents reeling from a prolonged recession, facing united majority party opposition in Congress**, or mired in an unpopular war will find little solace in the powers specified or implied in Article II of the Constitution. Nevertheless, **in most circumstances 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.** Some of this authority, particularly in regulatory affairs, has been delegated to the president by Congress, [53](http://www.questiaschool.com/read/103283202) but presidents have also simply assumed many policy-making powers, especially in national security and foreign policy matters. [54](http://www.questiaschool.com/read/103283202) **Although the courts do step in to block presidential action on constitutional grounds** (with *Youngstown* the most notable case), **the general pattern has been more one of judicial deference to executive action than of assertiveness.**

A2: Perm -->Do both

Executive Order: A2 Perm – Do Both

Double Bind Either you sever out of congressional action and that makes the plan a moving target, which is worse than cp abuse cause the plan is the focus of debate. Also, would justify 2ac plan amendments which would jack all neg ground—voting issue.

OR

The perm still includes congressional action which sparks opposition, triggering the link

Doesn’t solve presidential power – simultaneous legislative and executive action creates a mixed precedent, undermining presidential authority

**Bellia 2** [Patricia, Professor of Law @ Notre Dame, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

Second, courts' failure to resolve the contours of the President's constitutional powers creates uncertainty about whether some forms of constitutionally based executive action have the same legal force as a federal statute. Returning to Dames & Moore, the fact that the Court **r**ested the President's authority on grounds of congressional approval rather than implied constitutional authority avoided the difficult question of how the President could by his sole authority displace the application of the federal statutes that had provided the basis for Dames & Moore's original cause of action against the Iranian enterprises. [291](https://www.lexis.com/research/retrieve?_m=f19618c70694bf3d339be1d061d942b7&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtz-zSkAW&_md5=1b7b7f45414d178a7293c7eabf182ff3" \l "n291#n291" \t "_self) Similar questions arise with respect to the displacement of state law by operation of sole executive agreements. The result is **confusion** about whether sole executive agreements are the "supreme Law of the Land," [292](https://www.lexis.com/research/retrieve?_m=f19618c70694bf3d339be1d061d942b7&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtz-zSkAW&_md5=1b7b7f45414d178a7293c7eabf182ff3" \l "n292#n292" \t "_self) with the available precedents suggesting that they are [293](https://www.lexis.com/research/retrieve?_m=f19618c70694bf3d339be1d061d942b7&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtz-zSkAW&_md5=1b7b7f45414d178a7293c7eabf182ff3" \l "n293#n293" \t "_self) and the weight of recent commentary suggesting that they are not.

-- Congressional silence key to presidential power

**Bellia 2** [Patricia, Professor of Law @ Notre Dame, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

To see the problems in giving dispositive weight to inferences from congressional action (or inaction), we need only examine the similarities between courts' approach to executive power questions and courts' approach to federal-state preemption questions. If a state law conflicts with a specific federal enactment, n287 or if Congress displaces the state law by occupying the field, n288 a court cannot give the state law effect. Similarly, if executive action conflicts with a specific congressional policy (reflected in a statute or, as Youngstown suggests, legislative history), or if Congress passes related measures not authorizing the presidential conduct, courts cannot give the executive action effect. n289 When Congress is silent, however, the state law will stand; when Congress is silent, the executive action will stand. This analysis makes much sense with respect to state governments with reserved powers, but it makes little sense with respect to an Executive Branch lacking such powers. The combination of congressional silence and judicial inaction has the practical effect of creating power. Courts' reluctance to face questions about the scope of the President's constitutional powers - express and implied - creates three other problems. First, the implied presidential power given effect by virtue of congressional silence and judicial inaction can solidify into a broader claim. When the Executive exercises an "initiating" or "concurrent" power, it will tie that power to a textual provision or to a claim about the structure of the Constitution. Congress's silence as a practical matter tends to validate the executive rationale, and the Executive Branch may then claim a power not only to exercise the disputed authority in the face of congressional silence, but also to exercise the disputed authority **in the face of congressional opposition**. In other words, a power that the Executive Branch claims is "implied" in the Constitution may soon become an "implied" and "plenary" one. Questions about presidential power to terminate treaties provide a  [\*151]  ready example. The Executive's claim that the President has the power to terminate a treaty - the power in controversy in Goldwater v. Carter, where Congress was silent - now takes a stronger form: that congressional efforts to curb the power are themselves unconstitutional. n290

A2: Agent CP’s bad

Executive Order: Agent CP’s Good

*The Offense…*

1. Key to negative ground, half of all CP’s run are agent CP’s
2. Tests the affirmative plan- 90% of policy is implementation, we prove their policy is 90% bad
3. Gives the affirmative ground- They can run any DA’s they have to our agent
4. Makes the aff defend their plan, why would they specify \_\_\_\_\_\_\_\_\_\_\_\_ if we can’t have a debate on it.

*The Defense…*

1. Its predictable, they’re constantly run and we didn’t pick some obscure actor
2. Lit checks abuse- There aren’t many agencies that someone will advocate should do the plan
3. Debate has changed. As topics got bigger, affs defended plans instead of the whole resolution, reciprocally, It’s now only the negatives job to disprove the plan.
4. Not a voter- Its an argument to reject the CP

Affirmative Answers: Courts will rollback

Rollback - The Courts

**Cooper 2** [Phillip, Professor of Public Administration @ Portland State University, *By Order of the President: The Use and Abuse of Executive Direct Action”* pg..77]

Despite the apparent deference by the judiciary to the president's orders, this chapter has plainly demonstrated any number of instances in which the White House has lost in court. Executive orders, both legal and illegal, can expose officials to liability. It is an old argument, developed long before the battle over the so-called Nuremberg defense, that illegal orders do not insulate a public official from liability for his or her actions. The classic example harks back to Little v. Barreme 13 1 during the Washington administration. Even legal orders can expose the government to liability. Though the federal courts have often upheld dramatic actions taken by the president during difficult periods, they have not been hesitant to support claims against the government later. The many cases that were brought involving the U.S. Shipping Board Emergency Fleet Corporation after World War I provide examples of just how long such postorder legal cleanup can take and how much it can Cost. 112 Later, in a 1951 case, the Supreme Court subjected government to claims by business for the damages done to their interests during the government's operation of the coal mines during World War II after FDR seized the mines in 1943.133 Thus, the legal issues that may arise are concerned with both the validity of orders and with addressing the consequences of admittedly legitimate decrees.

Affiramtive Answers: Future Presidents Rollback

Future Presidents-Rollback

**Cooper 97** [Phillip, Professor of Poli Sci @ University of Vermont, Administration and Society, Lexis]

Even if they serve temporary goals, executive orders can produce a significant amount of complexity and conflict and not yield a long-term benefit because the next president may dispose of predecessors’ orders at a whim. It may be easier than moving a statute through Congress and faster than waiting for agencies to use their rule-making processes to accomplish policy ends, but executive orders may ultimately be a much weaker foundation on which to build a policy than the alternatives.

Affirmative Answers: Presidential Powers –Non Unique

Obama has large amounts of presidential control

Baker 10, (Obama Making Plans to Use Executive Power By PETER BAKER Published: February 12, 2010, [http:/ /www.nytimes.com/2010/02/13/us/politics/13obama.html?\_r=1](http://www.nytimes.com/2010/02/13/us/politics/13obama.html?_r=1))

Any president has vast authority to influence policy even without legislation, through executive orders, agency rule-making and administrative fiat. And Mr. Obama’s success this week in pressuring the Senate to confirm 27 nominations by threatening to use his recess appointment power demonstrated that executive authority can also be leveraged to force action by Congress.

Presidential control increasing

Baker 10, (Obama Making Plans to Use Executive Power By PETER BAKER Published: February 12, 2010, [http:/ /www.nytimes.com/2010/02/13/us/politics/13obama.html?\_r=1](http://www.nytimes.com/2010/02/13/us/politics/13obama.html?_r=1))

Mr. Obama has already decided to create a bipartisan budget commission under his own authority after Congress refused to do so. His administration has signaled that it plans to use its discretion to soften enforcement of the ban on openly gay men and lesbians serving in the military, even as Congress considers repealing the law. And the [Environmental Protection Agency](http://www.epa.gov/) is moving forward with possible regulations on heat-trapping gases blamed for [climate change](http://topics.nytimes.com/top/news/science/topics/globalwarming/index.html?inline=nyt-classifier), while a bill to cap such emissions languishes in the Senate.

Presidential power increasing now

Fox 10, (News, Obama Poised to Use Executive Power to Muscle Through Domestic Agenda

Published February 13, 2010 | FOXNews.com, <http://www.foxnews.com/politics/2010/02/13/obama-poised-use-executive-power-muscle-domestic-agenda/>) WDK

Faced with a resurgent GOP and a largely stalled legislative agenda, President Obama is planning to use his executive powers to forge ahead with his domestic initiatives, including on energy, the environment and the economy, The New York Times reported. "We are reviewing a list of presidential executive orders and directives to get the job done across a front of issues," White House Chief of Staff Rahm Emanuel told the newspaper. But aides told the newspaper that Obama is still hopeful that progress can be made on Capitol Hill, citing the bipartisan summit on health care scheduled later this month. Yet the GOP's stunning capture last month of the Senate seat previously held by Ted Kennedy has prompted the White House to prepare to go solo to break any partisan gridlock heading into the midterm elections. The president has a range of powers -- from executive orders to agency initiatives -- that don't require legislative action, and White House officials argue that the increased focus on executive powers is not uncommon in the second year of any presidency.

Affiramtive Answers: Presidential Powers kill SOP (DA)

Presidential Power destroys the separation of powers

Branum 2 (Tara, Editor in Chief Texas Review of Law and Politics, Texas Review of Law and Politics, “President or King? The Use and Abuse of Executive Orders in Modern-Day America”, http://heinonline.org/HOL/Page?men\_tab=srchresults&handle=hein.journals/jleg28&id=8&size=2&collection=journals&terms=increased&termtype=phrase&set\_as\_cursor=#7) CBC

**The perception of Americans that the President is not only willing, but also able to solve their problems is reinforced by the media and by the political process**…(CONTINUES)… **Congressmen and private citizens besiege the President with demands that action be taken on various issues. 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. Many were controversial and the need for the policies he instituted was debatable.** Nevertheless, **President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. 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.** Restoration of our system of separation of powers will require that the public be educated on what does—and does not—constitute a constitutional use of executive orders and other presidential directives.

SOP is critical to liberty

Redish 95

Martin **Redish** - Professor of Law and Public Policy at Northwestern University School of Law, 19**95**: [Martin Redish, published 1995, Oxford University Press, “The Constitution as Political Structure.” pg. 111. <http://books.google.com/books?id=cb_BlipRCVQC&printsec=frontcover&source=gbs_navlinks_s> ]

The most significant problem with the modern attacks on separation of powers is that they completely ignore the very real fears that led to adoption of the system in the first place. No critic has adequately demonstrated either that the fears of undue concentrations of political power that caused the Framers to impose separation of powers are unjustified, or that separation of powers is not an important means of deterring those concentrations. It might be argued that the dangers of tyranny thought to be prevented by the use of separation of powers are at best speculative. After all, no one can predict with certainty that, but for the formal separation of branch power, the nation would be likely to sink into a state of tyranny. It is, then, conceivable that all of the Framers’ efforts to separate and check powers have been wasted. But that is a risk inherent in the use of any form of prophylactic protection: we cannot be sure that, but for the use of protection, the harm we fear would result. The decision regarding whether to employ a particular prophylactic device, then, must come down to a comparison of the costs incurred as a result of the device’s use with an estimate of both the likelihood and severity of the feared harm. Although some undoubtedly believe that separation of powers imposes severe costs on the achievement of substantive governmental goals, it would be inaccurate to suggest that government ahs been paralyzed as a result of separation of powers. Too much legislation is enacted by Congress to accept such a criticism. More importantly, in critiquing the failure of the federal government to act, one must do so behind a Rawlsian “veil of ignorance”: Assuming that abolition of separation of powers would result in an increase in governmental action, we cannot know whether those actions will be ones with which we agree. Moreover, the facilitation of governmental programs could just as easily lead to a withdrawal of existing governmental programs that we deem to be wise and just. For example, but for separation of powers, election of Ronald Regan could have easily led to the abolition of social welfare programs that had been instituted in previous Democratic administrations. Political liberals who criticize separation of powers for the constraints it imposes on governmental actions should therefore recognize how removal of separation of powers could turn into a double-edged sword. Thus, the costs imposed by maintenance of separation of powers are probably nowhere near as great as critics have suggested. Whether the costs that we actually do incur are justified by the system’s benefits requires us to examine the likelihood and severity of harm that could result if separation of powers were removed. AS previously noted, some might question the likelihood of tyrannical abuse of power if separation of powers were abolished. After all, Britain lacks our system of formalistic separation of powers, and democracy still flourishes. Why, the, could we not do the same here? The same could, however, be said of the First Amendment rights of free speech and press: In Britain, speech and press receive no countermajoritarian constitutional protection, yet it is reasonable to believe that for the most part those institutions flourish there. Yet undoubtedly, few would feel comfortable with the repeal of the First Amendment. If we have begun to take the value of separation of powers for granted, we need only look to modern American history to remind ourselves about both the general vulnerability of representative government and the direct correlation between the concentration of political power and the threat to individual liberty. The widespread violation of individual rights that took place when President Lincoln assumed an inordinate level of power, for example are well document. Arguably as egregious were the threats to basic freedoms that arose during the Nixon administration, when the power of the executive branch reached what are widely deemed to have been intolerable levels. Though in neither instance did the executive’s usurpations of power ultimately degenerate into complete and irreversible tyranny, the reason for that may well have been the resilience of our political traditions, among the most important of which is separation of powers itself. In any event, it would be political folly to be overly smug about the security of either representative government or individual liberty. Although it would be all but impossible to create an empirical proof to demonstrate that our constitutional tradition of separation of powers has been an essential catalyst in the avoidance of tyranny, common sense should tell us that the simultaneous division of power and the creation of inter-branch checking play important roles toward that end. To underscore the point, one need only a limited modification of the actual scenario surrounding the recent Gulf War. In actuality, the war was an extremely popular endeavor, thought by many to be a politically and morally justified exercise. But imagine a situation in which a president, concerned about his failure to resolve significant social and economic problems at home, has callously decided to engage the nation in war, simply to defer public attention from his domestic failures. To be sure, the president was presumably elected by a majority of the electorate, and may have to stand for reelection in the future. However, at this particular point in time, but for the system established by separation of powers, his authority as commander in chief to engage the nation in war would be effectively dictatorial. Because the Constitution reserves to the arguably even more representative and accountable Congress the authority to declare war, the Constitution has attempted to prevent such misuse of power by the executive. It remains unproven whether any governmental structure other than one based on a system of separation of powers could avoid such harmful results.

Affirmative Answers: IBC turn

XO’s cause inter-branch conflict

**Rosen 98** [Colonel Richard**,** Judge Advocate General's Corps, United States Army, “Funding "Non-Traditional" Military Operations: The Alluring Myth Of A Presidential Power Of The Purse” Military Law Review 155 Mil. L. Rev. 1, Lexis]

Finally, if a situation is sufficiently grave and an operation is essential to national security, the President has the raw, physical power--but not the legal authority--to spend public funds without congressional approval, after which he or she can either seek congressional approbation or attempt to weather the resulting political storm. To the President's immediate advantage is the fact that the only sure means of directly stopping such unconstitutional conduct is impeachment. 703 Congress could, however, [\*149] certainly make a President's life miserable through other means, such as denying requested legislation or appropriations, delaying confirmation of presidential appointments, and conducting public investigations into the President's actions.

IBC destroys leadership

**Winik ‘91 [**Jay, Senior Research Fellow, Nat’l Defense U, Washington Quarterly, Autumn, Lexis]

Thus, it is demonstrably clear that, in the absence of bipartisanship, dealing with the new international system will be difficult at best and at times next to impossible. Friends and foes alike, watching U.S. indecision at home, will not see the United States as a credible negotiating partner, ally, or deterrent against wanton aggression. This is a recipe for increased chaos, anarchy, and strife on the world scene. The appeal, then, to recreate anew as the hallmark of U.S. efforts abroad the predictability and resolve that can only come from bipartisanship at home is as critical as during the perilous days following World War II. Bipartisanship in Context The ease of constructing bipartisanship, however, should not be overstated. Its halcyon years are often idealized. People forget that the golden years from Pearl Harbor to the Tet offensive were the exception rather than the rule. Consensus was not a prevailing characteristic in the first 170 years of the Republic. Critics have noted with justification that it was the clear lack of purpose regarding vigorous U.S. involvement in world affairs that led to the U.S. rejection of membership in the League of Nations. In no small measure, this rejection led to the 20-year crisis that resulted in the rise of Hitler. Proponents of bipartisanship point out its crowning achievements. Unprecedented unity between the two political parties made it possible for President Harry S. Truman and a Republican senator, Arthur H. Vandenberg (R-Mich.), to join forces and create such monumental achievements as the Marshall Plan, the Truman Doctrine, the North Atlantic Alliance, and the United Nations Charter. Despite strains between the two parties over the Korean War and China, to name but two issues, that unity held firm and enabled United States to act with continuity and consistency. Allies saw that the United States was strong and reliable, and the unmistakable message to adversaries was that the United States would abide by its commitments. Some argue that it was the foreign policy consensus prevalent during the Cold War that made possible the tragic U.S. involvement in the Vietnam War. But this argument in no way invalidates the benefits of bipartisanship and, in the case of Vietnam, represents an oversimplification of the facts. The failure of U.S. involvement in Southeast Asia had as much to do with the unique circumstances of the war itself, which were exacerbated by the then current theories of limited war fighting. These factors, in conjunction with the profound domestic turmoil on both domestic and foreign policy that was tearing at the U.S. political fabric, made a complicated and protracted war abroad virtually impossible to prosecute. More generally, the fact remains that the perception of strength resting on bipartisan unity has been crucial to the United States in times of crisis. This principle was most vividly displayed by the bipartisan support for President John F. Kennedy during the Cuban missile crisis. Had the Soviets felt the United States was divided, the situation might have ended in tragic defeat or quite possibly in a devastating war. Although history will be the final judge, it could be argued that in the recent Gulf crisis it was precisely the vast chasm that separated the Republicans from the Democrats over whether to use force or to employ sanctions in order to reverse Saddam Hussein's aggression that led him to calculate that the United States would never actually employ significant military power. This encouraged him to ignore the resolutions passed by the United Nations (UN) and wait for the United States to seek a watered-down diplomatic compromise. Certainly Hussein's statements that the American people would have to "face rows of coffins' if there were a war, echoing statements emanating from lengthy Senate hearings and floor debate, were designed to play into the antiwar sentiment that wanted to "give sanctions a chance." Tragically, the perception of division and weakness at home made the necessity for a military solution almost inevitable. Executive-Legislative Relations: The Search for Balance The foundation of sustainable bipartisanship is effective executive-legislative relations. After the Vietnam War, however, the cold war foreign policy consensus, supported by harmonious executive-legislative relations and by both parties in Congress in a manner that minimized conflict over foreign affairs, was rudely shattered. Although it was not completely undone, as is often claimed by the pundits, and central elements of the postwar consensus enjoyed a fair deree of support, it was severely frayed. As a result, a slide began down a slippery slope leading to the balkanization of the U.S. approach to national security, and today this threatens to inject chaos into the foreign policy process. Congress lies at the heart of the issue.

Global nuclear war

**Khalilzad ‘95** (Zalmay, RAND Corporation, Losing The Moment? Washington Quarterly, Vol 18, No 2, p. 84)

Global Leadership Under the third option, the United States would seek to retain global leadership and to preclude the rise of a global rival or a return to multipolarity for the indefinite future. On balance, this is the best long-term guiding principle and vision. Such a vision is desirable not as an end in itself, but because a world in which the United States exercises leadership would have tremendous advantages. First, the global environment would be more open and more receptive to American values -- democracy, free markets, and the rule of law. Second, such a world would have a better chance of dealing cooperatively with the world's major problems, such as nuclear proliferation, threats of regional hegemony by renegade states, and low-level conflicts. Finally, U.S. leadership would help preclude the rise of another hostile global rival, enabling the United States and the world to avoid another global cold or hot war and all the attendant dangers, including a **global nuclear exchange**. U.S. leadership would therefore be more conducive to global stability than a bipolar or a multipolar balance of power system.

Affirmative Answers: Politics links to the CP

Politics links to the CP—Congress backlashes against XO’s

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 121, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

In 1954 Richard Neustadt described the expansion of central clearance this way: “**For more than thirty years now, central clearance has persisted, its history marked by a long series of ‘accidental,’ unforeseen accretions. Nothing once absorbed has been wholly displaced; each new element somehow encompasses the old … overall, here is a record of great growth, successful adaptation—this under six successive Presidents, through every variation in national and governmental circumstance** since Harding's term of office.” [57](http://www.questiaschool.com/read/103283224) **The presidential budget and growth of BoB power illustrates the pattern: societal and political pressures serve as the impetus for a new government capability; Congress and the president compete over the question of control; the president prevails and uses the new capability in unanticipated ways to develop even more power, and Congress can do little to stop him. Over time, the new powers—once so controversial—become institutionalized as a routine and accepted part of the presidency. The** **pattern has played out in a number of situations, across presidents and eras, and has less to do with specific presidential initiative than the motivations and incentives, relative positions, and inherent institutional qualities of Congress and the presidency.**

Affirmative Answers: Take years

Executive Orders can take years to happen

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 61, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

In contemporary practice, **executive orders typically either originate from the advisory structures within the Executive Office of the President or percolate up from executive agencies desirous of presidential action. For** particularly **complex or far-reaching orders, the White House will solicit comment and suggestions from affected agencies on wording and substantive content. Simple executive orders navigate this process in a few weeks; complex orders can take years, and can even be derailed over an inability to obtain the necessary consensus or clearances.**

Affirmative Answers: Congress Checks

Limits to XO are inevitable Congress checks the President from becoming to powerful

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 222-223, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

**The ultimate check on executive energy is**—and should be—**political. Congress can step in to reclaim the ground it has lost to the executive, and its failure to do so is much more a function of political will than of any flaws in constitutional arrangements.** If, say, the 105th Congress had successfully overturned the affirmative action requirements in Executive Order 11246, the ban on assassinations included in the intelligence orders, or the secrecy regulations in Executive Order 12356, its success would not be viewed as a destruction of constitutional foundations (although, to be sure, there would be vigorous debate about the merits). More important**, a president would be hard pressed to defy such a legislative statement, although we might expect chief executives to exploit any residual discretion that Congress left them. When presidents have ignored statutory limits on their power, as exemplified by the ineffective 1973 War Powers Resolution, they are often able to do so because Congress has either left them with more than enough residual decision space** (or, to use a less technical term, “wriggle room”) **to permit broad discretion or has passed legislation with poorly worded or ineffective restrictions. The history of executive-legislative relations strongly suggests that overreaching by one branch often leads to a clear response from the other.** Fisher notes: “**At some point, after passing beyond a threshold of common sense and prudence, aggressive actions become counterproductive. They trigger revolts, leading to the recapture of ground taken not only in the most recent assault but in earlier offenses as well.”** [**11**](http://www.questiaschool.com/read/103283248) **The boundaries of executive power might be ambiguous, but they are not invisible. The importance of the legal construction of the executive has not been matched by a commensurate level of attention, at least among political scientists, to the empirical, historical, or normative aspects of the question of just how much executive power is enough**.

Affirmative Answers: XO hurt democracy

Executive Orders bad-hurt democracy and undermine the constitution

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 9, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

Although **the rate at which Clinton issued executive orders dropped after the Republicans won congressional majorities in 1994**, **critics** still **accused him of using the prerogative power to turn the presidency into a dictatorship**. One review of Clinton's use of executive orders concluded that **the president had relied on his decree authority to “act dictatorially without benefit of constitutional color.”** [39](http://www.questiaschool.com/read/103283201) In his 1997 State of the Union Address Clinton announced his “American Heritage Rivers” initiative, in which federal agency officials would help communities find and apply for environmental grants (the program's details were fleshed out in a series of proposed rules, culminating in Executive Order 13061, issued in September 1997). [40](http://www.questiaschool.com/read/103283201) The program did not commit any funds, create new environmental regulations, change any laws, or impose any requirements at all on local governments or the private sector. [41](http://www.questiaschool.com/read/103283201) Still, conservative property-rights groups claimed it was “a massive conspiracy to extend federal, and perhaps foreign, control over the nation's 3.5 million miles of rivers and streams, over watersheds, even over private riverfront property.” [42](http://www.questiaschool.com/read/103283201) Representative Helen Chenoweth (R-Idaho) denounced the initiative as a “flight from democracy,” and attempted (unsuccessfully, so far) to stop the program both legislatively and through the courts. [43](http://www.questiaschool.com/read/103283201) During 1995 Senate hearings held in the aftermath of the Oklahoma City bombing, John Trochman, head of the Militia of Montana, complained that **“the high office of the Presidency has been turned into a position of dictatorial oppression through the abusive use of Executive orders and directives, thus leaving Congress stripped of its authority.** **When the President overrules Congress by Executive order, representative democracy fails.” Despite the apparent importance of executive orders**, **the political science literature has paid scant attention to them.** This position is especially clear within the subfield of presidency studies, which has been dominated by a research paradigm that emphasizes the president's leadership skills and strategic acumen, not the legal basis of presidential power, as the keys to political success.

Presidential powers bad-they hurt democracy and undermine the political system

Branum 2 (Tara, Editor in Chief Texas Review of Law and Politics, Texas Review of Law and Politics, “President or King? The Use and Abuse of Executive Orders in Modern-Day America”, http://heinonline.org/HOL/Page?men\_tab=srchresults&handle=hein.journals/jleg28&id=8&size=2&collection=journals&terms=increased&termtype=phrase&set\_as\_cursor=#7) CBC

**The current use of executive orders and other presidential directives is a fundamental problem in modern-day America. The Constitution does not give one individual an "executive pen" enabling that individual to single handedly mite his preferred policy. Despite this lack of constitutional authority, presidential directive have been increasingly used—both by Republicans and Democrats—to promulgate laws and to support** public **policy initiatives** in a manner **that circumvents the proper lawmaking, body, the United States Congress**. **It would be foolhardy to ignore the danger inherent in situation, simply because one might like the individual currently holding the presidential pen."** It could be hypocritical, as well as dangerous, to seek change when a president from the opposing political party is in power, but to ignore the problem once a president from one’s own party has been elected. **While the current president may back acceptable policies or refrain from using his executive power in a tyrannical fashion, there is no guarantee that all future presidents will continue to do so** as well. Controversy over the nature of executive power and the limitations that should be placed upon it is not new. Since the founding of out country, Presidents, congressman, scholars, and individual citizens have sought to properly define the boundaries of the executive's power. Two Presidents, who served in the early 1900s are often said to exemplify the two opposing views on the proper use of executive power.' President Theodore Roosevelt, a proponent of a powerful executive. once stated:

Affirmative Answers: Congress will Rollback

Congress hates executive orders-they are viewed as totalitarianism

Mayer 01 (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 8, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

**Executive discretion cuts both ways**, of course**, and opponents of a particular case of presidential initiative will view these pen strokes quite differently**. **After** President **Clinton issued an executive order that barred government contractors from hiring permanent replacement workers,** [**34**](http://www.questiaschool.com/read/103283200) **congressional Republicans were in no mood to congratulate him** on either his energy or his dispatch. **On the House floor the next day, Representative** Bill **Barrett** (R-Neb.) **condemned the president for overturning fifty years of labor law “with the stroke of a pen.” Observers who are even less sympathetic cast executive orders in an altogether sinister light, seeing in them evidence of a broad conspiracy to create a presidential dictatorship. The common theme of these complaints is that the executive order is an example of unaccountable power and a way of evading both public opinion and constitutional constraints.** In the more extreme manifestations**, executive orders are portrayed as an instrument of secret government and totalitarianism. The president says “Do this! Do that!” and not only is it done, but the government, the economy, and individual freedom are crushed under the yoke of executive decree.**

Prez powers bad-if unchecked leads to war

Eland 7 (Ivan, Sen. Fellow and Dir. of the Center on Peace & Liberty at The Independent Institute, Consortium News, “Bush Out of Line In Scolding Pelosi”, http://www.consortiumnews.com/2007/040307a.htmlQ1) CBC

**This expansive view of wartime presidential power couldn’t be further from the framers’ intent.** In fact, **the founders undoubtedly would have noted that the warlike European monarchs of the day were the sole purveyors of their nations’ foreign policy—the very problem the framers attempted to address with the constitutional separation of powers**. Curiously, although **the expansion of executive power in foreign policy has not served the nation well,** it often has the counterintuitive effect of serving the interests of Congress. **If the President is always in charge** of U.S. foreign policy**, members of Congress can duck responsibility for tough issues that might pose risks to their paramount goal—getting re–elected. For example, by allowing presidents to fight even major conflicts without constitutionally required declarations of war—a phenomenon that began when Harry Truman neglected, with a congressional wink and nod, to get approval for the Korean War—the Congress conveniently throws responsibility for the war into the President’s lap**. **The founders would be horrified at the erosion of a major pillar of their system of checks and balances. To fulfill their constitutional responsibility as a check on the President, members of Congress do have a responsibility to be heavily involved in U.S. foreign policy**. Instead of publicly condemning Speaker Pelosi for carrying out the bipartisan Iraq Study Group’s heretofore–languishing recommendation of actually talking to Syria to resolve bilateral issues, the President should be happy that someone in the U.S. government is willing to take risks with one of America’s major adversaries in the region.