Index

\*\*DOD CP\*\*

DOD CP 1NC Shell 2

CMR Net Benefit 3

Gates Key to CMR 4

Military Control Key to CMR 5

DOD CP Net Benefit 7

Solvency 8

Agency Shield 9

Aff Answers 10

Plan not key 10

CP roll back 11

CP PMC Link 12

Civilian control good 13

\*\*Gates DA\*\*

Gates DA 1NC Shell 15

Afghanistan U/Links 17

Iraq U/Links 18

Gates key 19

\*\*XO\*\*

XO Neg Cards 20

XO Answers 21

\*\* DOD CP 1NC Shell\*\*

Plan Text: The Department of Defense should relocate all troops currently occupying \_\_­­\_\_\_\_\_\_\_ to other U.S. military bases.

CENTCOM has authority over military decisions

Global Security, U.S. Central Command (USCENTCOM), no date,

http://www.globalsecurity.org/military/agency/dod/centcom.htm

United States Central Command's Area of Responsibility (AOR) includes 25 nations, ranging from Egypt in the West to Pakistan in the East, from Kazakhstan in the North to Kenya and the Horn of Africa in the South. The 25 countries within the AOR are: Afghanistan, Bahrain, Djibouti, Egypt, Eritrea, Ethiopia, Iran, Iraq, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Oman, Pakistan, Qatar, Saudi Arabia, Seychelles, Somalia, Sudan, Tajikistan, Turkmenistan, United Arab Emirates, Uzbekistan, and Yemen. On October 1, 1999, USCENTCOM assumed responsibility for all U.S. military engagement activities, planning, and operations for the five Central Asian states. USCENTCOM is responsible for peacetime engagement planning and program execution for the five countries in the Central Asian Region: Turkmenistan, Uzbekistan, Kazakhstan, Kyrgyzstan, and Tajikistan. The Area of Responsibility includes the waters of the Red Sea, Arabian Gulf, and the Western portions of the Indian Ocean. The region comprises an area larger than the continental United States, stretching more than 3,600 miles East-to-West and 4,600 miles North-to-South. It includes mountain ranges with elevations exceeding 24,000 feet, desert areas below sea level and temperatures ranging from below freezing to more than 130 degrees Fahrenheit. It remains, as it has for centuries, a region of diversity, with different cultures, religions, economic conditions, demographics, and forms of government.

CMR Net Benefit

The counterplan is key to CMR – commitment to defer to the military rebuilds faith. It’s key to hegemony and avoiding disaster in Iraq

Michael Desch, Robert M. Gates Chair in Intelligence and National Security Decision-Making at Texas A&M's George H. W. Bush School of Government and Public Service, Foreign Affairs, May/June 2007

The Bush administration arrived in Washington resolved to reassert civilian control over the military -- a desire that became even more pronounced after September 11. Rumsfeld vowed to "transform" the military and to use it to wage the global war on terrorism. When they thought military leaders were too timid in planning for the Iraq campaign, Bush administration officials did not hesitate to overrule them on the number of troops to be sent and the timing of their deployment. And when the situation in Iraq deteriorated after the fall of Baghdad, tensions flared again. Retired generals called for Rumsfeld's resignation; there is reportedly such deep concern among the Joint Chiefs of Staff (JCS) about the Bush administration's plans to use nuclear weapons in a preemptive attack against Iran's nuclear infrastructure that some of them have threatened to resign in protest; and the Bush administration's "surge" now has tens of thousands of more troops going to Iraq against the advice of much of the military. The new secretary of defense therefore has a lot on his plate. In the short term, Gates must play out the endgame of a war in Iraq that he admits the United States is "not winning" but that he and the president do not want to "lose" either. He must continue the efforts to transform the U.S. military while repairing a ground force that has been nearly "broken" by almost four years of continuous combat in Afghanistan and Iraq. But Gates can hope to succeed at those tasks **only** if he manages to rebuild a cooperative relationship between civilian leaders and the U.S. military. He must both rethink how civilian officials oversee the military and **clarify the boundaries** of legitimate military dissent from civilian authority. The key is that Gates needs to recognize that Rumsfeld's meddling approach contributed in significant measure to the problems in Iraq and elsewhere. The best solution is to return to an old division of labor: civilians give **due deference** to military professional advice in the **tactical and operational realms** in return for complete military subordination in the grand strategic and political realms. The success of Gates' tenure in the Pentagon will hinge on his reestablishing that proper civil-military balance.

Gates Key to CMR

Gates is key to restore CMR

Michael Desch, Robert M. Gates Chair in Intelligence and National Security Decision-Making at Texas A&M's George H. W. Bush School of Government and Public Service, Foreign Affairs, May/June 2007

Defense Secretary Gates now faces a doubly difficult situation: little real progress has been made in transforming the U.S. military, and it is now embroiled in a conflict that not even he is optimistic about. Worse, he has to address these problems in a climate of distinct frostiness between civilians in the Bush administration and senior military leaders. Former Secretary of the Army White, summarizing the Bush and Rumsfeld legacy, noted, "By definition, [secretaries of defense] are civilians. Some of them might have had experiences in their younger years in the military, but their job, among other things, is to take the wise advice offered them by the military and think that over and give it some credence and then make a decision. The question is, have we lost the balance of that? I think they went too far." Gates' key challenge, therefore, is to reestablish that civil-military balance.

Military Control Key to CMR

Military control over tactical decisions is essential to sustainable civil-military relations

Michael Desch, Robert M. Gates Chair in Intelligence and National Security Decision-Making at Texas A&M's George H. W. Bush School of Government and Public Service, Foreign Affairs, May/June 2007

In their determination to reassert civilian control, administration officials were even willing to immerse themselves in operational issues such as determining force sizes and scheduling deployments. As former Secretary of the Army Thomas White recalled, Rumsfeld wanted to "show everybody in the structure that he was in charge and that he was going to manage things perhaps in more detail than previous secretaries of defense, and he was going to involve himself in operational details." Such an intrusive form of civilian oversight was bound to exacerbate friction with the military. In his seminal treatise on civil-military relations, The Soldier and the State, Samuel Huntington proposed a system he called "objective control" to balance military expertise with overall civilian political supremacy. Huntington recommended that civilian leaders cede substantial autonomy to military professionals in the tactical and operational realms in return for complete and unquestioning military subordination to civilian control of politics and grand strategy. Although not always reflected in practice, this system has shaped thinking about how civilians ought to exercise their oversight of the U.S. military for 50 years. When followed, it has generally been conducive to good civil-military relations as well as to sound policy decisions.

Military control over tactical decisions is key to sustainable CMR

Michael Desch, Robert M. Gates Chair in Intelligence and National Security Decision-Making at Texas A&M's George H. W. Bush School of Government and Public Service, Foreign Affairs, May/June 2007

The proper balance would give civilian leaders authority over political decisions -- such as whether the United States should stay in Iraq or use force against Iran -- and the military wide leeway in making the operational and tactical decisions about how to complete a mission. The line between the two realms is not always perfectly clear, and sometimes military considerations affect political decisions, and vice versa. But the alternative -- civilians meddling in matters of military expertise -- is almost as bad as the military involving itself in politics. Whenever the civil-military balance is off-kilter in either direction, the country suffers as a result.

Civilian interference in tactical issues causes military backlash

Peter Feaver, professor at Duke University, “Delegation, Monitoring, and Civilian Control of the Military: Agency Theory and American Civil-Military Relations”, May 1996 http://www.wcfia.harvard.edu/olin/pubs/no4.htm

SA5: The less the previous autonomy enjoyed by the military, the greater the tendency to act strategically. The same degree of discrepancy will “cost” more to the military the more strongly they believe that the issue is by rights theirs to decide—i.e. the more the issue falls in the military bailiwick of the traditional division of labor or the closer the issue is to military’s organizational essence. In other words, the more divergent the civilian and military viewpoints, the greater the incentive for the military to act strategically and seek autonomy. Other things equal: SA6: The closer the issue to combat operations or to the organizational essence of the military, the greater the tendency to act strategically. The foregoing outlines conditions under which the military agent will want to act strategically. Of course, civilian oversight complicates the ability of the military to act strategically. The military will have greater ability to influence the outcome the more powerful they are relative to civilians. A divided principal weakens the civilian and absence of interservice rivalry strengthens the military. Also, the greater the importance of military expertise ( i.e. the more technical the issue) the greater the relative power of the military.

Managing tactics undermines civil-military relations

Ronald Spector, professor of history and international relations at George Washington University, Washington Post, August 22, 1999

Many people have little trouble resolving this paradox. Let the civilians make the basic decisions about when to go to war, against whom and for what objectives, and then step aside and let the military do its thing. The great 19th-century German general Helmuth von Moltke liked this approach: Once war begins, "political considerations can be taken into account only as long as they do not make demands that are militarily improper or impossible." The problem with this argument is that wars are fought for political considerations, as Karl von Clausewitz underlined in his well-known observation that "war is merely the continuation of policy by other means . . . . Therefore there can be no question of a purely military evaluation of a great strategic issue, nor of a purely military scheme to solve it." Soldiers generally know a lot more about conducting military operations than civilians. But all military operations have political consequences. That was one reason the war with Serbia had to be conducted as it was. The political aim of keeping the NATO allies together seemed to demand it. The most controversial decisions--the incremental pace of the bombing, the question of committing ground troops to Kosovo and the decision to attack the economic infrastructure in heavily populated areas--all had important political and psychological implications far beyond the question of whether destroying an electric power grid would help bring about Yugoslav President Slobodan Milosevic's capitulation. These wider implications are properly the responsibility of elected political leaders and not professional military officers. So how far should civilians go in micromanaging military operations? Lyndon Johnson's direction of the Vietnam War has been held up for almost three decades as a prime example of what not to do. Johnson and his civilian advisers exercised minute control over air operations against North Vietnam. Their methods have been widely condemned for needlessly endangering U.S. pilots' lives and hobbling the air war. (It is often overlooked now, but the primary reason Johnson kept such tight control was not a tenderhearted concern about civilian casualties or worry about the reaction of antiwar protesters, but a dread of inadvertently provoking a crisis with Russia or China. If LBJ has access to CNN wherever he is now, he must have had a knowing grin when he saw the repercussions of the U.S. bombing of the Chinese Embassy in Belgrade.) Soldiers often dislike political control because in their eyes it makes their missions more dangerous and costly, sometimes seemingly impossible. Or they think they are being asked to perform tasks that the armed forces should not do at all--as in the ill-fated U.S. intervention in Somalia earlier in this decade. But we can be fairly certain that political leaders in the future will again assign the military services to inappropriate, costly or militarily dubious missions. This does not occur simply because of ignorance or whimsy on the part of the politicians. Rather, it reflects the fact that politicians must answer to a far wider range of demands than do soldiers. Along with military considerations, a president may have to be concerned with the attitude of his allies, the reaction of his domestic constituency, the state of the economy, the larger goals of his foreign policy and the "signals" he is sending to foreign rivals and potential enemies.

The military will resist outside interference with battle decisions

Sarah Sewall, Program Director, National Security and Human Rights, Carr Center for Human Rights Policy, JFK School, Harvard, Understanding Collateral Damage Workshop, June 4-5, 2002, http://www.ksg.harvard.edu/cchrp/Web%20Working%20Papers/WebJuneReport.pdf

Even so, representatives of the U.S. armed forces expressed great concern at outsiders second-guessing their actions. In retrospect, it is very easy to raise questions about decisions made in split seconds under life threatening circumstances, they said. Distinguishing between bad luck and error is necessarily a judgment call in their view. In addition, others pointed out, a criminalized framework for evaluating aspects of compliance with international humanitarian law may well make governments even less willing to provide public information, investigate internally, or admit mistakes.

**Civilians should not dictate military strategy**

Desch, Michael C. Civilian Control of the Military : The Changing Security Environment Johns Hopkins University Press, 2001. ISBN 0-8018-6059-8

While civilian control forms the normative standard in almost everysociety outside of [military dictatorships](http://www.reference.com/browse/wiki/Military_dictatorship), its practice has often beenthe subject of pointed criticism from both uniformed and non-uniformed observers, who object to what they view as the undue"politicization" of military affairs, especially when elected officials orpolitical appointees micromanage the military, rather than giving themilitary general goals and objectives (like "Defeat Country X"), and have the military decide how best to carry those orders out. By placing responsibility for military decision-making in the hands of non professional civilians, critics argue, the dictates of military strategy are subsumed to the political, with the effect of undulyrestricting the fighting capabilities of the nation's armed forces for what should be immaterial or otherwise lower priority concerns

DOD CP Net Benefit

DODs control over the U.S. government is at a tipping point

Vlahos, 12-22-**08** (Kelley, reporter specializing in war policy, civil liberties “Hopes for Thwarting Mission Creep in 2009” <http://www.amconmag.com/blog/2008/12/22/hopes-for-thwarting-mission-creep-in-2009/> 7/2/10)

Finding yesterday’s Washington Post Outlook section as ruefully unsatisfying as ever, I nearly missed the quite substantive charges leveled in commentary by former Bush official Thomas A. Schweich — but I’m glad I didn’t — it’s a conversation we need desperately to have, but probably won’t, in 2009. Schweich, who served under Bush as ambassador for counter-narcotics in Afghanistan and deputy assistant secretary of state for international law enforcement affairs, starts out quickly with this marker: We no longer have a civilian-led government. It is hard for a lifelong Republican and son of a retired Air Force colonel to say this, but the most unnerving legacy of the Bush administration is the encroachment of the Department of Defense into a striking number of aspects of civilian government. Our Constitution is at risk. President-elect Barack Obama’s selections of James L. Jones, a retired four-star Marine general, to be his national security adviser and, it appears, retired Navy Adm. Dennis C. Blair to be his director of national intelligence present the incoming administration with an important opportunity — and a major risk. These appointments could pave the way for these respected military officers to reverse the current trend of Pentagon encroachment upon civilian government functions, or they could complete the silent military coup d’état that has been steadily gaining ground below the radar screen of most Americans and the media.

Obama will allow Gates to call the shots to prevent backlash

Boyle 1/26 Francis A. Boyle, Professor of International Law at the University of Illinois College of Law, 1/26/2010. [War is a Crime.org, Gates Threatens Obama with US Military Coup] 7/5/2010

Obviously, Gates is sending a threat to Obama and the civilian “leadership” in America: You risk a military coup if you do not do exactly what we in the Pentagon tell you to do. This is no idle threat. And it can happen here in America. Just remember the plutocratic sponsored military coup attempt against President Franklin Roosevelt that was thwarted by retired Marine Corps General Smedley Butler under similar economic and political conditions. If it had succeeded that anti-FDR coup would have established a fascist dictatorship in America. I am not comparing Obama to FDR by any means. But the historical parallels should be obvious to everyone. And remember that Bush’s General Tommy Franks publicly stated that in the event of another major terrorist attack on America, the American people would demand that the military shut the civilian government down. In other words, Gen. Franks too publicly threatened a military coup against this Republic’s democratically elected civilian leadership.

(insert impact module)

Solvency

CP Solves best-Civilians makes poor decisions on tactical issues

Michael Desch, Robert M. Gates Chair in Intelligence and National Security Decision-Making at Texas A&M's George H. W. Bush School of Government and Public Service, Foreign Affairs, September/October, 2007

The most important issue Mackubin Thomas Owens raises concerns the respective roles of military and civilian leaders in wartime decision-making. The best system is one that allows for substantial military autonomy in the military, technical, and tactical realms (how to fight wars) in return for complete subordination to civilian authority in the political realm (when and if to fight them). Admittedly, this approach is not perfect, but, like Samuel Huntington, I believe that it strikes the best possible balance between military effectiveness and civilian control. It is also consistent with Clausewitz's dictum that war has "a grammar of its own, but its logic is not peculiar to itself." Civilians should have the final say, in Clausewitz's view, not because they have any greater expertise than military officers in the narrow military realm (the grammar of war) but because the political rationale for war (its logic) should be paramount in guiding state policy. This important distinction highlights just how radical a departure the Bush administration's approach to civilian control has been. That approach, which Owens endorses, is that civilians are more competent than military professionals not only in the larger political sphere (a point on which we all agree) but also in the narrower military realm. This latter argument defies common sense: professionals by definition have greater expertise in their particular fields than do those who deal with them in only part of their careers and then only episodically, as is the case for most senior civilian leaders in regard to the military. There is not much evidence supporting the proposition that civilians make superior decisions in the narrow military realm than do military professionals. The single study that Owens cites -- Cohen's Supreme Command -- is flawed. Rather than looking at all the instances in which civilians "probed" into the military realm, Cohen chooses only a handful of cases, and only ones in which civilians did so successfully. And even among the handful of cases Cohen examines, the record of civilian strategists is mixed. Winston Churchill, whatever his heroic political leadership during World War II, pushed more than his share of harebrained military schemes that resulted in disaster (Gallipoli in World War I and Norway early in World War II) or would have had they been implemented (landings in the Balkans instead of western Europe).

Congress won’t check-they have little control over Iraqi military occupation

**Swanson, 10** (David “Obama Scraps Iraq Withdrawal” \May 13th, 2010 http://pubrecord.org/special-to-the-public-record/7615/obama-scraps-iraq-withdrawal/ 7/1/10)

So, we elected a president who promised a withdrawal from Iraq that he, or the generals who tell him what to do, is now further delaying. And, of course, the timetable he’s now delaying was already a far cry from what he had promised as a candidate. What are we to think? That may be sad news, but what could we have done differently? Surely it would have been worse to elect a president who did not promise to withdraw, right? But there’s a broader framework for this withdrawal or lack thereof, namely the SOFA (Status of Forces Agreement), the unconstitutional treaty that Bush and Maliki drew up without consulting the U.S. Senate. I was reminded of this on Tuesday when Obama and Karzai talked about a forthcoming document from the two of them and repeatedly expressed their eternal devotion to a long occupation. The unconstitutional Iraq treaty (UIT) requires complete withdrawal from Iraq by the end of next year, and withdrawal from all Iraqi cities, villages, and localities by last summer. Obama’s latest announcement doesn’t alter the lack of compliance with the latter requirement. Nor does it guarantee noncompliance with the former. But it illustrates something else, something that some of us have been screaming since the UIT was allowed to stand, something that pretty well guarantees that the US occupation of Iraq will never end. Imagine if Congress funded, defunded, oversaw, and regulated the military and wars as required by our Constitution. Imagine if the president COULDN’T simply tell Congress that troops would be staying in Iraq longer than planned, but had to ask for the necessary funding first. Here’s the lesson for this teachable moment: Persuading presidents to end wars only looks good until they change their mind. Cutting off the funding actually forces wars to end. When the US peace movement refused to challenge the UIT, it left Bush’s successor and his successors free to ignore it, revise it, or replace it. Congress has been removed from the equation. If Obama decides to inform Congress that the occupation of Iraq will go on into 2012, Congress’ response will be as muted as when the Director of National Intelligence informed Congress that killing Americans was now legal. And what can Congress say? It had no role in ratifying the UIT in the first place. And the peace movement is in large part on the same path with Afghanistan, working to pass a toothless, non-binding timetable for possible redeployment of troops to another nation. Congress sees itself as advisors whose role it is to persuade the president that he wants to cease the activity that most advances presidential power. And activists share that perspective. But what happens if the president becomes unpersuaded about ending both of these wars? What in the world are we supposed to do then? We have an alternative to painting ourselves into this corner. The alternative is to build a movement of war opponents (and advocates for spending on human needs and/or tax cuts) that can pressure the House of Representatives to cut off the funding for the wars. Of course, this isn’t easy. It’s much harder than collecting signatures on a toothless resolution. And it’s dramatically harder than watching the president create an unconstitutional treaty (something Bush was forced into primarily by the people of Iraq) and then stepping aside to celebrate. But there is no stronger message that could be used to persuade a president than a growing caucus of congress members denying him the money. And once a majority is reached in the caucus of war defunders, then the war simply has to end, whether the president is persuaded of anything or not. So, the lesson to be learned from Obama scrapping his current plan for an Iraq withdrawal is not that we should phone the White House and complain. It’s not that we need 20 more cosponsors of the nonbinding timetable for Afghanistan. The lesson is that we must tell members of the House of Representatives that they can vote against war funding or we will vote against them. Not a new lesson, I realize, but the Constitution is always less read than talked about.

Agency Shield

Executive Agency actions don’t require capital

**Mayer and Price 2** professor of political science at the University of Wisconsin Madison & graduate student at the University of Wisconsin—Madison [Kenneth R. Mayer, and Kevin Price, Presidential Studies Quarterly, 6.1.02 lexis]

By using their formal powers, presidents structure the institutions that surround them to standardize their interactions with other actors. To convert the bargains that would otherwise require skill and scarce political capital into manageable leadership opportunities, presidents seek routines that encourage compliance from other actors. By creating institutions and processes that make these once-expensive bargains part of the political landscape, presidents alter default outcomes, leaving it to other actors to expend resources to undo what the president has done.

Agencies avoid politics – empirically proven

**Shane 95** Dean and Professor of Law, University of Pittsburgh (Peter, “Political Accountability in a System of Checks and Balances: The Case of Presidential Review of Rulemaking”, 48 Ark. L. Rev. 161, 1995)

Such was the regulatory oversight system dedicated most faithfully to a categorical separation of powers philosophy that, in turn, was touted as advancing the cause of accountability. But even without careful parsing, the record suggests obvious accountability issues. First, it was the conclusion of the most extensive journalistic study of the Council that it intervened in "dozens of unpublicized controversies over important federal regulations, leaving what vice presidential aides call "no fingerprints' on the results of its interventions." 58 The White House's efforts to avoid public disclosure of its oversight activity took multiple forms: resisting FOIA disclosure of documents belonging to President Reagan's Task Force on Regulatory Relief on the ground that the Task Force (and, by implication, the Council) was not a covered "agency"; 59 resisting Congressional access to information about the Council beyond published fact sheets and the testimony of individuals who did not participate in Council deliberations; 60 keeping decisions at staff level to shield them from the greater publicity that would likely follow cabinet level involvement. 61 Intriguingly, only one Council decision - pressuring EPA on pollution permit modifications - ever escalated to actual presidential involvement; 62 the usual, albeit tacit, rule was to avoid appeals to the President wherever possible. 63 It would not seem unrealistic that behind this approach lay a desire to buffer the President from criticism for Council policies, especially given a campaign promise to be the "environmental president." 64 That would, of course, be the opposite of accountability

Agencies shield- plan doesn’t go through congress

**Salem News 9** (1/23, “Does Obama Have Control of the DEA?”, http://www.salem-news.com/articles/january232009/obama\_dea\_1-23-09.php, Aly)

The DEA is defying President Barack Obama's word that the Department of Justice would no longer be used to harrass and arrest owners and operators of medical marijuana dispensaries. "I would not have the Justice Department prosecuting and raiding medical marijuana dispensaries; it is not a good use of our resources," then Presidential Contender Obama said, on August 21st 2007. The group Americans for Safe Access reports that on Thursday, the Drug Enforcement Administration, still mostly comprised of officials from the Bush Administration, raided a medical cannabis dispensary in South Lake Tahoe, California. "They did so knowing full well that President Obama has repeatedly pledged to end federal threats, arrests, and prosecutions of patients and their providers in medical cannabis states," the ASA's George Pappas said. Obama has stated on more than one occasion that he is not interested in locking up non-violent drug offenders as felons which leads to no good prospects except drug dealing and other criminal activity. Obama said in September 2007, that he believes when it comes to offenders, "they become more locked into crime from being in prison." We have included video below of President Obama making the quoted statement above, and more. Why is the DEA so intent on carrying on what many call "thuggish behavior"?\

Aff Answers

Plan not key

Plan not key-Department of Defense will do everything necessary to stay in power.

**Serwiech, 08** (Tom, State Department, December “DOD controls U.S. government” <http://www.dark> government.com/news/dod-controls-us-government)

As military officers sought to take over the role played by civilian development experts abroad, Pentagon bureaucrats quietly populated the National Security Council and the State Department with their own personnel (some civilians, some consultants, some retired officers, some officers on "detail" from the Pentagon) to ensure that the Defense Department could keep an eye on its rival agencies. Vice President Cheney, himself a former secretary of defense, and his good friend Rumsfeld ensured the success of this seeding effort by some fairly forceful means. At least twice, I saw Cheney staffers show up unannounced at State Department meetings, and I heard other State Department officials grumble about this habit. The Rumsfeld officials could play hardball, sometimes even leaking to the press the results of classified meetings that did not go their way in order to get the decisions reversed. After I got wind of the Pentagon's dislike for the approved interagency anti-drug strategy for Afghanistan, details of the plan quickly wound up in the hands of foreign countries sympathetic to the Pentagon view. I've heard other, similarly troubling stories about leaks of classified information to the press.

CP roll back

Congress will check Obama-preventing plan passage

**Crenson and Ginsberg 07** Matthew Crenson and Benjamin Ginsberg. Crenson is a political science professor at Johns Hopkins University. Benjamin Ginsberg Ph.D. was a political science professor at Johns Hopkins University. He is now the Director of the Center for the Study of American Government and Chair of the Government Program of Advanced Academic Program at Johns Hopkins University, 2007. [Presidential Power: Unchecked and Unbalanced p. 218] [Cory Stern]

Through its general legislative powers, moreover, Congress can exercise broad influence over foreign policy. Congress may, for example, refuse to appropriate funds for presidential actions it deems to be unwise or inappropriate. Thus, in 1796, the House of Representatives was asked to appropriate funds to implement the Jay Treaty. Opponents of the treaty demanded that the House be given all papers and records pertaining to the negotiating process—a demand rejected by President Washington. The House narrowly approved funding but accompanied its acquiescence with a resolution affirming its right to refuse appropriations for the implementation of any treaty to which a majority of its members objected. On several occasions over the years, the House has indeed refused to appropriate funds needed to implement treaties negotiated by the president and ratified by the Senate.

This power of the purse also extends to military action. Not only does Congress have the constitutional power to declare war, but under its general legislative powers it must appropriate the funds needed to support military activities. In Federalist 69, Hamilton argues that Congress’s power of the purse provides it with an ultimate check on the president’s power as commander in chief. This principle was illustrated during the Reagan administration when Congress enacted the so-called Boland Amendment, which prohibited the president from using any funds to provide military support for right-wing “Contra” guerilla forces in the civil war then raging in the nation of Nicaragua. The administration’s response was to seek funds from Saudi Arabia, the Sultan of Brunei, and even from private individuals. This attempt to circumvent Congress’s authority sparked the 1986 congressional Iran-Contra investigations, which led to criminal convictions for several high-ranking administration officials. In 2007, congressional Democrats threatened to use their power of the purse to gain some leverage over the bush administration’s Iraq policies.

CP PMC Link

Obama must exert his control now to repair CMR-CP kills them

Cohen 6/23 Eliot A. Cohen, writer for the Wall Street Journal, 6/23/2010.

There are two lessons here. For Mr. Obama it is the imperative of taking charge of this war and owning it—reshaping the team waging it, and communicating a resolve that, alas, one doubts he actually feels. Failing that, he owes it to the soldiers and civilians we have sent there to liquidate the war and accept the consequences for our country and the region. The president has not spoken publicly about Afghanistan in any serious way since December, and one wonders whether he has the nerve to act, in respect to Gen. McChrystal, like a serious commander in chief. If he leaves a wounded—and therefore more malleable—commander in place, he will have shown a calamitous weakness masquerading as political cleverness. For the rest for of us, there is a lesson about re-establishing fundamental norms of civilian-military relations. For years both political parties have used generals as props. Democrats cheered when disgruntled generals snarled at Secretary of Defense Donald Rumsfeld. Republicans, to their equal discredit, played up military disquiet with President Bill Clinton and may do so again in this case. In wartime, generals become public heroes. In some cases—in Stanley McChrystal's—they really may be heroes. But that does not change the fundamental imperative of maintaining order and discipline. And if doing so means relieving a hero of command, so be it.

Civilian control good

Civilian control is key to readiness, cohesion and democracy

Michael C. Desch, Assistant director of the John M. Olin institute for strategic studies @ Harvard University, Civilian Control of the Military, 1999 <http://www.wcfia.harvard.edu/olin/pubs/no3.htm>

Let me recap the importance and sometimes counterintertuitive findings about civil-military relations presented so far. First, this is an extremely broad and multifaceted issue. Obviously, the ideal is to prevent coups, keep the military within its proper sphere, reduce the number of instances of civil-military conflict over issues of national importance, ensure that civilian and military leaders like and respect each other, and produce effective national policies. However, the most important issues of civil-military relations in developed democracies is civilian control: can civilian leaders reliably get the military to obey when civilian and military preferences diverge? There does not have to be any danger of a coup for there to be a problem with civilian control of the military, as the cases of post-Cold War America and Russia both make clear. Second, despite its greater expertise in military matters, excessive influence by the military on national policy jeopardizes the successful conduct of war. This is illustrated by the German, Japanese, and Argentine cases. Far from making the effective prosecution of war more likely, lack of civilian control makes it less likely. Obviously, the American failure in Vietnam shows that civilian control does not always ensure good national policy, but the other cases studied in this book show that excessive military influence never does. Third, not only is lack of civilian control bad for the country, it is also bad for the military itself. The experiences of the German, Brazilian, Argentine, and Chilean militaries clearly suggest that prolonged military rule undermines the cohesion and effectiveness of the organization. Thus, it is in the interest of he military itself to remain subordinate to civilian authority. Finally, and perhaps most surprisingly, war—or at least challenging external threats –can under certain conditions, enhance civilian control of the military and thereby strengthen, rather than weaken, democracy. This was Stanislaw Andreski’s very important intuition. This was the case in the United States and France during the Cold War. While the Cold War Soviet Union was certainly not a democracy, it at least had firm civilian control of its military. Far from producing Lasswell’s nightmare—the garrison state—the Cold War actually bolstered civilian control.

The military makes bad strategic decisions in Afghanistan

Gregory Foster, professor at the Industrial College of the Armed Forces, National Defense University, In These Times, August, 2007

Does the military provide sound (strategic) advice to civilian decision-makers? Even traditionalist observers of civil-military relations who subscribe to the view that the proper preserve of the military is narrowly circumscribed military advice must answer no. Whatever Gen. Petraeus may say or eventually accomplish, the desultory U.S. performance to date in Iraq and Afghanistan is an outgrowth of failed military advice from senior officers unable to rise above their tactical and technical conditioning. In fact, deep-seated anti-intellectualism and an attendant institutional bias for action have prompted those in uniform to seek comfort in tactical and technical thinking, and thereby robbed them of the capacity to think strategically.

Weak control over the military dooms hegemony and ensures failed operations

Gregory Foster, professor at the Industrial College of the Armed Forces, National Defense University, In These Times, August, 2007

Beyond the foregoing, the U.S. military almost invariably precipitates rather than prevents crisis; feeds perceptions abroad of American arrogance and hypocrisy, while undermining U.S. credibility and legitimacy; threatens, in single-mindedly providing for the common defense, other important dimensions of security (liberty, justice, the general welfare); and permits itself to be an instrument for the militarization of U.S. foreign policy. In short, it is strategically dysfunctional. Add to this the following, and it is indeed a recipe for crisis: consistently unsound strategic advice from senior military leaders; strategically inept civilian officials, executive and legislative, who have turned the hallowed principle of civilian control into civilian subjugation; a civically apathetic public that has acceded to uncompromising military demands for secrecy and failed to responsibly oversee the military’s overseers; an uncritical press that has declined to exact transparency and accountability from the military and its overseers; a weak, fragmented civil society, typified by a largely moribund anti-war movement; and a military-industrial complex whose overweening influence on policymakers and policies has fed militarism and corruption. Given this state of affairs, no longer can we, the people, give a free pass to a military institution that expects unconditional appreciation, unequivocal support, unquestioning trust, unlimited discretionary license and the absence of “meddling” by “amateurs.” Nor can we blindly trust those who profess to oversee the military on our behalf. The strategic price for doing so is one we cannot afford.

Weak control over the military collapses hegemony

Gregory Foster, professor at the Industrial College of the Armed Forces, National Defense University, In These Times, August, 2007

Beyond the foregoing, the U.S. military almost invariably precipitates rather than prevents crisis; feeds perceptions abroad of American arrogance and hypocrisy, while undermining U.S. credibility and legitimacy; threatens, in single-mindedly providing for the common defense, other important dimensions of security (liberty, justice, the general welfare); and permits itself to be an instrument for the militarization of U.S. foreign policy. In short, it is strategically dysfunctional. Add to this the following, and it is indeed a recipe for crisis: consistently unsound strategic advice from senior military leaders; strategically inept civilian officials, executive and legislative, who have turned the hallowed principle of civilian control into civilian subjugation; a civically apathetic public that has acceded to uncompromising military demands for secrecy and failed to responsibly oversee the military’s overseers; an uncritical press that has declined to exact transparency and accountability from the military and its overseers; a weak, fragmented civil society, typified by a largely moribund anti-war movement; and a military-industrial complex whose overweening influence on policymakers and policies has fed militarism and corruption. Given this state of affairs, no longer can we, the people, give a free pass to a military institution that expects unconditional appreciation, unequivocal support, unquestioning trust, unlimited discretionary license and the absence of “meddling” by “amateurs.” Nor can we blindly trust those who profess to oversee the military on our behalf. The strategic price for doing so is one we cannot afford.

Excessive deferral destroys military function

Eliot Cohen, professor of strategic studies in the Paul H. Nitze School of Advanced International Studies at Johns Hopkins, Joint Force Quarterly, Summer, 2002, http://www.dtic.mil/doctrine/jel/jfq\_pubs/1031.pdf

Moreover, popular myth notwith- standing, the military failures of modern democracies have not resulted from micromanagement or interference, but the reverse. Lyndon Johnson and Robert McNamara did select tar- gets in North Vietnam, but never questioned the assumptions of search and destroy operations. They repeatedly wrote something approaching blank checks for manpower and matériel for Vietnam and paid little attention to command arrangements devised by the military for conducting that conflict. For years they put up with generals whose professional qualities seem remarkably dim—William Westmoreland, for example, lasted four years in command. Abraham Lincoln, who could decide that an officer was incapable in a matter of months, would not have abided that. In a similar vein disaster resulted between 1967 and 1973 when Israeli political leaders accepted the nearly reckless assumptions of their military advisers on the capabilities of the Arab states.

**\*\*Gates DA\*\***

A) **[Insert card specific to country]**

B) Obama will appease Gates to prevent backlash-strengthening gates authority

Boyle 1/26 Francis A. Boyle, Professor of International Law at the University of Illinois College of Law, 1/26/2010. [War is a Crime.org, Gates Threatens Obama with US Military Coup]

Obviously, Gates is sending a threat to Obama and the civilian “leadership” in America: You risk a military coup if you do not do exactly what we in the Pentagon tell you to do. This is no idle threat. And it can happen here in America. Just remember the plutocratic sponsored military coup attempt against President Franklin Roosevelt that was thwarted by retired Marine Corps General Smedley Butler under similar economic and political conditions. If it had succeeded that anti-FDR coup would have established a fascist dictatorship in America. I am not comparing Obama to FDR by any means. But the historical parallels should be obvious to everyone. And remember that Bush’s General Tommy Franks publicly stated that in the event of another major terrorist attack on America, the American people would demand that the military shut the civilian government down. In other words, Gen. Franks too publicly threatened a military coup against this Republic’s democratically elected civilian leadership.

**C) Strong Gates key to cut DOD budget**

Jaffe 5/9 Greg Jaffe, staff writer for the Washington Post, 5/9/2010.

ABILENE, KAN. -- Defense Secretary Robert M. Gates vowed Saturday to lead an effort to cut as much as $15 billion in overhead costs from the Pentagon's $550 billion budget and warned that without the savings, the military will not be able to afford its current force. Under Gates's plan, the billions taken from the Pentagon's vast administrative bureaucracy would be used to pay for weapons modernization programs and the overall fighting force in Iraq and Afghanistan. Gates also hinted that additional cuts to major weapons programs would probably be necessary in the coming years. The Pentagon's budget has almost doubled over the past decade, but the faltering national economy and surging U.S. debt will impose new austerity on the military, Gates warned. "The gusher has been turned off," he told an audience of about 300 people at the Eisenhower Presidential Library here. "And it will stay off for a good period of time." Gates is far from the first defense secretary to promise major cuts in the Pentagon bureaucracy. Throughout his tenure, Donald H. Rumsfeld railed against the inefficiencies plaguing the Defense Department but was unable to realize significant savings. The Clinton administration similarly promised savings by turning to private contractors, an effort that only produced greater costs. But Gates said that the ballooning national debt lends his efforts a new urgency. "The national economic situation is different than it has ever been in modern times," he told reporters Friday. "If we want to sustain the current force, we have no alternative."

D) Cutting DOD budget key to stabalizing U.S. economy

Amadeo no date Kimberly Amadeo, Degree in management from MIT, Her thesis was on international exchange rate fluctuations, she has been involved in economic research for the last 25 years, working for The Arizona Republic, Arizona Public Service, and The Rockport Company. [About..com Department of Defense].

With an allocation of nearly $600 billion in 2006, the Defense Department is the single largest government agency, and receives over half the discretionary expenditure in the budget. It has $1.4 trillion in assets and $2 trillion in liabilities. Three-quarters of DoD’s total liability is retirement and medical benefits for veterans, which is mostly unfunded until 2033. (Source: DoD Fiscal Year 2006 Performance and Accountability Report) The size of the DoD’s budget stimulates the economy in the short term. However, it also threatens the economy in the long term by increasing the budget deficit, and thereby the U.S. debt.

The impact is extinction

Newsflavor, 9 (Newsflavor is a network of journalists that cover current events, political coverage, world news, and opinions, April 9, “Will an Economic Collapse Kill You?” <http://newsflavor.com/opinions/will-an-economic-collapse-kill-you/>)

It may or may not sound likely to you, but the economy is on the brink of collapse. The stock market is riding a sled down a steep hill. The United States government is spending money faster than it can print it. opinRight now the government is passing bills and proposals that will give trillions of dollars to failing companies and bankrupt manufacturers. They believe that by giving these companies resources to invest and expand, the economy will expand. The problem with this plan is that the same companies that are receiving billions of dollars in aid aren’t prepared to handle this money better than they used capitol in the past. Chances are these companies still have the same investors and management that they did pre-bailout, so who’s to say that they won’t make the same mistakes they’ve made in the past? The most likely thing to happen is that these companies are going to spend this money the same way they have in the past and that these companies are going to go bankrupt, again. These companies are the lynchpin of the economy, such as major insurance providers, banks, investment firms, manufacturers, etc. If these companies or firms were to collapse, the economy would be falling down the same pit as these companies. Not just the United States economy, because the U.S. is a major trade partner in this world, and most other countries are dependent on the United States one way or another, a United States collapse would cause a domino effect on the world’s economy. If the United States economy failed, for example, we could see Iraq, Iran, and Russia fall with them, because all of their economies are reliant off the selling of oil. Then the nations who are reliant on their economies would fail, etc. Now it’s time to look at the consequences of a failing world economy. With five official nations having nuclear weapons, and four more likely to have them there could be major consequences of another world war. The first thing that will happen after an economic collapse will be war over resources. The United States currency will become useless and will have no way of securing reserves. The United States has little to no capacity to produce oil, it is totally dependent on foreign oil. If the United States stopped getting foreign oil, the government would go to no ends to secure more, if there were a war with any other major power over oil, like Russia or China, these wars would most likely involve nuclear weapons. Once one nation launches a nuclear weapon, there would of course be retaliation, and with five or more countries with nuclear weapons there would most likely be a world nuclear war. The risk is so high that acting to save the economy is the most important issue facing us in the 21st century.

Afghanistan U/Links

**Immediate pull out of Afghanistan without Gates permission will create backlash**

**Richter, 2009 (** Paul, Columnist at the L.A. Times,“Robert Gates says Afghanistan withdrawal will be gradual”

December 07, 2009 Paul Richter, [http://articles.latimes.com/2009/dec/07/world/la-fg-gates-afghanistan7-2009dec07 7/5/10](http://articles.latimes.com/2009/dec/07/world/la-fg-gates-afghanistan7-2009dec07%207/5/10))

Gates, appearing on television news programs with other senior U.S. officials, said the Obama administration intended to maintain its commitment to Afghanistan while gradually shifting security responsibilities to the country's central government . "This is a transition," Gates said on ABC's "This Week." "We are not talking about an abrupt withdrawal. We are talking about something that will take place over a period of time." Gates, Secretary of State Hillary Rodham Clinton and national security advisor James L. Jones appeared on the Sunday TV talk shows in a continuing effort to explain a policy that aims to satisfy those who want to end the war swiftly, as well as those who want to stay for as long as it takes for U.S. goals to be met. Obama announced last week that he would soon send 30,000 additional U.S. troops to Afghanistan, bringing the total to nearly 100,000, but that some would start to return home in 18 months. His decision to set July 2011 as the point when U.S. troops will begin to depart has proved the most difficult element to explain to domestic audiences and allied governments. The Afghan, Pakistani and Indian governments are concerned that the war-weary United States might sharply scale back its commitment to the region, as it has in the past. Gates said U.S. troops would first be withdrawn from areas where the Taliban poses less of a threat, mostly in the north. He said U.S. military commanders had reason for optimism that a minimum 18-month troop buildup would work, because they have seen progress in the south where U.S. forces have been added. "I think one of the reasons our military leaders are pretty confident is that they've already begun to see changes where the Marines are present in southern Helmand," Gates said. He said on NBC's "Meet the Press" that the buildup "has the opportunity to make significant gains. . . . We will have 100,000 troops there, and they are not leaving in July 2011." Gates also sought to brace Americans for higher military casualties, which are expected as U.S. troops flood the most hotly contested parts of the country in the south and the east.

Gates wants to stay in Afghanistan-immediate pullout would anger him

**CNN, 2008** ( September “Gates: Troops staying in Iraq regardless of election” [http://edition.cnn.com/2008/POLITICS/09/29/gates .defense/index.html](http://edition.cnn.com/2008/POLITICS/09/29/gates%20.defense/index.html)7/6/10)

Read VIDEO WASHINGTON (CNN) -- The United States will not likely launch another regime-changing war "anytime soon," but American troops will remain in Iraq and Afghanistan for years, Defense Secretary Robert Gates said Monday.Robert Gates says U.S. troops in Iraq will serve in advisory or counterterrorism capacities "for years to come." Failure in either nation "would be a disastrous blow to our credibility, both among our friends and allies and among potential adversaries," Gates said. Speaking at the National Defense University in Washington, Gates addressed President Bush's recent decision to pull 8,000 troops out of Iraq and send 4,500 troops to Afghanistan. Gates predicted even more troops would be sent to Afghanistan next year. "Given its terrain, poverty, neighborhood and tragic history, Afghanistan in many ways poses an even more complex and difficult long-term challenge than Iraq -- one that, despite a large international effort, will require a significant American military and economic commitment for some time," Gates said.

Iraq U/Links

Gates wants to stay in Iraq-plan will create backlash

**CNN, 2008** ( September “Gates: Troops staying in Iraq regardless of election” [http://edition.cnn.com/2008/POLITICS/09/29/gates .defense/index.html](http://edition.cnn.com/2008/POLITICS/09/29/gates%20.defense/index.html)7/6/10)

Read VIDEO WASHINGTON (CNN) -- The United States will not likely launch another regime-changing war "anytime soon," but American troops will remain in Iraq and Afghanistan for years, Defense Secretary Robert Gates said Monday.Robert Gates says U.S. troops in Iraq will serve in advisory or counterterrorism capacities "for years to come." Failure in either nation "would be a disastrous blow to our credibility, both among our friends and allies and among potential adversaries," Gates said.

Speaking at the National Defense University in Washington, Gates addressed President Bush's recent decision to pull 8,000 troops out of Iraq and send 4,500 troops to Afghanistan. Gates predicted even more troops would be sent to Afghanistan next year. "Given its terrain, poverty, neighborhood and tragic history, Afghanistan in many ways poses an even more complex and difficult long-term challenge than Iraq -- one that, despite a large international effort, will require a significant American military and economic commitment for some time," Gates said.

Gates key

**Gates key to check budget-Obama wants an increase in DOD funding**

**Shalal-Esa 2/1** Andrea Shalal-Esa, staff writer for Reuters, 2/1/2010.

President Barack Obama asked Congress to approve a record $708 billion in defense spending for fiscal 2011, but vowed to continue his drive to eliminate unnecessary, wasteful weapons programs. The budget calls for a 3.4 percent increase in the Pentagon's base budget to $549 billion plus $159 billion to fund U.S. military missions in Iraq, Afghanistan and Pakistan. Obama's spending freeze on other parts of the budget, to try to rein in the deficit, did not apply to the military. "Even though the Department of Defense is exempt from the budget freeze, it's not exempt from budget common sense," Obama told reporters at the White House.

\*\*XO\*\*

XO Neg Cards

Executive orders have power over the military

**Cooper**, Gund Professor of Liberal Arts at the University of Vermont and was the first recipient of the Charles Levin Award given by the American Society for Public Administration and the National Association of Schools of Public Affairs and Administration **‘2**

Among the standard executive orders issued by each administration is a variety of actions concerning military personel including adjustments of rates of pay and allowances for the uniform services and amendments to the manual for court marshall. 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 part of military reservations or sites. In fact, many of the orders issued by presidents in time of war or national emergency are very focused actions of this sort. Even in peace time there are manifold organizational issues to detail for statuettes 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. (pg. 33)

XOs are easy, fast, and convenient at passing significant policies

Cooper, Gund Professor of Liberal Arts at the University of Vermont and was the first recipient of the Charles Levin Award given by the American Society for Public Administration and the National Association of Schools of Public Affairs and Administration ‘2

Phillip J. Cooper, Gund Professor of Liberal Arts at the University of Vermont and was the first recipient of the Charles Levin Award given by the American Society for Public Administration and the National Association of Schools of Public Affairs and Administration. By Order of the President: The Use & Abuse of Executive Direct Action pg.59 University Press of Kansas, 2002

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 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 procedures, particularly the rulemaking processes required by the Administrative Procedure Act. 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 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. (59)

XO Answers

Executive Orders bypass all separation of powers, destroying the Constitution.

Branum, Associate for Fulbright & Jaworski, 02

Tara Branum, Associate for Fulbright & Jaworski, “President or King? The Use and Abuse of Executive Orders in Modern-Day America,” LexisNexus.com, 02

Congressmen and private citizens besiege the President with demands [\*58] that action be taken on various issues. n273 To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. n274 Many were controversial and the need for the policies he instituted was debatable. n275 Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. n276 A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

Strong constitution needed to prevent on the fly decisions risking nuclear war

Hemesath, J.D./M.S.F.S. Georgetown, 2k

(J.D./M.S.F.S. Georgetown University Law Center, School of Foreign Service, 2001; B.A. University of California at Los Angeles, 1996.88 Geo. L. J. 2473. Lexis Nexis Academic)

Politically, nuclear weapons wield such powerful and unique symbolic effects n70 that a decision regarding their offensive use--outside the context of a declared war or defensive maneuver--may fall under the ambit of congressional control as an act tantamount to a declaration of war. n71 Such political consequences may place the nuclear decision beyond mere tactical strategy intended for the judgement of the Commander in Chief alone. Professor Louis Henkin believes that Congress has the authority to decide the essential character of a war, and specifically, whether the conflict should be escalated to a nuclear level or not. n72 President Lyndon Johnson admitted that the decision to go nuclear is a "political decision of the highest order." n73 That nuclear engagement connotes a political decision, as opposed to a mere choice of weaponry, may place the nuclear decision beyond the scope of military decisions normally reserved for the President alone. Regardless, proponents of the Executive position insist that nuclear weapons [\*2484] are not constitutionally unique. n74 In support of their claim, nothing in the text of the Constitution indicates a special classification for particularly destructive weaponry, nor does the Constitution allow the Congress to override the President's choice of weapons. n75 Decisions regarding the type of weapons used in war are considered tactical--of a type supposed to be well within the scope of the Commander in Chief's power. n76 Furthermore, no congressional law or judicial decision has drawn an instructive distinction between nuclear and conventional weaponry. n77 Such a distinction would require artificial constructions distinguishing weapons systems that, despite differences of magnitude and technology, are basically designed to do the same thing. However, the lack of textual references to nuclear weapons in the Constitution does not adequately resolve the question of nuclear war authority. Although nuclear weapons as weapons are indistinguishable in literal constitutional terms, their uniquely pernicious and lingering effects may nevertheless define their offensive use as a quintessential act of war and thus constitutionally place them within the sphere of congressional war power via the War Powers Clause. As critics have noted, there currently exists no source of constitutional authority or judicial reasoning that would resolve this debate in favor of either side. n78

The Supreme Court will Strike down the XO

Cooper, Professor for the University of Vermont, 02

Phillip, Professor at the University of Vermont, “By Order of the President: The Use and Abuse of Executive Direct Action,” p. 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.