



Reassessing the President's Administrative Powers

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Reassessing the President's Administrative Powers

A dissertation presented

by

Jesse Matthew Shron Gubb

to

The Department of Government

in partial fulfillment of the requirements
for the degree of
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in the subject of
Political Science

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Reassessing the President's Administrative Powers

Abstract

Research in the last two decades has established that administrative powers are central to the president's agenda. My dissertation is a three-paper compilation that answers several remaining questions about how these powers relate to other parts of the political system.

The first chapter, "The Limits to Power without Persuasion," co-authored with Matt Dickinson, argues that executive orders are imperfect substitutes for legislation. We show that an increase in the number of significant executive orders issued does not correspond to a decrease in the number of legislative proposals the president sends to Congress. A case study of the creation of the Department of Homeland Security, which the president created first as a small office by executive order before supporting legislation for a department, suggests that executive orders are likely to be the first move in a policymaking process, because they offer advantages like speed while legislation offers durability and comprehensiveness. Examining the generality of this case, we find that presidents sometimes follow significant orders with proposals to enshrine them in statute. Our research supports viewing orders as a tool in the president's toolbox rather than a challenge to the legislative process.

The second chapter, "Does the Messenger Matter?," presents a survey experiment to test whether presidents can influence public support for the policies of their administration by manipulating whether they're seen as taking the policy action themselves. I find that, in most cases, manipulating whether the president, an agency, or the government is responsible for a policy has no effect on whether survey respondents support the policy. Instead, respondent partisanship is the biggest factor in explaining policy support. In less salient cases, "presidentializing" policy may polarize public opinion by lowering support among those in

the opposite party. The results affirm the importance of partisanship to public opinion and the limited ability of the president to manipulate credit and blame for the actions of his administration.

The third chapter, “How Unilateral is Unilateral Action?,” examines two areas of delegated presidential authority to test whether congressional constraints on administrative power vary by policy domain. I find that in land policy, where Congress gave presidents broad authority, presidents are more likely to create national monuments when Congress is gridlocked, a pattern consistent with a strong theory of unilateral action. In trade policy, where Congress left itself a continuing role by requiring reauthorization of presidential authority, presidents are less likely to issue proclamations when Congress is gridlocked, consistent with a cooperative approach to administrative action. With these cases, I show that presidents do not take executive action in a constant strategic environment, because congressional delegation often determines the limits of presidential power.

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Introduction

Research has established that administrative policymaking is an important, powerful, but limited part of the president's ability to influence outcomes. Presidents possess a wide array of policymaking tools not contingent on the active participation of other branches of government. By pursuing policy administratively, presidents avoid the need to bargain with Congress via the legislative process. They can, at first glance, produce policy "unilaterally," with a "stroke of the pen" (Mayer, 2001).

Presidents seem to be taking advantage of the opportunity. Mayer (2001) provides evidence that presidents have increasingly made substantive policy through executive orders, finding that the percentage of executive orders he deems "significant" rose from 0.6 percent in the period 1936 to 1939 to 28.0 percent in the 1990s (Mayer 2001, 79-87). Warber (2006, 60), using a different methodology to identify policy content in executive orders, argues that presidents have consistently issued a large number of policy orders since 1936, simply decreasing the number of insignificant orders issued. A 2008 CRS report identifies 27 distinct types of presidential directives, to which we should also add memoranda and presidential determinations (Relyea 2008; Dodds, 2013; Lowande 2014).

Administrative powers are the tools that presidents have to make policy through their control of the executive branch, both the office of the presidency itself and the broader set of departments and agencies that they oversee. Broadly, these are non-legislative means for the president to seek policy change. They include presidential directives as well as influence over rulemaking, enforcement, and other agency policy. The category could even be broadened to include emergency powers, war powers, control of personnel and appointments, and even

prerogatives like executive privilege (Rudalevige, 2010). The presidencies of George W. Bush and Barack Obama, and, indeed, the first years of the Trump presidency, show the increasing centrality of administrative tools to the president’s agenda, and the importance of understanding them, for both the public and political science.

The centrality of administrative action raises important positive and normative questions. At first glance, these powers appear to be a “direct challenge to the strategic [i.e. Neustadtian] presidency,” in which legislation is the goal and bargaining the tool (Mayer 2009). Normatively, this suggests a malfunctioning system of separated institutions sharing power, if presidents can evade checks and balances to make policy on their own. However, whether administrative powers offer presidents “unilateral” power—that is, truly independent, unchecked influence on outcomes—should be a conclusion rather than a starting assumption. Even in signing an executive order, presidents must work with their staff, seek legal counsel, and bargain with members of the executive branch, both in the writing and in the eventual implementation of an order (Kennedy 2014). Presidents must preempt challenges from both Congress and the courts (Howell 2003). They must consider the political impact on public support and other policy goals. And as Rudalevige (2012) identifies, most executive orders trickle up to the president for ratification, having been written by executive branch agencies. They are often imperfect representations of the president’s preferences. Still, where legislation forces presidents to bargain at every turn, administrative action offers quick progress on policy goals.

At present, research has left unresolved several questions fundamental to our understanding of presidential policymaking and our assessment of whether administrative action represents a fundamental shift in our understanding on American government. This dissertation is a modest contribution towards answering these outstanding questions. The three papers in this compilation endeavor to examine administrative action in the broader context in which it operates.

The first paper tackles a central question of the unilateral politics literature head on: whether presidents abandon the legislative arena by acting administratively. Howell (2003)

asserts that “Presidents have a choice about how to implement their policy agendas. They can either submit legislation to Congress, or they can proceed on their own.” This dichotomy is a fundamental assumption in our understanding of administrative power. Research on executive action often assumes that presidents face an either/or decision between issuing an administrative order and seeking legislation. This premise, however, ignores differing structural characteristics of administrative and legislative policy vehicles. Moreover, it has never been tested directly, from the perspective of the president who must decide between issuing an executive order and seeking legislation. We argue that, rather than see administrative actions as equivalent to legislation, presidents understand the distinct advantages and disadvantages each policy instrument brings and act accordingly. Using data linking executive orders and presidential legislative proposals, as well as a case study of the creation of the Department of Homeland Security, we show that when presidents issue more orders, they do not issue fewer legislative proposals. In fact, presidents sometimes follow up on significant executive orders with proposals to enshrine them in statute. Our research supports viewing executive orders as a tool in the legislative toolbox rather than a challenge to the legislative process.

The second paper turns the focus to the role of the public and the tactics presidents use to manipulate the credit and blame they receive for actions taken by their administrations. Recent literature has shown public opinion to be an important check on a president’s administrative actions and, therefore, a key factor in the strategic choices involved with executing these actions, although this literature is split on whether the public exhibits a fundamental dislike for unilateral action or partisan-motivated reasoning (Reeves and Rogowski 2018; Reeves et al. 2017; Reeves and Rogowski 2016, 2015; Christenson and Kriner 2015, 2016). Because a large portion of administrative actions are accomplished through departmental directives rather than those signed by the president himself, the president may be able to manipulate the degree to which he is seen as responsible. The paper examines the consequences for public support when the president “presidentializes” a bureaucratic action by claiming it as his own. Using a series of survey experiments, I test the relationship between

the identity of the policy actor and public approval of policy. The results suggest only a limited ability for presidents to manipulate support, polarizing responses in some cases and having no effect in others. The results affirm the importance of partisanship in shaping public support for policy and the limited ability of the president to manipulate credit and blame for the actions of his administration.

The third paper revisits Congress's role in shaping administrative action through delegations to the executive. It also sheds light on proclamations, understudied tools of administrative action that have both symbolic and policy uses. Because much unilateral authority is delegated, Congress can vary the extent to which it awards the president discretion in a given policy area. The paper uses this fact to examine whether congressional constraints on administrative action vary with policy domain.

I study the effect of this discretion by examining the two largest policy areas handled by presidential proclamation: the creation of national monuments and the setting of tariff rates, both of which were delegated to the president in the early 20th Century. In land policy, presidents were given a broad grant of authority with no mechanism for additional congressional involvement. The data show that presidents use this power to evade Congress, exhibiting a pattern of use consistent with a strong theory of unilateral action: acting when Congress is weak and internally divided, potentially against its wishes. In trade policy, Congress left itself a continuing role by requiring reauthorization of presidential trade authority. Presidents, then, exhibit a cooperative pattern of proclamation use, acting when Congress is unified and able to participate in trade policy. The results demonstrate that presidents do not take executive action in a constant strategic environment, because congressional delegation often determines the limits of presidential power.

Taken together, these papers shed additional light on the uses of administrative powers, providing new insight into how they interact with the legislative arena, the public, and how they are shaped by shifts in power between branches of government. This work conveys some of the potency and limitations of administrative action, and will hopefully stimulate further questioning and research into this central area of political activity.

1 | The Limits to Power without Persuasion¹

1.1 Introduction

Within the last two decades a number of researchers (Chiou and Rothenberg 2014; Cooper 2014; Howell 2003, 2005; Krause and Cohen 1997; Mayer 2002; Rottinghaus and Maier 2007; Rudalevige 2010; Savage 2007; Warber 2006) have sought to document presidents' capacity to make policy administratively, via executive orders (EOs), national security directives, proclamations, signing statements, and other nonlegislative means. Much of this research suggests that presidents, by pursuing policy administratively, can avoid the need to bargain with Congress via the legislative process. That is, they can produce policy “unilaterally,” with a “stroke of the pen” (Mayer 2001).²

The implicit (and often explicit) assumption underlying many of these studies is that presidents face a choice: they can either pursue a policy objective by submitting a legislative proposal to Congress or they can “proceed on their own” through administrative means (Howell 2003, 96; Mayer 2009; Moe and Howell 1999a, 132). But how do presidents choose? What factors determine whether they proceed legislatively or administratively? Previous research (Deering and Maltzman 1999; Howell 2003, 2005) suggests that the decision turns in large part on the degree to which Congress is able to legislate, either on the president's behalf, or against his policy objectives. Thus, Howell (2003, 2005) shows that when Congress

¹Co-authored with Matthew J. Dickinson, Middlebury College.

²We prefer the term administrative rather than unilateral to describe the process of making policy via administrative directives. This is because, as one of us argues elsewhere (Dickinson 2009), administrative directives, such as executive orders, often originate via bargaining among several executive branch officials, and thus should not be considered unilateral directives that solely reflect the president's preferences. See also Rudalevige (2012).

has a strong majority party, as measured by the number of seats it possesses and its ideological cohesion relative to the minority party, presidents will be less likely to pursue policy objectives through administrative means such as executive orders. This is because, in the case of a sympathetic Congress, presidents can achieve their objectives via legislation. And if a strong majority party does not share the president's policy preferences, it can overturn his administrative directives. However, when Congress is ideologically fragmented or lacks a strong majority party, it has less capacity to legislate on his behalf, or to block him.

Significantly, most of this prior research primarily addresses one side of the either/or decision; it documents the logic for why presidents issue administrative directives but does not demonstrate whether these same reasons also explain when presidents submit legislative requests to Congress. Howell does show that a Congress dominated by large and ideologically cohesive parties is more likely to produce nontrivial legislation (Howell 2003, 96-99). However, looking at the nontrivial legislation Congress produces does not necessarily tell us whether that legislative output fulfills the president's policy goals. To more accurately assess the either legislation or administrative action hypothesis, then, scholars need to compare presidents' use of administrative directives, such as executive orders, with their legislative requests to Congress. When do presidents request legislative action from Congress and when do they opt to pursue policy objectives via administrative action?

This article presents an initial effort to answer that question. We show that administrative directives and legislation are not, as some previous research suggests, equivalent methods by which presidents can make policy, and presidents do not view them as such. Instead, presidents choose which policy instrument to use based in part on its particular structural attributes.

As a policy-making mechanism, administrative directives, such as executive orders, provide important advantages to presidents. Most notably, they allow presidents to capitalize on their first-mover status to make policy quickly and efficiently. But EOs cannot appropriate money or remake existing law, and they are susceptible to tampering by future presidents, which makes them less durable (Thrower 2017). Moreover, because these direc-

tives are based on existing statute or other formal grants of power, they tend to change policy in a more limited fashion than does legislation. To enact broad and lasting policy change on important issues, then, presidents prefer to work with Congress via the legislative process. In some instances, particularly during periods of crisis, presidents may initially pursue significant policy change via direct administrative action. But rather than a means to bypass Congress, as previous research suggests, these substantively important unilateral acts are often meant to put down an initial policy marker pending eventual congressional action; presidents act administratively in the expectation or even hope of further legislation action, or to prod Congress to act. In short, administrative directives can, under some circumstances, serve as a first step in a multistage policy process that culminates in legislative action by Congress.

Presidents, we suggest, understand the distinct advantages and disadvantages offered by each policy instrument and act accordingly. Most notably, except when speed is paramount, presidents prefer to pursue their most significant policy goals through legislation rather than administrative means. Our argument unfolds as follows. Building on previous research, in the next section, we examine the circumstances under which presidents during the post-World War II period are likely to issue executive orders and when they will propose legislation. Consistent with prior research, we find that when congressional majorities are small and ideological cohesion in Congress is weak, presidents are increasingly likely to issue executive orders. However, there is no statistically significant relationship between the strength of congressional parties and the number of legislative proposals the president submits to the body. Moreover, the number of proposals sent to Congress in each period dwarfs the number of policy-making executive orders signed, indicating that presidents seeking significant policy change prefer to work through the legislative process.

To explain these somewhat unexpected findings, we examine the establishment of the Department of Homeland Security (DHS) during George W. Bush's presidency. In the crisis conditions existing in the immediate aftermath of the 9/11 terrorist attacks, Bush moved quickly via executive order to establish a Homeland Security Council (HSC) administered

by a White House–based assistant for homeland security. While his EO was being implemented, however, several bills were introduced in Congress designed to put homeland security organization on a more durable statutory footing. Ultimately Bush was able to bargain successfully with Congress to pass legislation establishing a cabinet-level DHS on terms largely agreeable to him.

Although a single case study, Bush’s experience creating the DHS suggests to us that although EOs and legislation serve somewhat different roles in the policy process because of their different structural attributes, under some circumstances they can be used in complementary fashion to achieve the president’s important policy objectives. Executive orders, we hypothesize, offer advantages in speed of action, symbolic impact, and flexibility of terms, while legislation—although slower to reach fruition—tends to be more durable because passage typically requires political coalition building. As a consequence, particularly in response to a crisis, and for symbolic reasons, presidents sometime proceed first through administrative means, but then seek to secure these initial policy gains through legislation.

How often does this occur? In the penultimate section, we present a new data set linking executive orders to subsequent presidential legislative proposals during the period 1947-2003, from the start of Harry Truman’s administration through George W. Bush’s first term. This data set differs from previous efforts that link executive orders to subsequent actions by Congress (e.g., Howell 2003, who traces congressional attempts to revoke or codify executive orders) or that identify executive orders issued in response to pending legislation, either to support or preempt its enactment (Belco and Rottinghaus 2014). We identify twenty orders for which presidents then submitted legislative proposals, either to codify the orders’ authority or to expand it. For an important subset of policies, then, EOs are best understood as the president’s first step in a bargaining process with Congress.

Our findings indicate the need for scholars to dig beneath the aggregate numbers and look more closely at the substance of legislative proposals and executive orders and the context in which they are issued. Although in many instances administrative procedures are unilateral, it is also true that a significant portion are subsequently amended or even

revoked by presidential action. Moreover, a few of the most important EOs are best viewed as part of the congressional bargaining process. This interpretation suggests that, rather than offering a “direct challenge to the strategic presidency” (Mayer 2009, 429), presidents’ use of administrative directives, such as executive orders, is consistent with prior research (Jones 2005; Neustadt 1990) regarding how presidents must bargain to achieve policy goals. Even in the realm of unilateral administrative action, it appears that presidents cannot always escape the constraints imposed on them by operating in a system of separated institutions sharing power.

1.2 The Policy Process: EOs or Legislative Proposals

When do presidents pursue policy change through administrative means, and when do they rely on the legislative process? And are these approaches equivalent means of achieving policy goals, as some scholars suggest? Howell (2003, 2005) provides one of the more thoroughly developed explanations for why presidents issue executive orders in the post–World War II era. His 2003 book, *Power Without Persuasion* and a subsequent 2005 journal article present a model that posits an inverse relationship between a president’s likelihood to issue significant executive orders and Congress’s ability to produce legislation.³ That is, the more fragmented the Congress, the less likely it can either legislate on the president’s behalf or act in response to a president’s effort to make policy via administrative means. To measure congressional fragmentation, Howell looks at both the relative size of the congressional majority and the ideological cohesion of the congressional parties (2003, 85–96). In an initial test of his thesis, Howell compiles a list of significant EOs for the period 1945–1998 and regresses that against his measures of congressional fragmentation (including divided government), while controlling for a variety of fixed effects (for individual presidents, their term in office, and the time period within the president’s term). In the 2005 article, Howell fine tunes the initial data set of executive orders and tweaks the regression methodology, but his

³In the 2005 article Howell defines significant executive orders as those mentioned in a front-page article in the *New York Times*.

basic conclusion is unchanged: when Congress is fragmented and less capable of legislating, presidents issue more significant executive orders.⁴ Subsequent research has raised important challenges to Howell’s interpretation of his results and to the unilateral politics thesis more generally. Using a more robust sample of executive orders, Chiou and Rothenberg show that, because of congressional constraints, presidents have less discretion to issue EOs than much of the unilateral politics literature suggests; as they write, “[p]residents generally don’t employ EOs to move the status quo without tacit approval by congressional parties” (2014, 655). Belco and Rottinghaus (2014) demonstrate that, in some instances, presidents exercise administrative power not to evade the legislative process, but rather to support their party members’ legislation. Rottinghaus and Warber (2015) note that administrative directives, such as presidential proclamations, are often better understood not as efforts to bypass Congress so much as attempts to bolster public support with key constituencies. Collectively, this research indicates that administrative directives, such as executive orders, are not always instances of presidents making policy without persuasion. Instead, they are, in some cases, better understood as an extension or modification of the legislative process.

To test whether executive orders are best viewed as alternatives to legislation, we begin our analysis where Howell leaves off, by using his coding methodology to extend the coverage of significant executive orders to account for the eight years of George W. Bush’s presidency.⁵ Based on Howell’s coding scheme, we estimate that Bush issued an additional sixteen significant EOs. Interestingly, given his reputation for unilateral action, Bush was less than half as likely to issue significant EOs compared to his predecessors.⁶ He averaged

⁴Howell’s initial (2003) analysis utilized a combination of court opinions, the *Congressional Record*, and the *New York Times* to identify significant EOs issued by presidents from 1945 through 1983. For the period 1983-1998, his analysis relied on predicted values of EOs. In his subsequent analysis (2005), however, he was able to utilize the *New York Times* exclusively to identify 228 significant EOs for the period 1945-2001. This second data set is the one we extend through 2008, using Howell’s methodology of relying on *New York Times* coverage to identify significant EOs during Bush’s presidency. Howell (2005) employs negative binomial regression, rather than the Poisson models used in 2003, to account for overdispersion in the count data, with substantively similar results.

⁵We first ran Howell’s model using his data and were able to replicate his findings.

⁶Those perceptions relied on more than simply Bush’s issuance of EOs of course; they were also a function of his use of other administrative methods such as signing statements. See, for example, Charlie

about two significant executive orders per year, compared to almost five, on average for his ten immediate predecessors. All told, presidents Harry Truman through George W. Bush issued on average about 9.5 significant executive orders per two-year congressional term.

1.2.1 Counts of Events in Unequal Observation Periods

Having extended our count of significant EOs, we turn next to analyzing the factors that determine when they are issued. In his 2005 analysis, Howell aggregates significant EOs on a quarterly basis by year and regresses these counts against two different measures of party strength in Congress, while controlling for divided government, the average number of articles on the *New York Times*'s front page,⁷ and for the fixed effects of presidents, their term year in office, and the quarter-year in which the EOs were issued. Aggregating by quarter, or any other fixed interval of time, such as a year or a congressional term, necessitates compromises in calculating the corresponding parameter values, because presidential terms and congressional sessions are offset in time, with presidents inaugurated on January 20 and new congressional sessions beginning January 3. Equal observation periods will, therefore, include some observations in which either the president or congressional variables are not correctly specified. Consider the case of a presidential transition. The quarter that begins January 1 and ends March 31 includes two presidents, the outgoing lame duck and the incoming president, and one Congress. Shifting quarters to start with the inauguration on January 20 means that the previous quarter, now October 20 through January 19, contains a single president but two congressional terms, necessitating a misspecification of the key majority size variable.⁸ A similar coding issue, in which two presidents fall within the same quarter, occurs with the two unexpected transitions in the post-WWII presidency: the transition from John F. Kennedy to Lyndon Baines Johnson following Kennedy's as-

Savage (2007).

⁷This variable controls for the decline in the average number of articles shown on the *New York Times*'s front page during 1949-2008, which might otherwise bias the results.

⁸Even aggregating by larger periods, such as a Congress, will generate observations in which two presidents are included, resulting in a misspecification of presidential fixed effects.

sassination on November 22, 1963, and the transition from Richard Nixon to Gerald Ford following Nixon’s resignation on August 8, 1974.

Howell’s approach in both cases is to assign each calendar quarter to one president. His analysis attributes those EOs issued during the January 3–January 19 period by the lame-duck president but, under the new Congress, to the newly elected incoming president. As it turns out, only two presidents in our study—Harry Truman and Jimmy Carter—issued significant executive orders during this lame-duck period. And neither Kennedy nor Nixon issued any significant executive orders during the quarters that they share with their successors. However, attributing the full quarter to a single president assumes that they would have issued an equal number of significant orders had they been in office for the full three-month period.

We correct these oversights by generating unique observations for every distinct pair of presidential and congressional variables and including a parameter to account for the unequal observation intervals that this approach creates.⁹ This exposure parameter, the number of days in an observation period, allows us to compare observations of different lengths, which, intuitively, should have different expected numbers of orders, all else equal. We are essentially modeling a rate—the number of significant orders issued per day—rather than a count, to make comparison possible between observations of different lengths (King 1989, 124). This approach is presented in more detail in the appendix.¹⁰

With these changes, we utilize the adjusted model and new data to assess the relationship between the size, in percentage of total seats, of the majority party in Congress on presidents’ propensity to issue significant EOs.

⁹Following Howell and a desire to make use of the most fine-grained data possible, we start with quarter-year observations but include additional observations for lame-duck periods and the transitions between Kennedy and Johnson and Nixon and Ford. The exposure parameter, explained briefly above and detailed in the appendix, accounts for the unequal lengths of observation intervals.

¹⁰In implementing this regression in Stata, we use *nbreg* with the `exp()` option, which includes the log of the observation interval time as a parameter with its coefficient constrained to 1. The resulting negative binomial regression coefficients represent the linear change in the logged rate of executive order issuance (the logged number of EOs per day) for a one unit change in the regressor value.

1.2.2 Measuring Executive Order Significance

Another potential criticism of this approach is that relying solely on front-page coverage by the New York Times is not an optimal way of identifying significant executive orders. As an additional robustness check on our findings, therefore, we redo the analyses using a different set of significant EOs based on research by Chiou and Rothenberg (2014). Utilizing nineteen sources as raters in a hierarchical item response theory (IRT) model, they construct continuous significance scores for all executive orders issued in the period 1947-2003 (Chiou and Rothenberg 2014). In order to focus our analysis on only the most significant EOs so as to be comparable with previous research, we examined three subsets—the top 10%, 5%, and 1% of these EOs based on the significance scores assigned by Chiou and Rothenberg.¹¹ Of these three categories, the top 10% comes closest in number to the New York Times list of EOs. However, although there is some overlap between the two data sets (correlation 0.64), Chiou and Rothenberg’s method for identifying the 10% most significant EOs picks up a significant number that the New York Times omits, while excluding others that it includes. As a further robustness check, we also utilize Warber’s (2006) hand-coded measure of orders containing policy content, a broader categorization that includes about 38% of orders issued from 1945 to 2005. Descriptive statistics for each of the EO significance measures, our measure of legislative proposals (described below), and key independent variables are included in Table 1.1.

1.2.3 Results

As shown in Table 1.2, consistent with Howell’s findings, majority party size is a significant predictor of presidents’ use of EOs. Holding the other variables at their means, an increase of the size of the majority party by one standard deviation from its mean value, that is, from 57% to 61.5%, predicts a decrease in the number of significant executive or-

¹¹One could also isolate significant EOs using a fixed threshold value on the significance scale. This is the approach Chiou and Rothenberg take. Rerunning our models with several threshold values generates substantively similar results to those presented here.

Table 1.1: Descriptive statistics

| | N | Mean | Std. Dev. | Min. | Max. | Years Available |
|--------------------------------------|-----|-------|-----------|------|------|-----------------|
| <i>New York Times</i> Front-page EOs | 266 | 1.14 | 1.50 | 0 | 9 | 1945-2009 |
| Top 10% Significant EOs | 238 | 1.47 | 1.60 | 0 | 11 | 1947-2003 |
| Top 5% Sig. EOs | 238 | 0.74 | 1.11 | 0 | 10 | 1947-2003 |
| Top 1% Sig. EOs | 238 | 0.15 | 0.71 | 0 | 10 | 1947-2003 |
| Legislative Proposals | 226 | 34.67 | 49.45 | 0 | 286 | 1949-2002 |
| Majority Size | 266 | 0.57 | 0.05 | 0.50 | 0.68 | 1945-2009 |
| Divided Government | 266 | 0.60 | 0.49 | 0 | 1 | 1945-2009 |
| Observation Interval (Days) | 266 | 87.48 | 14.51 | 19 | 92 | 1945-2009 |

ders issued per two-year congressional session by about 3.5, from 7.7 to 4.2. This result is consistent with Howell’s findings that when congressional majorities are small and parties ideologically fragmented, presidents make greater use of executive orders.¹² The tweaking of the model to address discrepancies in presidents’ time in office and the inclusion of data from George W. Bush’s presidency do not appear to substantially change these institutional and political dynamics.¹³

We come to substantively similar results when regressing the count of EOs using Chiou and Rothenberg scores against the same regressors. Columns 2, 3, and 4 in Table 1.2 contain the results for the 10%, 5%, and 1% most significant EOs. Once again an increase in majority party size is associated with a decrease in the number of significant EOs issued, controlling for the fixed effects of term year, quarter, and individual presidents. Figure 1.1 provides a visual representation of the predicted number of EOs as a function of increasing majority party size while controlling for the other variables in the model.¹⁴ Clearly, the underlying relationship between the two variables is robust to different methods for identifying significant EOs.

¹²The variable signifying a president’s lame-duck status proves to be a statistically significant independent predictor of presidents’ tendency to issue significant EOs, but this is largely capturing the actions of Jimmy Carter, who issued nine significant executive orders during the period January 3-20, 1981 in response to the Iran hostage crisis. Some research has considered these executive orders a single action.

¹³Although not shown here, these results are robust to alternative estimates of policy-making executive orders. For example, when Warber’s (2006) count of policy-related EOs is substituted for significant EOs, the same substantive results hold.

¹⁴Figures depict the predicted number of orders issued during a period equal to the weighted average of the observation intervals, or about eighty-seven days.

Table 1.2: The issuance of significant executive orders

| | (1) <i>New York Times</i> Front Page | (2) Top 10% Sig. | (3) Top 5% Sig. | (4) Top 1% Sig. |
|--|--|----------------------|---------------------|-----------------------|
| Majority size | -13.120*** (4.023) | -7.273** (3.180) | -9.853** (4.990) | -35.420*** (6.785) |
| Divided government | -0.668 (0.458) | -0.198 (0.261) | -0.429 (0.408) | -0.901 (0.769) |
| Lame Duck | 2.144*** (0.779) | 1.424** (0.652) | 2.213*** (0.646) | 2.849*** (0.838) |
| <i>New York Times</i> size | -1.735 (1.484) | | | |
| (<i>New York Times</i> size) ² | 0.115 (0.076) | | | |
| Constant | 6.635 (8.466) | -0.922 (1.454) | -0.612 (2.406) | 10.500*** (3.667) |
| ln(alpha) | -1.313*** (0.305) | -1.432*** (0.225) | -1.238** (0.607) | -40.36 (0.000) |
| Fixed effects included for | | | | |
| Year of term | Yes | Yes | Yes | Yes |
| Quarter within year | Yes | Yes | Yes | Yes |
| President | Yes | Yes | Yes | Yes |
| <i>N</i> | 266 | 238 | 238 | 238 |

Note: Negative binomial regressions estimated. The dependent variable in (1) consists of the total number of non-ceremonial executive orders mentioned on the front page of the *New York Times* between 1945 and 2008. The dependent variable in (2), (3), and (4) consists of the top 10, 5, and 1 percent, respectively, of executive orders as determined by Chiou and Rothenberg's (2014) significance scores. Robust standard errors clustered on president in parentheses. *** $p < 0.01$; ** $p < 0.05$; * $p < 0.1$.

1.2.4 Predicting the Issuance of Legislative Proposals

The underlying premise of the unilateral presidency thesis, however, is that EOs are not issued in a policy vacuum, but instead provide an alternative to proceeding legislatively through Congress. Indeed, Howell finds that the same congressional factors that help predict a greater tendency for presidents to issue EOs are negatively correlated with the production of nontrivial laws. As noted above, however, a focus on congressional legislative outputs tells us only about Congress's capacity to act but not whether it is acting on the president's preferred legislative agenda.

To better gauge the factors influencing a president's decision whether to act administratively or legislatively, scholars need to compare the use of executive orders with a presidents' decision to request legislation from Congress. To do so, we draw on a database created by Andrew Rudalevige (2002) that lists the presidents' messages to Congress, and the policy

proposals contained in those messages, for the years 1949-2002. Table 1.1 shows summary statistics for proposals in each observation interval.

Note that presidents are much more likely to pursue legislation through Congress than they are to rely on significant executive orders to achieve policy objectives. On average, the eleven presidents studied here issued about fifty-five messages, containing 130 legislative proposals, per year. The greater use of legislation may reflect the limits of executive orders in making policy. As noted above, they cannot be used to enact policy that requires federal spending unless Congress has appropriated the money, and they cannot change existing laws. As we discuss below, moreover, legislation may offer additional benefits in terms of durability and political support.

Following the logic laid out earlier regarding when presidents are likely to issue significant executive orders, if the either/or hypothesis is correct we expect to find a positive relationship between congressional party size and the size of the president's legislative agenda. Simply put, when Congress is able to act legislatively without fear of opposition, presidents should be more likely to pursue their policy objectives through legislative means. As Table 1.3 indicates, however, that does not seem to be the case. In both a model containing only majority size and divided government and the full model controlling for time and presidential fixed effects, we find no statistically significant relationship between party strength in Congress and the president's legislative agenda.¹⁵

It appears, then, that presidents are more likely to utilize policy-related EOs when Congress is less likely to produce legislation. But the opposite logic does not hold true for presidents' decision to issue legislative proposals; larger parties do not increase the likelihood that presidents will pursue a larger legislative agenda. Instead, as Figure 1.2 shows, the factors that influence presidents' decision to issue significant EOs seem to have no discernible relationship to presidents' choice to pursue policy through Congress.

¹⁵Even a model regressing legislative proposals on majority size alone fails to reach the standard 0.05 level of statistical significance. A significant coefficient for majority size only appears when we regress the number of proposals on the set of parameters that includes time controls but not presidential controls. In models without time controls and models that additionally control for president, majority size is not significant.

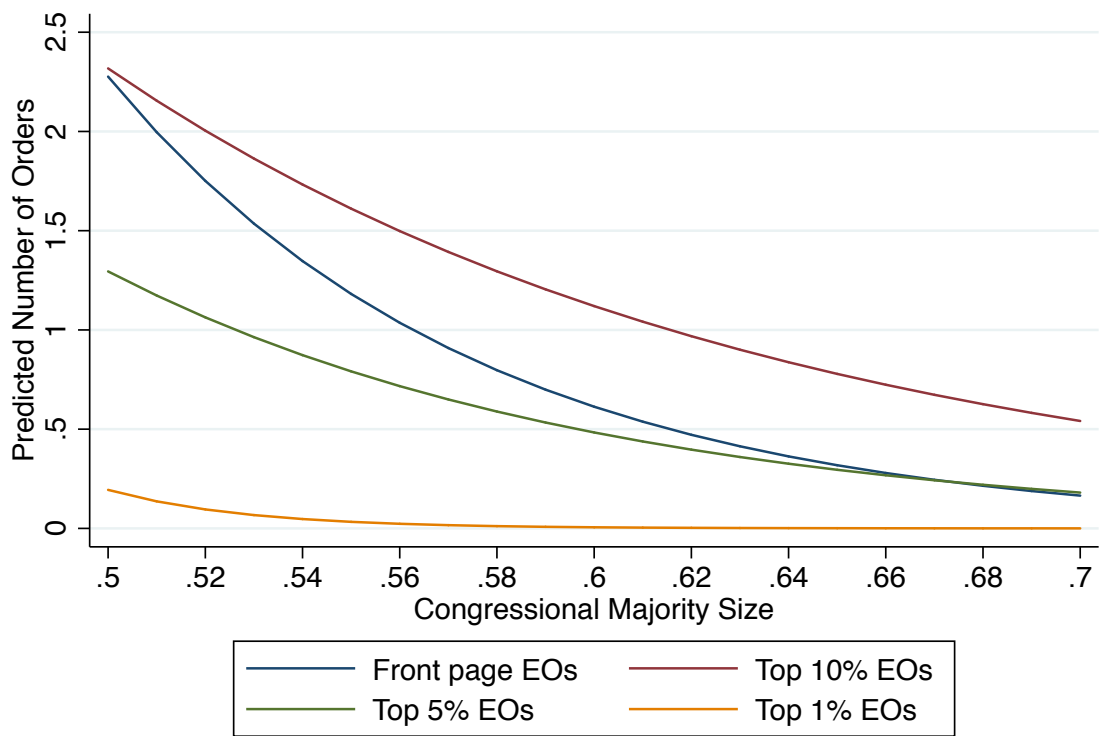


Figure 1.1: Predicted Number of Executive Orders (EOs) by Congressional Majority Size

Table 1.3: The issuance of legislative proposals, 1949-2002

| | (1) | (2) |
|----------------------------|-------------------|--------------------|
| Majority Size | 2.52 (1.54) | -0.04 (1.02) |
| Divided government | -0.33 (0.21) | 0.24 (0.21) |
| Lame duck | | -0.89* (0.50) |
| Constant | -2.19** (0.92) | -4.09*** (0.79) |
| ln(alpha) | 0.48** (0.24) | -0.55*** -0.19 |
| Fixed effects included for | | |
| Year of term | No | Yes |
| Quarter within year | No | Yes |
| President | No | Yes |
| <i>N</i> | 226 | 226 |

Note: Negative binomial regressions estimated. The dependent variable is the number of legislative proposals issued by the president in each period. Standard errors in parentheses. Robust standard errors clustered on president in parentheses. *** $p < 0.01$; ** $p < 0.05$; * $p < 0.1$.

1.2.5 Discussion

A potential criticism of this comparison is that we are comparing apples to oranges, in that executive orders represent completed policy while legislative proposals represent a president’s wish list issued at the beginning of a bargaining process. As we demonstrate in the following sections, this distinction between finished and initial policy is overstated, given the subsequent bargaining that occurs over executive orders. Even if we grant this distinction, however, the either/or hypothesis suggests that presidents will choose between issuing an executive order or engaging with Congress. The signed executive order and the expressed legislative proposal are the two points at which the president may enter this process. In explaining how he identified the list of presidential proposals, Rudalevige notes, “Each item [in the Public Papers] is . . . sponsored by the president, in writing, and associated with him personally; he is to this extent committed to its substance and passage” (2002, 68). One could make an identical claim for executive orders signed by the president.

A more justified criticism of the two measures is that the set of legislative proposals contains *all* proposals whereas the set of executive orders examined has been culled to contain only those with significant policy content. As such, the proposal data may contain more noise, the result of the president’s clerkship rather than a considered use of power (Neustadt 1990). Nonetheless, some prioritization has already occurred by focusing only on the legislative proposals from the Public Papers of the Presidents, as opposed to a more liberal count that included bills introduced directly by executive branch departments or by members of Congress themselves that had presidential support. The policy proposals we analyze here, as Rudalevige explains, bear the presidents’ personal imprimatur.

Moreover, further attempts to isolate significant proposals generate no additional responsiveness to the congressional variables. Neither limiting the proposals to those contained in the State of the Union address, or to those identified by Rudalevige as originating in the White House or Executive Office of the Presidency (which might serve as a proxy for importance to the president) produces stronger statistical results. In contrast, broadening the caliper of significance for executive orders, by using Warber’s (2006) more comprehensive list of policy orders, generates substantively similar results to a narrower set of EOs.

Why, then, do the factors that are associated with presidents’ decisions to issue EOs not also explain when they pursue policy change legislatively? A possible explanation—one familiar to an older generation of scholars but which has largely been ignored in the more recent literature discussing the administrative presidency—is that legislation and executive orders are distinctly different policy instruments. To understand those differences, consider the creation in 2002 of the Department of Homeland Security.

1.3 The Creation of the Department of Homeland Security

In the aftermath of the 9/11 terrorist attacks, President Bush and members of Congress stood united on the need to reform the nation’s sprawling, highly fragmented, and largely uncoordinated national security bureaucracy. There was less agreement, however, on how

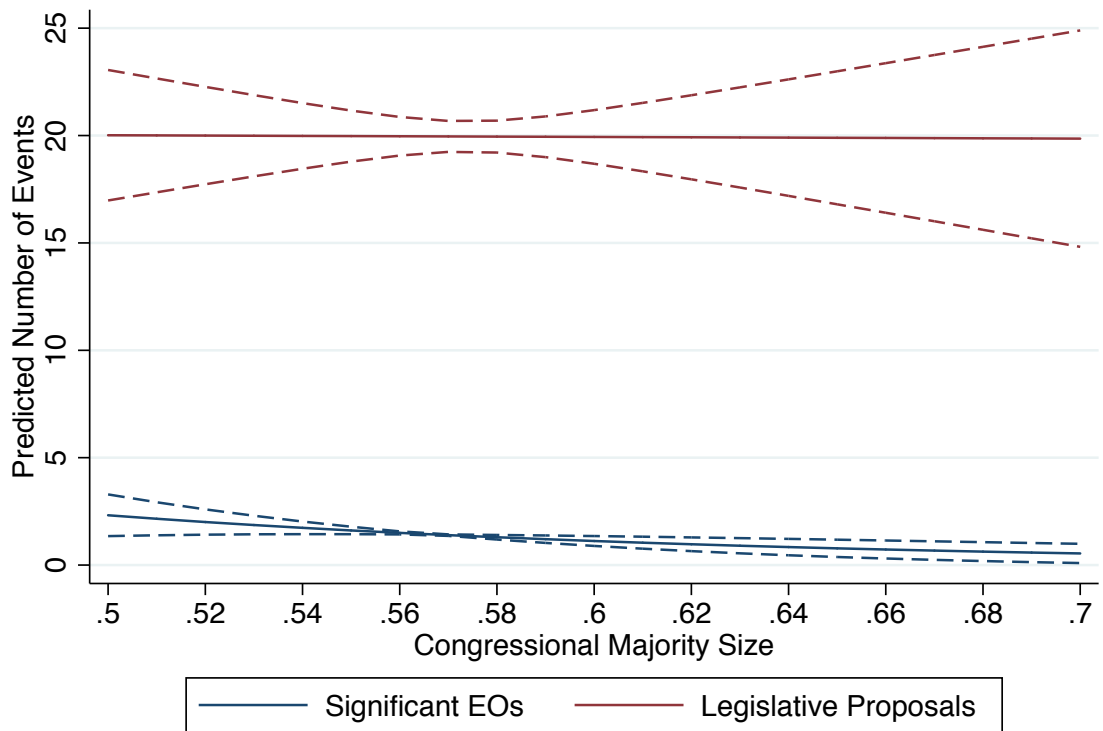


Figure 1.2: Predicted Number of Executive Orders (EOs) and Legislative Proposals, with 95% Confidence Intervals, by Congressional Majority Size

to do so.¹⁶ The president preferred to superimpose a small coordinating staff, located in his own White House Office, on the existing national security structure. Congress, in contrast, sought to construct an entirely new cabinet-level DHS composed of some of the forty-six existing agencies with missions linked at least in part to homeland defense.

Bush moved first, capitalizing on the traditional boost in political support afforded any president in the aftermath of a national crisis. Just nine days after the attack, during a nationwide address before a joint session of Congress, he announced his intent to create a White House–based homeland security office, to be headed by former Pennsylvania Governor Tom Ridge. Ridge, supported by a small staff, would be charged with overcoming the compartmentalization, turf wars, and conflicting missions that then characterized the national security bureaucracy. Members of Congress, fearing that another attack could occur at any moment, and without a fully developed legislative alternative, initially acquiesced to Bush’s plan. But members made it clear that, Bush’s action notwithstanding, they would pursue legislation to create a cabinet-level department dealing with homeland security.

On October 8, 2001, President Bush signed EO 13228, establishing the Office of Homeland Security (OHS) and the Homeland Security Council (HSC), “within the Executive Office of the President . . . to be headed by the Assistant to the President for Homeland Security.” In establishing both the OHS and HSC by executive order, Bush hoped to accomplish several objectives. Most importantly, of course, the use of an executive order allowed him to move more quickly in developing a comprehensive national strategy for protecting the nation’s borders and to prevent another terrorist attack without waiting for congressional action. Moreover, by placing these entities within the EOP, under the coordinating authority of a personal White House assistant with a West Wing office, Bush was administratively better positioned to control that process (Moe 1989). The creation of a small coordinating office, rather than a new large cabinet department, also fit more neatly with his small-government principles.

¹⁶Our account of the creation of the DHS draws primarily on studies by Draper (2007), Kettl (2007), and Mycoff and Pika (2008), supplemented by journal and news articles.

From the start, however, members of Congress viewed Ridge's position with skepticism. They questioned whether he possessed the administrative tools, such as budget authority, to effectively coordinate the dozens of agencies involved in homeland security. Kettl notes that Bush's EO creating the OHS uses the word "coordinate" more than thirty times, but does not use "command" or "control" even once (Kettl 2007, 49). At the same time, however, legislators refused to grant Ridge stronger administrative authority. As a presidential assistant not subject to Senate confirmation, Ridge was not directly accountable to Congress. Members also worried that Ridge might use his authority to upset traditional ties between agencies and congressional oversight committees. For these reasons, legislators in both chambers were already drafting bills designed to put the OHS on statutory footing with cabinet-level status, headed by a secretary subject to Senate confirmation.

Congressional fears were not without merit. Ridge soon found himself engaged in a series of turf battles with other agencies as he sought to put his imprimatur on homeland security policy. Lacking budget control or any authority to command, however, Ridge fell back on using his office as a bully pulpit in an effort to persuade agencies to follow his lead. Meanwhile, Bush resisted efforts by Congress, beginning in March 2002, to compel Ridge to formally testify on behalf of the administration's initial \$37.7 billion homeland security budget request. The president argued that, as a presidential assistant, Ridge was not required to formally meet with members of Congress. Instead, Ridge offered to meet informally to brief select legislators.

By late April 2002, however, with positions in Congress hardening, it appears that Bush recognized the need to concede to lawmakers' desire to create a cabinet-level homeland security department. Toward that end, Bush quietly informed Speaker of the House Dennis Hastert and Senate Majority Leader Dick Army of his intentions and appointed his own legislative drafting team, headed by his chief of staff Andrew Card and including Ridge, Office of Management and Budget Director Mitch Daniels, and White House counsel Alberto Gonzalez. In order not to prematurely incite jurisdictional disputes, they met secretly for ten days in late April and early May to draft legislation creating the new department (Mycoff

and Pika 2008, 154).¹⁷ At the same time, according to Bush biographer Robert Draper, White House aides did all they could “to discourage similar legislation being offered” by Congress (2007, 170).

Despite Bush’s aides’ efforts, a bipartisan group of legislators on May 2 introduced bills in both the Senate and the House to create the DHS. Rather than sign on to these congressional initiatives, however, Bush instead sought to position himself at the front of the parade by unveiling, in a June 6, 2002 nationwide address, his own plan to reorganize the national security bureaucracy. He asked “Congress to join me in creating a single, permanent department with an overriding and urgent mission: securing the homeland of America, and protecting the American people” (Bush 2002).

Under Bush’s plan, border and security-related agencies, but not intelligence gathering agencies, would be combined into a single homeland security department. According to Mycoff and Pika, “The Congress welcomed the president’s proposal because it gave them virtually everything Congress wanted and then even more” (2008, 151). However, although Bush proposed an outline for establishing what would become the third largest cabinet department, in terms of personnel, he did not submit actual legislation. It was left to Congress to fill in the details.

Initial deliberation over Bush’s proposal began in the Republican-controlled House, under the direction of a bipartisan select committee created expressly to turn the president’s outline into legislation. Despite the bipartisan composition, however, the ensuing debate inevitably took on a partisan tone as both parties jockeyed for position in anticipation of the upcoming 2002 congressional elections. At the same time, the sweeping governmental reorganization, by threatening to disrupt existing relations between executive branch agencies and congressional oversight committees, accentuated the institutional rivalry between the president and Congress. Nonetheless the Republican-controlled House was able to pass a bill on July 26, 2002, that largely comported with Bush’s legislative preferences.

¹⁷Other staffers were brought in on a “need-to-know basis” to advise on portions of the plan (Mycoff and Pika 2008, 154).

In the Democrat-controlled Senate, however, debate moved more slowly, in part because of partisan divisions regarding how much managerial authority to grant the president over personnel working in the new DHS.¹⁸ Bush personally lobbied federal employees to support his request for greater personnel control, arguing that it was essential “to be able to reward excellence and ensure accountability for individual performance” (quoted in Mycoff and Pika 2008, 159). To Democrats, however, Bush’s insistence on “management flexibility” was rhetoric designed to obscure the reality that he was seeking the power to fire or transfer government employees. Debate over this issue continued for more than two months until it finally became clear that the Senate would not pass legislation before the upcoming midterm elections. In those elections, Republicans gained three House seats and two in the Senate, which put both chambers once again under Republican control. With the president’s hand now strengthened, the Republican-controlled Senate passed legislation, by a 90-9 vote, which included language much closer to the president’s position on personnel matters. The Senate bill was then ratified by the House on a voice vote and shortly thereafter signed into law by Bush.

The creation of the DHS, we argue, provides possible clues regarding the relative roles of executive orders and legislation on the most important policies presidents pursue. Substantively, Bush’s initial decision to establish a White House-based OHS and a HSC through executive order facilitated his need to act with dispatch in the aftermath of 9/11. With the threat of another terrorist attack, Bush could not afford to wait for congressional action. But it also served his administrative needs, by allowing him to exert direct control over the development of a comprehensive antiterrorist policy.

In the long run, however, Bush’s position, as laid out in the initial executive order, was neither institutionally nor politically sustainable. Institutionally, the original executive order simply did not provide Ridge with sufficient authority to fulfill his mission. Language in the executive order authorizing Ridge to “coordinate” the actions of the national security

¹⁸Democrats had gained majority control in the Senate when Vermont Republican James Jeffords declared himself an independent and began caucusing with Democrats in 2001.

bureaucracy meant little without the corresponding statutory authority to exercise budgetary or personnel control. Politically, Congress would not accept a presidential appointee exercising authority over so many agencies responsible for a combined budget larger than that of many cabinet departments without being subject to greater congressional oversight.

With the benefit of hindsight, it is clear that the initial executive order creating the OHS was simply the first step in a more than year-long bargaining process with Congress that eventually culminated in the creation of a statutorily based DHS. Bush undoubtedly would have preferred the continuation of a White House–based office of homeland security more responsive to his immediate direction, but he eventually bowed to the reality that he would need to work through Congress via the legislative process to put the OHS on a more durable institutional and political footing (Mycoff and Pika 2008, 147-48).

1.4 Executive Orders and Legislation in the Bargaining Process

How illustrative is the DHS case study of the role of executive orders and legislation in policymaking more generally? In his 2003 study, Howell finds evidence that Congress rarely overturns specific executive orders through the legislative process. However, our examination of the data suggests a more complex story, one that appears inconsistent with the either executive order or legislative action dichotomy. Consider the sixteen executive orders issued by Bush during his eight years in office that were deemed important enough to be mentioned in a front-page article of the New York Times. It is true that only two were overturned or essentially superseded by subsequent congressional legislation.¹⁹ However, a third executive order dealing with energy policy was amended via legislation designed to enhance Congress’s oversight authority of the relevant executive branch agencies. A fourth,

¹⁹As noted above, the OHS’s functions were in large part transferred to the DHS. Efforts by Bush to strengthen the Central Intelligence Agency director’s coordinating capacity via executive order were overturned when Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004. We use the set of orders cited on the front page of the New York Times here because Chiou and Rothenberg scores were only available through 2003.

dealing with freezing suspected terrorists' financial assets, was incorporated into the USA PATRIOT Act, although the statute went far beyond the executive order in scope and substance.

That leaves twelve significant executive orders on which Congress did not legislate, although in several instances bills were introduced to modify these orders. Of those twelve remaining executive orders, two dealing with presidential record keeping and military interrogations were directly contravened by President Barack Obama using his own executive authority. A third Bush order protecting Iraqi relief funds from legal action by creditors was also revoked by an Obama executive order, although this reflects the changing context of the Iraq situation more than it does a deliberate policy rebuke to Bush. Obama also revoked a fourth Bush executive order creating a corporate fraud task force but then used his executive authority to create a new task force with similar authority. Finally, in two instances Obama issued executive orders that clarified previous Bush orders pertaining to the creation and functions of a White House Office for Faith-Based and Community Initiatives by strengthening safeguards against the use of federal funds for religious purposes.

We see, then, that ten of Bush's sixteen significant executive orders were the subject of additional action either by Congress or Bush's successor President Obama. In five cases, Bush's actions were largely negated, either by Congress or President Obama, or amended in ways designed to strengthen congressional authority. The line demarcating legislative and administrative action blurs even more, however, when we note that two of the remaining six executive orders, dealing with efforts to protect striped bass and to intervene in an ongoing airline labor dispute, were both issued pursuant to existing congressional statutes authorizing the president to take these actions. Another, EO 13382, did not explicitly reference previous legislation, but its effort to freeze the assets of those engaged in the proliferation of weapons of mass destruction (WMDs) is consistent with congressional intent as expressed in the 1992 Iran-Iraq Arms Non-Proliferation Act. A fourth Bush executive order establishing the Commission on Intelligence Capabilities was in part an attempt to preempt a potentially politically more costly investigation into pre-Iraq War intelligence by

Congress. Despite Bush’s efforts, however, Congress went ahead with its own investigation regarding the faulty intelligence on WMDs. In all four cases, then, it is hard to claim that these executive orders extended the president’s policy reach in ways that thwarted or were otherwise inconsistent with Congress’s policy objectives.²⁰

Clearly, during the Bush years at least, the use of executive orders and legislation was rarely an either/or process. In some cases, executive orders provided the first step in a policy-making process that culminated in a legislative proposal by the president or at least legislative action by Congress even if not initiated by the president. In other instances, executive orders were issued pursuant to congressional legislation and intended to fulfill congressional intent. And on more than one occasion, Bush’s executive orders were overturned by his successor.

Table 1.4: Disposition of Top 10% Significant Executive Orders, 1947-2003

| | Frequency | Percent | Cumulative |
|------------------------------|-----------|---------|------------|
| Revoked by Issuing President | 55 | 17.68% | 17.68% |
| Revoked by Future President | 110 | 35.37% | 53.05% |
| Revoked by Legislation | 11 | 3.54% | 56.59% |
| Survived | 135 | 43.41% | 100.00% |
| Total | 311 | 100.00% | |

Note: Excludes orders that were explicitly coded as “temporary,” “executed and obsolete,” “tariffs,” and “public lands” in the *Federal Register’s* Executive Orders Disposition Tables. Dispositions were calculated as of October 2015. Executive orders surviving after October 2015 are right censored.

As it turns out, Bush’s experiences are not unique among the post–World War II presidents. When we examine the fate of the top ten percent most significant executive orders issued from 1947 to 2003 (using Chiou and Rothenberg (2014) scores), we find—consistent with Howell’s (2003, 2005) research—that Congress revoked only about 3.5% of these orders. However, about 35% were revoked at the hands of a future president. All told, only 135, or

²⁰Note that this focus on executive orders excludes other administrative methods by which presidents can establish policy. For example, on November 13, 2001, Bush issued a military order establishing military tribunals to try suspected terrorists. His order was subsequently amended legislatively in 2006 when Congress passed the Military Commissions Act.

less than half of these significant orders were still on the books as of 2015 (see Table 1.4).²¹

When we broaden our search to include all executive orders issued, the survival rates are even slimmer. Of the 2,087 nontemporary executive orders issued between 1945 and 1989 for which disposition information was available, almost 60% were revoked either by a future president (46%) or by the president who issued the original EO (13%). Congress terminated an additional 7% (see Table 1.5).²²

Table 1.5: Disposition of Executive Orders, 1945-1989

| | Frequency | Percent | Cumulative |
|------------------------------|-----------|---------|------------|
| Revoked by Issuing President | 458 | 18.00% | 18.00% |
| Revoked by Future President | 964 | 37.88% | 55.87% |
| Revoked by Legislation | 156 | 6.13% | 62.00% |
| Survived | 967 | 38.00% | 100.00% |
| Total | 2,545 | 100.00% | |

Note: Excludes orders explicitly coded as “temporary,” “executed and obsolete,” “tariffs,” and “public lands” in the 1989 Codification of Presidential Proclamations and Executive Orders Disposition Tables produced by the Federal Register. Executive orders surviving after January 20, 1989 are right censored.

These findings are consistent with other research showing that executive action is less durable than legislation. For example, David Lewis finds that legislatively created agencies have a “0.10 to 0.15 greater chance of surviving fifteen years and a 0.2 to 0.3 greater chance of surviving fifty years than agencies created by executive action” (2004, 396).²³ Consistent with the DHS case study, then, presidents have good reason to doubt that their executive orders will be considered the final say in a given policy area.

Given the fragility of executive orders, as well as their limited scope relative to legislation, presidents seeking significant and lasting policy change will likely find more success working with Congress through the legislative process—even if their initial step is to issue an executive order, as occurred with Bush and the DHS. But how often do EOs provide a

²¹These data were compiled by searching the Executive Order Disposition Tables maintained by the *Federal Register*. We excluded orders explicitly coded as “temporary” and “executed and obsolete,” as well as orders dealing with tariffs and public lands, whose current dispositions were not available.

²²These figures are based on the status of orders as of 1989, so the proportion revoked is only likely to have grown over time.

²³See also McCubbins, Noll, and Weingast (1989) and Moe (1989).

first step in a legislative policy-making process? To find out, we construct a new data set linking executive orders to subsequent presidential legislative proposals.

Our starting point is the 10% most significant orders, as determined by Chiou and Rothenberg (2014) scores. Next, we searched the presidents' legislative proposals, as compiled from the Public Papers of the President by Rudalevige (2002) and extended through the end of the George W. Bush administration, looking for substantive matches. The texts of the executive orders and legislative proposals in the potential list of matches were then read to confirm their relationship.

Executive order and legislative proposal pairings were included in our data set if the legislative proposal sought statutory support for an existing program or policy, or expansion of that program, through means not available in an executive order. We excluded cases in which an executive order and legislative proposal were issued in the same policy area, but on unrelated objectives. For example, President Clinton issued an executive order on "deficit control and productivity improvement in the administration of the federal government" (EO 12837) and subsequently asked Congress to create a deficit reduction trust fund for all new taxes proposed in the 1993 budget. Although both initiatives supported Clinton's goal of deficit reduction, the legislative proposal did not attempt to preserve or expand the same policy created by executive order, so this was excluded. Similarly, Carter issued EO 12138, "Creating a National Women's Business Enterprise Policy" in May 1979 and soon after submitted legislation for a Work and Training Opportunities Act. Although both initiatives dealt with women and work, the two programs were distinct.²⁴

Finally, to be included in our data set, the executive order must precede or be issued concurrently with the legislative proposal in time, consistent with a process in which executive orders *initiate* legislative policy making rather than serving as a response to inaction or rejection from Congress.

Our data set includes only legislative proposals contained in the president's program as

²⁴For similar reasons, we exclude pairings of executive orders and legislative proposals where the executive order establishes a commission that may subsequently recommend legislation. This is a different process than one in which an initial EO leads directly to specific legislation.

embodied in the Public Papers of the President. This excludes proposals made by members of Congress or executive agencies that may reference an executive order and are consistent with presidential priorities. Our intent in using this conservative approach is to identify only those instances in which presidents themselves make complementary use of executive orders and legislation to achieve policy objectives.²⁵

Using this coding, we identified twenty significant executive orders linked to subsequent legislative proposals during the period 1947 to 2003.²⁶ This amounts to about 6% of the 351 significant orders examined. Of the eleven presidents in our study period, only three—Truman, Johnson, and Carter—issued no legislative proposals linked to executive orders. The remaining eight each submitted legislative requests linked to at least one and up to six executive orders. The most active among them was Nixon, who issued legislative proposals related to six EOs on five distinct topics during his presidency.

As summarized in Table 1.6, the legislative proposals are of two general, and sometimes overlapping, types: those seeking to place existing programs on a statutory basis and those designed to expand the scope of existing programs. For the former, presidents often seek legislation to place policy on a stronger statutory footing, or to strengthen that policy in ways that cannot be accomplished by executive action alone. For example, George H. W. Bush's EO 12674 established "principles of ethical conduct," but required a legislative proposal for a "Government-wide Ethics Act," which established the use of independent counsels; specified misdemeanor, civil, and felony penalties; and updated the Internal Revenue Code, in order to give the ethical principles any bite (Bush 1989). A more minimal example, Reagan's request to strengthen central oversight of federal regulations (included in his budget message for fiscal year 1985) simply stated, "I believe it is time the policies and procedures of Executive

²⁵The choice to begin with only the top 10% of executive orders may miss some orders that lead to legislative proposals because the order fell below the admittedly arbitrary threshold of 10%. Although this is a possibility, we consider the risk unlikely given the altogether small number of orders that lead to legislative proposals as well as the positive correlation between significance and this link. Moreover, our focus in this preliminary attempt is to show that this process exists. The fact that more orders could fit this pattern only further supports this result.

²⁶A table containing the complete set of executive orders and legislative proposals discussed here is included in the appendix.

Table 1.6: Topics covered by executive orders and subsequent legislative proposals

| President | Issue Area | Type |
|------------|------------------------------|--------------------------------|
| Truman | <i>None</i> | – |
| Eisenhower | Disaster loans | Expansion |
| Kennedy | Food stamps | Expansion |
| | Peace Corps | Statutory Authority |
| | Equal Employment Opportunity | Expansion, Statutory Authority |
| Johnson | <i>None</i> | – |
| Nixon | Minority businesses | Expansion |
| | Environment | Expansion |
| | Energy | Expansion, Statutory Authority |
| | Consumer protection | Expansion |
| | Drug abuse | Statutory Authority |
| Ford | Intelligence | Statutory Authority |
| Carter | <i>None</i> | – |
| Reagan | Drug abuse | Expansion |
| | Regulatory review | Statutory Authority |
| | Government ethics | Statutory Authority |
| Bush 41 | Civil litigation | Statutory Authority |
| | Child support | Expansion |
| Bush 43 | Faith-based initiative | Statutory Authority |
| | Homeland security | Expansion |

Order 12291 were enacted into law” (Reagan 1984).

On other issues, presidents act initially via executive order to create a pilot program followed by a legislative request to expand the program. The initial pilot program may be directed at government officials or contractors, reflecting the president’s formal authority to manage the executive branch, while broadening the scope of the program usually requires legislative action. In this vein, Reagan issued an initial executive order to create a drug-free federal workplace but subsequently sought legislation for his Drug Free America Act.

Some proposals fit both categories. For example, Kennedy’s proposal on equal employment opportunity requested both statutory authority for his Committee on Equal Employment Opportunity as well as broader federal action on equal employment in government-involved areas not covered by the order, which established equal employment requirements for federal contractors.

Although limited in number, the cases in which executive orders beget legislative proposals illustrate how the two policy-making processes can serve different, complementary, purposes. Executive orders offer presidents the virtue of acting quickly, either to respond

to an immediate crisis or to alter the status quo to spur congressional action. Executive orders also provide symbolic advantages to presidents by allowing them to advertise that they can act quickly—often very early in their administration—on issues they deem particularly urgent to address.²⁷ Nonetheless, the fact that the initial executive act is subsequently addressed through legislation is a reminder that these structural advantages alone do not supplant the need for the greater durability and broader scope that comes from acting through Congress.

The clearest evidence regarding the different roles played by executive orders and legislation are the six cases in our sample of twenty in which presidents issued an executive order and a related legislative proposal on the same day.²⁸ In these cases, the executive orders are designed to address an issue immediately, with the explicit intent that they will be supplanted by legislation to follow. Nixon provides a clear explanation of this rationale in his message to Congress urging the creation of an office for drug abuse:

I urge the Congress to give this proposal the highest priority, and I trust it will do so. Nevertheless, *due to the need for immediate action*, I am issuing today, June 17, an Executive Order [11599] establishing within the Executive Office of the President a Special Action Office for Drug Abuse Prevention. Until the Congress passes the legislation giving full authority to this Office, a Special Consultant to the President for Narcotics and Dangerous Drugs will institute *to the extent legally possible* the functions of the Special Action Office. (Nixon 1971; emphasis added)

Nixon's message highlights both the need for immediate action, for which his executive order is well suited, and the need for greater statutory authority, particularly as it pertains to the role of the Special Actions Office, than his initial order can provide.

Of course, with only twenty examples in our study, we should not overstate the frequency with which presidents utilize executive orders as a first step in a policy-making process they

²⁷For example, President Kennedy issued his executive order initiating a food stamp program on his first full day in office, and President George W. Bush issued two orders establishing his Faith-Based Initiative only nine days into his presidency.

²⁸These examples are Nixon on minority business, energy, and drug abuse; Ford on intelligence; Reagan on drug abuse; and Bush on ethics reform. In other cases, legislative proposals followed mere days after the executive order was signed.

hope will culminate with legislative action. On the other hand, it is clear that in areas of high policy salience, presidents do sometimes utilize the two in complementary fashion.²⁹ There are good reasons to do so, as illustrated by the different fates of Nixon’s drug control office and Reagan’s regulatory review process.

Nixon’s executive order successfully secured statutory backing through Public Law 92-255, which established the Special Action Office legislatively. In contrast, Reagan’s EO 12291, which strengthened centralized regulatory review never secured statutory authority, and as a consequence, the process it established has been modified substantially by successive presidents, each using their own executive orders.³⁰ Presidents certainly try to achieve policy objectives alone when Congress does not act. This does not mean, however, that they would not sincerely prefer legislative enactment.

1.5 Conclusion

George W. Bush defended his executive order creating the Office of Faith-Based and Community Initiatives by saying, “Congress wouldn’t act, so I signed an Executive Order—that means I did it on my own” (Patterson 2008, 131). And yet he continued to ask Congress for legislative support, including in his final State of the Union address in 2008. Bush’s persistence in seeking to codify his order in statute is easy to understand. Executive orders are not legislation by another name. Instead, they have their own distinct advantages and disadvantages that help determine whether and when a president will seek to make policy “on his own.”

²⁹There is some evidence of a small but statistically significant positive relationship between executive order significance, as measured by Chiou and Rothenberg (2014) scores, and the probability of generating subsequent legislative proposals. There is the possibility of reverse causation, however, as congressional citation is one of the raters in Chiou and Rothenberg’s IRT model, and Congress may be more likely to cite orders for which legislative proposals have subsequently been issued.

³⁰Clinton’s EO 12866 revoked EO 12291 in 1993, which substantially changed the regulatory oversight program at Office of Management and Budget, giving the Office of Information and Regulatory Affairs discretion to selectively audit significant regulations, dramatically reducing its workload. The program has been further modified by President Bush in 2007 (EO 13422), and President Obama in 2009 (EO 13497) and 2011 (EO 13563).

Our updated event-count analysis supports previous findings regarding the negative relationship between presidents' issuance of significant executive orders and Congress's ability to legislate. However, we find a lack of support when we use this model to explain presidents' decisions to pursue policy through legislation. This discrepancy, we believe, is because presidents are quite willing to utilize executive orders to make limited policy changes in the short term when Congress is less capable of acting. But they also understand that executive orders lack durability, in large part because they are easy targets for future presidents. To create lasting and substantial policies, then, presidents see little alternative to working with Congress to produce legislation.

The results of our aggregate data analysis, combined with a more detailed look at Bush-era EOs and legislation, suggests the importance of analyzing the content of presidents' administrative and legislative proposals as well as the context in which they occur. It may be that, for the most important policy proposals, the choice by presidents regarding which policy vehicles to use, and when to use them, turns in part on the different structural attributes of legislation and executive orders. With that in mind, we present several tentative research hypotheses.

First, where *durability* of policy is the main goal, defined as longevity and program capability, we suggest presidents will seek legislation. In contrast, where speed of implementation is more highly valued, presidents will turn to executive orders. As a corollary to the speed hypothesis, we surmise that a crisis is likely to increase the use of executive orders compared to legislation. Thus, in the immediate aftermath of 9/11, Bush's need to strengthen homeland security led to the executive order establishing the HSC, even though this may not have been the most effective way to achieve the desired level of bureaucratic coordination. Certainly Ridge lacked the power to do much more than encourage greater cooperation among agencies.

Second, for major policies, executive orders are less likely than legislation to represent the final stage of the policy process. That is, within a given policy area, legislation is more likely to follow the issuance of an executive order than vice versa. This was certainly the

case with the DHS and with the policies detailed in section four.

Third, presidents are more likely to take symbolic action in the form of an executive order than by pressing for legislation. For example, Bush created the commission on prewar WMD intelligence in part to demonstrate his commitment, as chief executive, to understanding why the intelligence community got the story so wrong. Symbolic policy means that the policy *message* is, at least initially, more important than the actual policy content. Executive orders afford the president the opportunity to take clear positions on policy issues, undiluted by the give and take of working with Congress, and to claim credit for the creation of policy.³¹

Although not studied here, campaign promises may provide another example of an area where positions may be initially more important than the substance of the EO. This would suggest presidents are likely to issue symbolic executive orders at the beginning of their terms.³²

Note that we do not mean to dismiss the importance of Congress's partisan makeup in understanding presidents' choice of policy vehicle, as it clearly conditions the number of significant executive orders issued by several measures. However, in some instances, the president's use of executive orders is not an attempt to escape the bargaining framework. Sometimes it is an alternative vantage point from which to bargain.

The evidence we have provided by linking significant EOs and legislative proposals is an initial indication of the plausibility of our hypotheses, based on a review of 351 executive orders. However, from the start of 1945 through the end of 2008, Adam Warber (2006) counts almost 1,800 executive orders issued by eleven presidents that contain some policy content. Although it is a labor-intensive task, much more work needs to be done to systematically answer the questions of how often these orders become legislation and what role this plays in the president's administrative and legislative strategy.

Future work should attempt to model, with formal and empirical rigor, why some execu-

³¹See Mayhew (1974, 52-73). Mayhew applies the terms *credit claiming* and *position taking* to the actions of members of Congress in pursuit of reelection, but they are equally suited to the president.

³²On this point see Howell (2003, 85-100).

utive orders prompt further legislative action. We suggest, loosely, that there is a spectrum of reasons for following this process, from needing to change the status quo to force the hand of Congress, to securing the preservation of a program that might easily be canceled by a future president, to responding to a crisis before a more complete legislative response can be created, or to model a program in the federal government that could eventually see wider adoption. These are only a few possibilities. The more general point is that in important policy areas, the limitations of executive orders are often too great to consider them the last word.

Future research should also attempt to understand the success of this approach. We have hypothesized reasons for which EOs are often preferred as an initial policy step: speed, symbolism, and credit claiming, in addition to the first-mover advantage they confer. Are presidents more successful in achieving their legislative goals when they have initiated the bargaining process by issuing an executive order? How often does Congress take up these measures? More generally, do presidents benefit from having altered Hamilton’s “antecedent state of things?” (Hamilton 1973). Work should also explore the consequences in the implementation of executive orders and bureaucratic responsiveness. In issuing an executive order and following it with legislation, presidents are signaling both the importance of the issue to their administration and the limits of their intermediate steps to address them. How do bureaucrats respond in these instances?

Pending further analysis, our findings should be viewed as an exploratory test of an alternative understanding of administrative action in the realm of significant policy—an understanding that places presidents’ choices more squarely within the conventional presidential bargaining paradigm. When viewed alongside legislation, the decision to pursue executive action to address the most important issues may be governed not by an innate desire to shun Congress (an unwise strategy in a system of shared powers) or as a way to move closer to an ideal point in a one-dimensional policy space. Instead—at least in some instances—the choice seems to turn on qualitative differences in the policy-making tools. Executive orders offer advantages in speed of implementation, symbolic impact, and flexibil-

ity in future bargaining. Legislation, in contrast, provides durability and a more substantial policy impact. Or so we suggest. We hope, however, that these preliminary hypotheses stimulate additional interest into this burgeoning research area.

2 | Does the Messenger Matter?

Examining the Effect of Presidentializing Administrative Policy-making on Public Support

2.1 Introduction

Much of what constitutes “executive action” is done by bureaucrats, rather than the president’s pen. This means that presidents, in crafting their agenda, can choose whether or not to claim credit for a bureaucratic action. Indeed, this credit claiming often exhibits itself as “appropriation,” with presidents presenting bureaucratic actions as their own (Kagan 2001, 2299). For example, in 2014, speaking about extending deportation protections to additional undocumented immigrants, President Obama said, “there are actions *I have the legal authority to take as President...*that will help make our immigration system more fair and more just” (Obama 2014, emphasis added). Yet Obama did not sign an executive order. The actual actions were taken by Secretary of Homeland Security Jeh Johnson, who issued a departmental memorandum under his authority to set immigration enforcement priorities (Johnson 2014).

Importantly, presidents vary the extent to which they appropriate. In 2012, Homeland Security Secretary Janet Napolitano, not President Obama, made the initial announcement of the DACA program that, by departmental memorandum, granted deportation relief and work permits to many undocumented immigrants who came to the United States as children (Preston and Cooper 2012). Obama followed her statement, giving credit to the department, saying, “Homeland Security is taking steps to lift the shadow of deportation from these young people.” In even greater contrast, Obama did little to highlight or take credit for the fact

that his administration had up till then presided over record numbers of deportations.

This variation is not unique to President Obama. President Clinton, then-legal-scholar Elena Kagan notes, involved himself heavily in health care and gun control regulation, while avoiding other bureaucratic policy areas like the regulation of environmental and workplace hazards (Kagan 2001, 2308). More recently, President Trump has in some instances highlighted his involvement in cutting regulation, while at the same time distancing himself from particular administrative decisions, such as the Interior Department's recent decision to allow the importing of elephant trophies, a policy Trump publicly opposed and which the department rolled out quietly with a memorandum.¹

Presidents have competing incentives that affect the decision to presidentialize, which I define as the president taking personal, public ownership of administrative policy decisions. Administrative action offers an efficient means for achieving policy goals, especially when compared to seeking legislation. A vast literature in political science concerns strategies for control over the bureaucracy (e.g. Carpenter 1996; Kagan 2001; Lewis 2008; Moe and Wilson 1994; Rudalevige 2015; Wood 1988), such that presidents can use it to achieve their policy goals. Presidentializing offers a way both to influence bureaucratic output, by publicly committing the bureaucracy to carrying out presidential wishes, and to claim credit with the public for achieving a policy outcome (Kagan 2001, 2302; Whitford and Yates 2009). At the same time, recent experimental work on executive action, which posits a public dislike of "unilateral" action, along with evidence of the president's polarizing effect in the legislative arena, suggests that presidents may face costs for presenting themselves as the architects of executive branch policy. They may prefer to distance themselves from bureaucratic output. Given these competing incentives, the president's choice to presidentialize is rooted, at least

¹See Eli Rosenberg, March 6, 2018, "Trump administration quietly makes it legal to bring elephant parts to the U.S. as trophies," *The Washington Post*, https://www.washingtonpost.com/news/animalia/wp/2018/03/06/trump-called-elephant-hunts-a-horror-show-his-administration-just-lifted-a-trophy-hunting-ban/?utm_term=.1bd6e5f7ac8f and Trump's November 19, 2017 tweet, <https://twitter.com/realdonaldtrump/status/932397369655808001?lang=en>, which read, "Big-game trophy decision will be announced next week but will be very hard pressed to change my mind that this horror show in any way helps conservation of Elephants or any other animal."

in part, in how the public will react.

I test the effect of presidentializing on public support for policy in a series of survey experiments embedded in the 2017 Cooperative Congressional Election Study (CCES), using real world examples of executive branch actions. The experiments vary who was responsible for a series of actions (the president, an agency, or the federal government) and then ask respondents whether they supported the policy.

What I find is surprising. Rather than evaluate the policy on the basis of whether a president is named, respondents evaluate policy uniformly across conditions and consistent with their partisanship, regardless of the presidential cue given. The data suggest, surprisingly, that party or presidential cuing does not influence respondents, at least not for the policies I tested. This is in contrast to what one might expect given the power of party heuristics to influence views of policy; the polarizing nature of presidents in particular; and polarized responses to many “unilateral” actions. Respondents in the survey experiments made only minor shifts in support between conditions, even when the same policy was linked to presidents of two different parties. It seems that it doesn’t matter which party proposes it. Partisans differ on policy.

2.2 Presidents are polarizers

We should expect presidentializing an executive action to have a strong effect on how it is received by the public because of the nature of public opinion, how presidents influence it, and how the public perceives executive action in particular. I review each below.

Lacking political knowledge or stable attitudes about policy (Zaller 1992; Campbell et al. 1960; Converse 1964), the public relies on cues to shape its views. Parties, and particularly presidents, provide useful heuristics to understand complicated policy. Rather than take the time to investigate each issue independently and form one’s own views, it is simpler, and rational, to take the position shared by one’s preferred party. As a result, public opinion as measured in surveys is highly sensitive to survey wording (Rasinski 1989; Sniderman and

Theriault 2004), priming (Druckman and Holmes 2004), and framing (Jacoby 2000; Chong and Druckman 2007).

Both survey research and Jimmy Kimmel have illustrated that the Affordable Care Act is far more popular than Obamacare, despite being one and the same (Jimmy Kimmel Live 2013). But partisanship, and presidents in particular, polarize opinion in ways that go beyond tricks of question wording. Rather than choose candidates based on the issues, voters seem to pick their presidential candidate first, perhaps based on economic performance which the president can do little to control, and then shape their policy views to fit (Lenz 2012). Since the election of President Trump, who holds many views not typical of Republican politicians, surveys have shown Republican voters increasingly willing to see Russia as an ally and support higher tariffs.²

Even members of Congress, who have strong policy views of their own and spend a great deal more time thinking about policy and politics than the average American, find it difficult to support legislation proposed by a president from the opposite party (Lee 2008). Reaction to policy is more polarized in Congress when presidents champion a bill than when they do not, holding the issue constant. Members of Congress share a connected fate to the president that the public does not, which might necessitate they respond more strategically than the public would to the same stimulus. Still, the finding supports the conclusion that presidents are “dividers not uniters,” and suggests that the president’s own policies may sometimes be better off without his association in a highly polarized environment.

The problem of presidents driving polarization should be particularly acute when presidents take “unilateral,” or administrative, action.³ In this case, only the president, not

²A July 2018 Gallup poll, available here <https://news.gallup.com/poll/237137/republicans-positive-relations-russia.aspx>, finds that the percentage of Republicans viewing Russia as an ally jumped from 22 percent in 2014 to 40 percent in 2018. A Pew poll from July 2018 finds 73 percent of Republicans supportive of increasing tariffs, <https://pewrsr.ch/2uNDnEy>.

³I prefer the term administrative to unilateral, as it more accurately describes actions in this realm, which may not involve explicit bargaining with Congress over legislation but do involve bargaining with and managing the executive branch (Neustadt 1990). Even actions such as executive orders are rarely taken by the president alone. Instead, they are often written in the bureaucracy and sent up to the president for ratification (Rudalevige 2012). Work in this area has increasingly focused on the constraints under which presidents act administratively, including tacit bargaining with Congress (Chiou and Rothenberg 2014, 2017;

Congress, is visibly involved. Being able to say, as George W. Bush did, “I signed an Executive order—that means I did it on my own” strengthens the authorship cue, as well as raising any constitutional concerns about presidents acting without Congress (Bush 2004).

2.2.1 Public Opinion and Unilateral Action

While no study has yet examined the effect of presidential credit claiming of bureaucratic action, there has been an explosion in research that examines the public response to unilateral action more broadly, which supports a hypothesis of polarized public response. Although the literature is divided over the extent to which the public exhibits a baseline dislike of unilateral action (Reeves and Rogowski 2018; Reeves et al. 2017; Reeves and Rogowski 2016, 2015; Christenson and Kriner 2015), this research has generally shown that partisanship dominates assessments of policies achieved through unilateral action (Christenson and Kriner 2016). Partisanship also influences assessments of individual presidential powers, with one study showing support for presidents exercising a wide variety of presidential powers (veto, unilateral action, direct agency implementation) was increasing in presidential approval and partisan alignment with the president (Reeves and Rogowski 2015, 752). Moreover, constitutional qualms can reinforce partisan responses, if they are leveraged by political actors to erode support for policy (Christenson and Kriner 2017).

This vein of research also supports investigating opportunities where presidents can make choices that affect how the public perceives policy. Lowande and Gray (2017) study small variations in the tool of executive action used and find that “more salient means like executive orders have the potential to damage respondents’ evaluations of policy change” compared to tools like memoranda. Much of this literature investigates choices that presidents cannot readily make without changing the underlying policy, such as between an executive order and legislation (Reeves and Rogowski 2018). Even the choice between an executive order and memorandum may entail a narrowing of policy (Rudalevige 2017), while also containing

Belco and Rottinghaus 2017) and bargaining with the executive branch (Rudalevige 2012, 2015). The term administrative has found some use in the literature, chiefly Kagan (2001) and Porter (2014).

an equal amount of presidential involvement and relying on the media to reliably translate the distinction to the public, which it often fails to do. A less salient but perhaps more consequential choice is whether or not to appropriate bureaucratic output as presidential output. A regulation can exist without the president saying “I did that.” An executive order cannot. The number of actions that the president could plausibly vary their association with makes investigating presidentialization of bureaucratic policymaking substantively important as well as methodologically tractable for a survey experiment. In fact, Reeves and Rogowski (2015) found that Democratic and Republican respondents were particularly polarized over whether presidents should be able to “direct agency implementation of policies passed by Congress” (p. 750), which suggests that respondents may be particularly attuned to respond to partisan cues involving agency actions.

2.2.2 Presidents vary Involvement

Presidents appear responsive to concerns about the public cost of administrative action. President Obama, it seems, eschewed executive orders in favor of memoranda, perhaps in part to avoid the negative valence around the term (Lowande and Milkis 2014; Lowande 2014; Lowande and Gray 2017).⁴ In general, research into the public consequences of administrative action has begun to shift the discussion from the abundance of non-legislative action (Howell 2003) to their surprising dearth, given the limited ability of other actors to check the president (Christenson and Kriner 2016). The anecdotes above make clear that this can happen for bureaucratic policy, even on a single issue. Although the literature on presidential administration has often focused on the secular rise of centralization, it provides systematic evidence that centralization varies, often by issue, within administration (Rudalevige 2002, 2015).

⁴This is admittedly somewhat speculative, but the use of memoranda soared under Obama, while he issued slightly fewer executive orders than previous presidents. More to the point, Obama touted this fact, saying in July 2014, “The truth is, even with all the actions I’ve taken this year, I’m issuing executive orders at the lowest rate in more than 100 years” (quoted in Korte 2014). Obama’s lower use of executive orders also received positive notice from political scientists (see Voeten 2014; but see Rudalevige 2014 for an alternative perspective).

Publicly-oriented presidential administration arguably grew to new heights under Barack Obama, who explicitly campaigned in 2012 on a variety of administrative actions under the banner of “We Can’t Wait”, to show what he was doing despite congressional inaction on his agenda (Lowande and Milkis 2014). At the same time, Obama delayed potentially expensive or controversial rules on the environment, health care, and worker safety until after the election (Lowande and Milkis 2014, 13; see also Administrative Conference of the United States 2013; Eilperin 2013).

Studies of other areas of presidential centralization, such as the crafting of legislation and executive orders have shown that centralization varies with political considerations and is contingent on several factors like issue complexity, novelty, and agency jurisdiction (Rudalevige 2002, 2015). While these studies have generally focused on the need for expertise or political control, public opinion may also play a role in presidential decisions to appropriate bureaucratic output.

Work has not yet explored whether presidents can affect public opinion through these actions. Although Kagan argues that presidential administration should increase public understanding of the actions of the administrative state, she does not examine whether this is an effective strategy in terms of gaining (or losing) public support.⁵

We do know, however, that small distinctions between presidential and bureaucratic action are wide enough to affect public perceptions. Lowande and Gray (2017) show that small distinctions between how a presidential action is presented affect public support. On bureaucratic action specifically, Coglianese and Firth (2016) show in a survey experiment that presidents are seen as the decider when they are presented as involved in bureaucratic decision making. The study stops short, however, of assessing the effect of responsibility on support for the action itself.

Other evidence suggests, however, that decoupling the president from bureaucratic action might be harder to achieve, limiting the president’s ability to shape public opinion.

⁵Although Kagan focuses on appropriation as a tool of administrative control, influencing the bureaucracy by locking it into public commitments, she acknowledges it is also explicitly a credit claiming activity and a public relations exercise (Kagan 2001, 2302).

Peter M. Shane points out in a 2016 op-ed examining the court rulings blocking DAPA that conflating agency and presidential authority may have negative legal and political consequences. Despite a case in which the legal question was whether Secretary Jeh Johnson (not President Obama) properly interpreted his statutory authority, questions of presidential power and overreach were prominent. In oral arguments before the Supreme Court, Chief Justice Roberts asked, “could the President grant deferred removal?” Shane notes that he could not, but that was not the legal issue. In all, the president was mentioned 13 times, while the Secretary of Homeland Security, whose authority was at issue, was mentioned only four times. Roberts is not alone. DAPA also figured prominently in a Saturday Night Live skit as an example of an executive order. The media frequently casts all executive actions as “executive orders.” President Trump tasked Attorney General Jeff Sessions with announcing the end of the DACA program, perhaps to deflect blame from himself and cast it as a legal rather than partisan matter. Such a strategy could plausibly affect blame when the underlying actions are not inherently presidential. In this instance, however, media coverage suggests that the president was incapable of dissociating himself with the decision. Taken together, these suggest limits to the ability to sway public opinion on an issue, given the narrow divide between the president and the executive branch he nominally heads. Still, the fact that presidents appear to attempt such a strategy suggests the merit of investigating whether it has an effect.

In addition to the positive implications, variation in presidentialization raises normative concerns about accountability. Research suggests that voters struggle to correctly assign responsibility to officeholders at elections, but can do so when they hold more information about their roles (de Benedictis-Kessner 2018; Johns 2011; Malhotra and Kuo 2008; Arce-neaux 2006; but see Sances 2017). Presidentialization represents one mechanism by which residents can manipulate responsibility. Kagan (2001), certainly, hopes that presidential administration will make the bureaucracy more transparent and responsive to the public, by connecting its output to a prominent elected official. The president, however, may be equally able to obscure his responsibility. Although not part of the current study, it may be worth

considering in future work the degree to which presidentialization influences judgments of the president at election time.

2.3 Experiment Design

I test the effect of presidentializing administrative policy using three survey experiments embedded in the nationally representative 2017 Cooperative Congressional Election Study (CCES). An experimental approach is preferable to observational methods in this case because it allows for the measurement of the causal effect of presidential association, which is hard to identify in the real world. For one, other factors beyond presidential association drive support for certain policies. Second, presidents do not randomly decide which bureaucratic policies to claim as their own, making observational comparisons subject to selection bias. In particular, presidents may choose to associate themselves with a policy precisely because it has popular support, the reverse of the causal relationship I wish to test. Also, presidential involvement likely drives news coverage of policy. Indeed, this is one possible reason for associating or not associating the president with a policy, but it is separate from the direct effect of the presidential heuristic under investigation here. Randomized experiments allow the identification of direct presidential effects on public support (Druckman et al. 2006, 2011).

Experiments, however, may lack external validity if they rely on hypothetical or unrealistic situations. Avoiding these challenges is a particular problem for presidential research, because presidents comprise a finite and well-known set of individuals, who serve one at a time. Whereas an experiment on a different topic may reference “a congresswoman” or “a governor of a neighboring state” to induce generalizability, this is implausible when the focus is a single national office. Likewise, using hypothetical candidates (i.e. “Candidate Smith”) fails to capture partisanship fully and forces researchers to consider only evaluations of those who run for office rather than those who govern.

Because existing evidence suggests the importance of partisanship in evaluations of pres-

idential unilateralism, I ground this study in real world examples (Christenson and Kriner 2016). Fortunately, the focus on bureaucratic policy has the added benefit of permitting experimental variation in real examples with a minimum of deception, which otherwise might be required to construct appropriate counterfactuals (Dickson 2011). Each experiment presents a policy action as having been taken by the president, an agency, or the federal government. Each is a plausibly true statement, given the clear association between the three actors.⁶ Presidents routinely announce these policies as their own. Agencies make their own announcements as well. And both presidential and bureaucratic actions are often described as actions taken by the “government.” Minimizing deception is valuable because it guards against heterogeneous effects, if some high-knowledge respondents know they are being treated with false information.

In contrast to most previous experimental work on presidential powers, I take further steps to ground the vignettes in a real world context. Instead of asking respondents about “unilateral action”, I ask only about their support for the policy in front of them. Instead of presenting large contrasts, such as between legislation and executive action, or contrasts that rely on respondent knowledge of the presidential toolkit, such as between executive orders and memoranda, I present only variation in the extent to which the president is the author of the policy, keeping its content and its delivery vehicle constant. The goal here is to prevent results turning on semantic differences that may have little real world applicability (and may fail to obtain if people typically view presidential action through a media lens that is likely to obscure these distinctions). Any invocation of concern about “unilateral” action must be provided by the respondent. The result is a set of experiments that mimic how respondents would encounter these issues in the real world.

A final important qualifier is that this experiment is situated in the present, highly partisan political context, in which we observe presidents that are overwhelmingly popular

⁶This is unique compared to other experiments on presidential actions (Lowande and Gray 2017) that present the same policy as either taken by legislation, executive order, or memorandum, for example. An alternative method, used to address this concern in several other studies, is to present a true action to all respondents and experimentally vary different justifications or additional information.

with their own party and loathed by members of the other party. Over his first two years in office, President Trump averaged an 85 percent approval rating among Republicans and a less than 8 percent approval rating among Democrats. President Obama had an average approval rating among Democrats of 83 percent according to Gallup tracking polls, while his approval rating among Republicans was only 13 percent. George W. Bush had an 84 percent approval rating from Republicans and only a 23 percent approval rating from Democrats. The average party gap in approval has increased consistently and dramatically, by an average of over 7 percentage points, for the last four presidents.⁷ On the one hand, this may heighten the polarizing effect of presidentializing on public support for policy. On the other hand, high partisan tensions may mean that opinion is already sufficiently polarized, with little room for presidential tactics to shift opinion. In either case, the current level of partisanship likely precludes the possibility that presidential attention to an issue will generate support across large segments of the public, such as suggested in the Going Public literature (Canes-Wrone 2001; Kernell 2006).

2.3.1 Experimental Conditions

I ran three separate experiments, each presenting a similar set of experimental conditions in a different issue area: Deferred Action for Childhood Arrivals (DACA) under Obama, rescinding Title IX transgender guidance under Trump, and raising Corporate Average Fuel Economy (CAFE) standards under both Bush and Obama. Issue selection is discussed in more detail in the next section.

1,000 respondents saw each of the three issue experiments, with the conditions in each experiment independently randomized. For each issue, respondents were randomly selected into one of three conditions. The baseline condition presented the policy as having been created by the federal government. The agency condition presented the policy as having been created by a specific federal agency or department. The presidential condition pre-

⁷Gallup Presidential Approval Ratings available here: https://news.gallup.com/interactives/185273/r.aspx?g_source=WWWV7HP&g_medium=topic&g_campaign=tiles. Approval gaps are my own calculations.

sented the policy as having been created by the president. Raising CAFE standards has the advantage of having been proposed, in nearly identical form, under both Bush and Obama, allowing comparisons between two presidents on a single issue. In this case, two presidential conditions were included, for a total of four conditions.

Using DACA as an example, respondents were told that either “the federal government”, “the U.S. Department of Homeland Security”, or “President Barack Obama”:

“gave temporary legal status to many undocumented immigrants. The policy allows certain undocumented immigrants to the United States who entered the country before their 16th birthday and before June 2007 to receive a renewable two-year work permit and exemption from deportation.”

Each experiment offered a comparable amount of detail on the policy in question. Complete vignettes and question wording are included in the appendix.

Respondents were presented with one of the three (or four) vignettes, after which they were asked if they approved or disapproved of the policy, using a four-point Likert scale. I omitted a neutral category in the responses, following the example of other presidential survey experiments, “to guard against satisficing” (Christenson and Kriner 2016, who cite the practice of Krosnick 1991, 1999).

Using real world examples introduces the possibility of preexisting attitudes toward the policies overwhelming the treatment effects. To mitigate this, a mix of issues of varying salience and ideological direction were selected. In addition, the expected findings of interest are variation within party. If preexisting attitudes are partisan in nature, within-party comparisons of treatment effects should still reveal information about presidentializing policy.

The contrast between agency and president is limited, particularly in comparison to broader contrasts between legislation and executive orders or Democrats and Republicans that are seen in the literature. There are substantive and methodological reasons for focusing on the agency/president distinction; however, it is possible that respondents will see no daylight between the actions of the president and the actions of an agency he nominally con-

trols. To mitigate against this, I include a true control condition, with actions attributed to the government. Although likely not completely devoid of partisan heuristics, it is clear that government conveys less partisan information than does an agency, which in turn conveys less partisan (and unilateral) information than the president. This allows for both a subtle test of agency vs president as well as a slightly starker test. To be sure, stronger contrasts or more neutral controls could be used, but this would fail to test the tactic of presidentialization. The result is that this is a hard test of the theory that presidents polarize public support for policy. To further mitigate against the lack of difference between president and other government actors, one of the experiments includes two presidential conditions, one of each party, with which one can test the simple question of the effect of presidential partisanship on evaluations of policy.

2.3.2 Issue Selection

Again, three issues are included in the survey experiments: the Department of Homeland Security's implementation of Deferred Action for Childhood Arrivals (DACA) under Obama, the revocation of joint Department of Education and Department of Justice Title IX transgender guidance under Trump (which withdrew Obama-era guidance that transgender students be allowed to use the bathroom corresponding to their gender identity in schools), and the raising of Corporate Average Fuel Economy (CAFE) standards under both Bush and Obama. A short discussion of the issues follows, with a detailed discussion, including determinations of their salience and complexity, included in the appendix.

The issues were chosen with a desire to consider issues on a spectrum of salience and existing polarization. DACA is the most salient, with high levels of existing polarization and association with the president. Trans guidance is also salient, although less persistently in the public eye, and also displays high levels of polarization. CAFE standards are not salient and are potentially less ideological, having been raised by both parties. The analysis leverages this variation to test whether the effect of presidentialization is conditioned by salience or existing polarization, which is likely. Testing the same question with multiple

policies also ensures that the result is robust to a variety of issues, and that the results hold for presidents of both parties.

The decision to include presidents of more than one party means that respondents are asked both about contemporary policy and their retrospective judgments about previous policy. To avoid having respondents answer questions in contexts with which they are unfamiliar, issues are limited to the last three presidents (and Bush is included only to facilitate a comparison to Obama). Other work has found a great deal of consistency between contemporary opinions and retrospective views on presidential power (Reeves and Rogowski 2018).

DACA has been seen as one of the most expansive uses of administrative power by the Obama administration (Christenson and Kriner 2016). It is one that is continuously in the news, given President Trump's decision to end the program and its still-unresolved status. It is also one that has been strongly associated with Obama individually, often labeled as an executive order. It has, therefore, attracted attention as an example of executive overreach. Nonetheless the policy itself is popular. DACA is likely a hard test for polarization effects given its salience and strong prior beliefs among the public, although the number of undecided respondents remains high in surveys.⁸ It is included here, in part, for its substantive interest. Several previous unilateral survey experiments have also discussed DACA or other Obama immigration policy, making it a useful comparison case.

The joint Education and Justice Departments guidance is also notably ideological and received extensive news coverage at the time it was announced in February 2017. Since then, however, the action has largely stayed out of the news, although a search finds that it is often mentioned in other news stories about transgender rights.

CAFE standards are the least salient of the three issues, and although fuel efficiency is still notably a liberal issue, these standards have been raised by both Democratic and Republican presidents. Newspaper articles on the auto industry occasionally mention the issue, and the Trump administration is considering lowering standards, but no action had

⁸I discuss these survey results in the appendix.

been taken at the time of the survey. It is not an issue that is typically regarded as inherently presidential. Importantly, CAFE standards are the one economic issue of the three, which should address concerns that the results are limited to social policy.

2.4 Hypotheses

To summarize the expectations developed above, I expect to find that presidential appropriation of bureaucratic action will polarize support for the underlying policy. Naming the president activates partisan heuristics for how to view the substance of the policy as well as constitutional qualms about unilateral action that may be used to depress support further among those otherwise neutral or opposed to the president or policy. Specifically, I expect *presidential association to increase support for the policy among co-partisans and decrease support among those of the opposite party*. This can be represented in a single quantity as the difference between mean party support in the treatment condition minus the difference between mean party support in the control condition.

$$\left(\bar{Y}_{Rep}(1) - \bar{Y}_{Dem}(1)\right) - \left(\bar{Y}_{Rep}(0) - \bar{Y}_{Dem}(0)\right)$$

In this case, the comparison is limited to only Democrats and Republicans and only the presidential and government control conditions, which I expect will provide the strongest possible effect.

There are less clear expectations for independents. We might expect them to support presidential policy less if concerns about unilateral action are activated. Absent this, partisan heuristics should have little effect on true independents.

2.4.1 Additional Expectations

There are several additional expectations that derive from the above discussion.

First, any causal effect will be limited by the relative difficulty of dissociating the president from a policy even when it does not bear his name, if the public assumes government

policy to be congruent with the president’s wishes or holds the president generally accountable for broad conditions like the economy (Kane 2016). Thus, I hypothesize the effect of moving from the control condition to the presidential condition to be greater than the effect of moving from the control condition to the agency condition or from the agency condition to the presidential condition.

Second, following similar logic, I expect that presidentialization effects will be stronger the less salient a policy is. Therefore, I expect the strongest effects in the CAFE experiment, followed by the transgender guidance experiment, followed by the DACA experiment. The more salient a policy, the more likely a respondent is already aware of the president’s connection to the policy, weakening the treatment effect.

Third, in comparing the Obama and Bush conditions of the CAFE experiment, I expect that Republicans will be more likely to support the policy under Bush and that Democrats will be more likely to support the policy under Obama, despite the identical policy content.

Finally, I expect any preexisting opinions to dominate assessments of policy, with presidential association moving support “at the margins” (Edwards 1990, 2006). That is, treatment effects are likely to be small. I expect presidentialization to increase polarization, while noting that polarization may already be significant, even in the control condition.

2.5 Results

The experiments generated mixed results for the theory that presidentialization drives polarization of public opinion. In only one of the three settings, the transgender experiment, did polarization between Democratic and Republican respondents increase when the president was named. In the other two, whether the actions were presented as being taken by the federal government, an executive agency, or the president had little effect on support for the underlying policy. On the whole, the set of experiments shows that respondent partisanship dominates assessments of policy. Unsurprisingly, Democrats tend to prefer left-leaning policies and Republicans prefer conservative ones, regardless of treatment condition. This leaves

room for presidents to act only “on the margins,” as expected. Even given this expectation, the lack of a treatment effect in the DACA and CAFE experiments is somewhat striking. There may be some evidence that salience plays a role. Certainly, opinions on the most salient issue, DACA, showed the least sensitivity to the treatment and the strongest partisan differences. However, it is harder to explain finding a presidential polarization effect for transgender policy but not CAFE standards.

2.5.1 Sample Demographics

The sample was fairly representative of the US population – 68 percent white, 12 percent black, and 17 percent Latino, with a median age of 48 – although it was disproportionately female (57 percent). The median respondent had completed “some college.” Republicans comprised 24 percent of the sample (32 percent if including leaners) and Democrats comprised 36 percent (47 percent if including leaners). The results displayed below group leaners with strong and weak partisans, but the results are robust to categorizing them as independents.

2.5.2 Experiment One: Deferred Action for Childhood Arrivals

Table 2.1 presents results from the experiment as OLS regressions of the experimental conditions on support for creating DACA. Support was collected from respondents as a four point scale but is here collapsed to a dichotomous measure. Because each variable is a dummy, the regressions are equivalent to presenting differences in means between each group. Column 1 presents results for the whole sample. Columns 2, 3, and 4 present results for subsets that identify as Democrats, independents, and Republicans. Presenting these subsets is equivalent to interacting each party with the experimental conditions.⁹ The government condition is the baseline category.

Associating either the Department of Homeland Security or President Obama with DACA has no effect on respondent support for the policy. The difference in support be-

⁹A fully saturated model is presented in the appendix.

Table 2.1: Support for DACA

| | All respondents | <i>Subset:</i> | | |
|-------------------------|---------------------|---------------------|---------------------|---------------------|
| | | Democrats | Independents | Republicans |
| | (1) | (2) | (3) | (4) |
| Obama condition | 0.022 (0.038) | 0.036 (0.038) | -0.015 (0.084) | -0.008 (0.063) |
| Agency condition | 0.016 (0.038) | 0.025 (0.038) | -0.026 (0.083) | -0.005 (0.064) |
| Constant | 0.612*** (0.026) | 0.854*** (0.027) | 0.568*** (0.058) | 0.309*** (0.044) |
| Observations | 991 | 463 | 213 | 315 |
| R ² | 0.000 | 0.002 | 0.001 | 0.000 |
| Adjusted R ² | -0.002 | -0.002 | -0.009 | -0.006 |

Note: OLS regressions estimated, with standard errors in parentheses. Outcome variable is binary support for DACA policy. Control condition is the omitted category. Independent leaners are grouped with partisans. *** indicates $p < .01$; ** $p < .05$; * $p < .1$ (two-tailed tests).

tween experimental conditions are both substantively small and statistically insignificant. This holds true in both the full sample and within party, failing to support the hypothesis that presidential authorship would increase polarization. Democrats are no more likely, and Republicans are no less likely, to support DACA when it is associated with Obama. The same is true for independents. For Democrats and Republicans, point estimates for the presidential treatment are larger in magnitude than those for the agency condition, but these differences are not large enough to be considered meaningful.

In contrast to the null effects for presidential treatment, there are striking partisan differences among respondents. Figure 2.1 plots the predicted probability of supporting DACA by party and treatment group. DACA found greatest support among Democrats, then Independents, then Republicans, with no differences within party between treatment groups. The differences between parties are large and statistically significant. Overall, over 87 percent of Democrats support DACA, whereas only about 55 percent of independents

and 30 percent of Republicans do in this sample.¹⁰ Although the experiment contains no manipulation check, strong partisan reactions provide evidence that respondents read and understood the vignettes as intended. It follows that we cannot attribute null treatment effects to a lack of attention to the survey.

The parties are polarized on this issue, but presidential authorship, in the experimental setting, does nothing to increase or decrease it. Moving from the control condition to the Obama treatment, the gap in support between the party means increased by a statistically insignificant four percentage points.

¹⁰Note that these results are not weighted by the CCES sample weights so they should not be considered broadly representative of partisan differences on DACA in the US population. A recent CNN/SSRS poll found significantly higher support for DACA among republicans and independents, although differences by party remain.

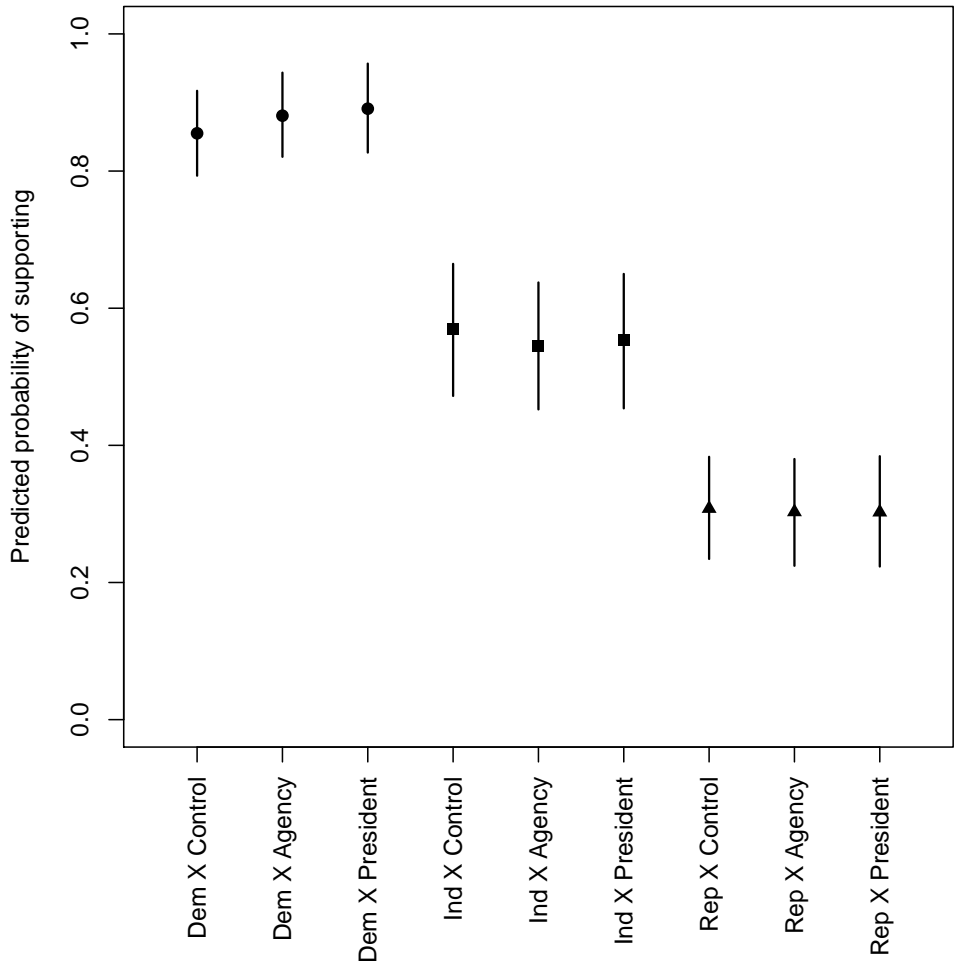


Figure 2.1: Support for DACA by Party

2.5.3 Experiment Two: Transgender Bathroom Guidance

Table 2.2: Support for revoking transgender bathroom guidance

| | All Respondents | <i>Subset:</i> | | |
|-------------------------|---------------------|----------------------|---------------------|---------------------|
| | | Democrats | Independents | Republicans |
| | (1) | (2) | (3) | (4) |
| Trump condition | -0.049 (0.039) | -0.130** (0.054) | -0.008 (0.086) | 0.051 (0.068) |
| Agency condition | -0.082** (0.038) | -0.159*** (0.053) | -0.110 (0.082) | 0.046 (0.066) |
| Constant | 0.520*** (0.028) | 0.442*** (0.038) | 0.577*** (0.059) | 0.596*** (0.048) |
| Observations | 995 | 467 | 213 | 315 |
| R ² | 0.005 | 0.021 | 0.010 | 0.002 |
| Adjusted R ² | 0.003 | 0.017 | 0.001 | -0.004 |

Note: OLS regressions estimated, with standard errors in parentheses. Outcome variable is binary support for new transgender policy. Control condition is the omitted category. Independent leaners are grouped with partisans. *** indicates $p < .01$; ** $p < .05$; * $p < .1$ (two-tailed tests).

In contrast, the second experiment – involving the Trump administration’s revocation of Obama-era guidance giving transgender students the right to use the bathroom corresponding to their gender identity – supports the hypothesis that presidential authorship increases polarization.

Party polarization increases when President Trump or his administration are associated with the policy. Moving from the control condition to the Trump condition increases the gap between the parties’ mean support by 18 percentage points, ($p < 0.05$). Moving from the control condition to the agency condition increase the gap between the parties by almost 21 percentage points ($p < 0.05$), although the difference between the two estimates is not statistically distinguishable. This suggests that presidents can, for some issues and for some types of voters, shift support for policy. In this case, the increase in polarization is driven by a drop in support among those of the opposite party of the president, rather than an

increase in support among the president’s co-partisans, or a combination of the two. The effect on how respondents evaluate a policy need not be symmetric.

As seen in column 2 of Table 2.2, support for the Trump administration policy decreased among Democrats when they were shown *either* the presidential condition or the agency condition. Interestingly, support decreased more, in terms of the point estimate, for the agency condition. This matches the experience of independents, who also decreased support by a similar magnitude (albeit not statistically significant) when shown the agency condition, but not the presidential condition. In contrast, Republicans viewed the policy similarly regardless of the policy actor. As in the DACA experiment, strong differences in support remain between parties, which were not erased by the experimental conditions. Republicans supported the policy in greatest numbers, with an average of 63 percent, followed by independents (54 percent), then Democrats (34 percent).

Figure 2.2 displays these results visually, showing the proportion supporting the policy by treatment group and party. Democrats largely behaved as hypothesized, responding negatively to both of the more specific stimuli than they do to the most generic condition, although these results do not support the assumption that the agency condition would be a middle ground between treatment and control. The result for independents, although not statistically significant, casts additional doubt on this monotonicity assumption.

The similarity of the agency and presidential effects, for Democrats, and the fact that independents may have been moved by the agency condition and not the presidential condition, suggest that presidents may have a hard time acting on this finding. Putting Jeff Sessions or Betsy DeVos on television in lieu of the president would cost the president an equal amount of Democratic support, with no offsetting gains to be found among Republicans. There is no immediately clear explanation for this finding, as it was not strictly hypothesized.¹¹ It suggests that giving respondents any specific information about which

¹¹The main polarization hypothesis was made with respect to the government and presidential conditions. I had assumed that the agency would resemble the control more than the president, providing little partisan heuristic to the respondent who may not be familiar with the particular agency, but the experiment is not dependent on this assumption. Out of concern that respondents would see no daylight between a president and an executive branch department, the experiment includes both an agency condition and a more generic

government actor took action increases partisan differences in how they evaluate the policy. With only one example, however, it is hard to distinguish this conclusion from one that argues that Jeff Sessions and Betsy DeVos, or the departments they lead, are particularly controversial or salient figures. In addition, this policy is unique among the three issues in being a negative action, the revoking of a policy, which may lead respondents to evaluate it differently.

The result here raise the possibility that salience conditions the effect of a president on policy evaluations, given the comparison between the increase in polarization here and the null result for DACA. However, the null CAFE result, described below, is inconsistent with this hypothesis, as it is even less salient. We may need more than salience to explain when presidents can effectively manipulate public opinion.

government condition.

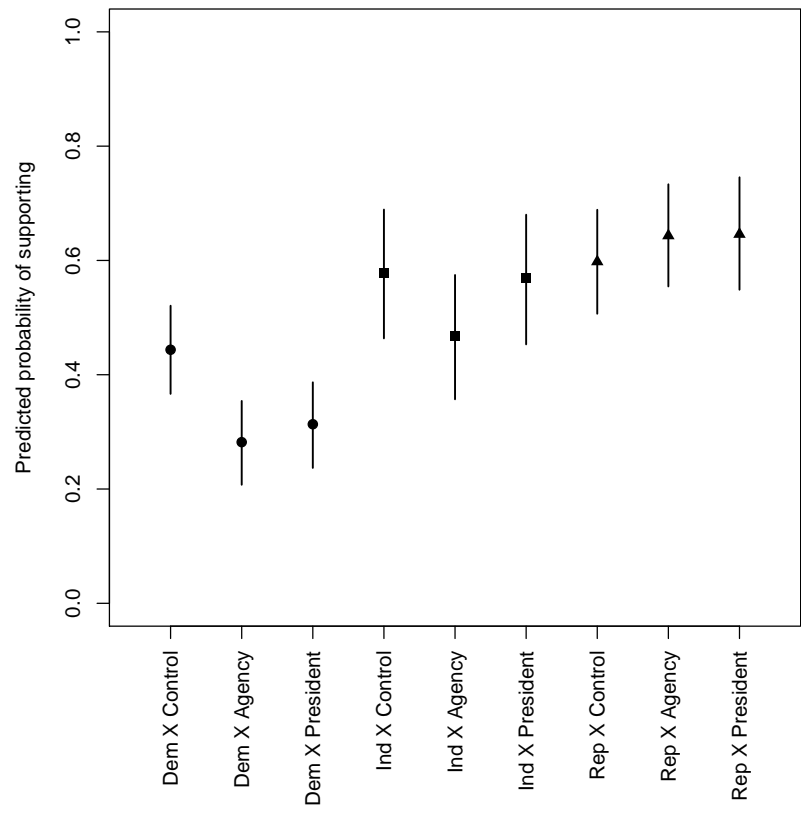


Figure 2.2: Support for revoking transgender bathroom guidance by party

2.5.4 Experiment Three: CAFE standards

Table 2.3: Support for increasing CAFE standards

| | All Respondents | <i>Subset:</i> | | |
|-------------------------|---------------------|---------------------|---------------------|---------------------|
| | | Democrats | Independents | Republicans |
| | (1) | (2) | (3) | (4) |
| Obama condition | -0.014 (0.037) | -0.014 (0.041) | 0.011 (0.079) | -0.047 (0.078) |
| Bush condition | -0.036 (0.037) | -0.072* (0.041) | -0.104 (0.079) | 0.062 (0.077) |
| Agency condition | 0.016 (0.037) | -0.008 (0.041) | 0.066 (0.079) | 0.010 (0.078) |
| Constant | 0.788*** (0.026) | 0.914*** (0.029) | 0.796*** (0.055) | 0.600*** (0.055) |
| Observations | 989 | 467 | 209 | 313 |
| R ² | 0.002 | 0.008 | 0.023 | 0.006 |
| Adjusted R ² | -0.001 | 0.002 | 0.008 | -0.003 |

Note: OLS regressions estimated, with standard errors in parentheses. Outcome variable is binary support for increasing CAFE standards. Control condition is the omitted category. Independent learners are grouped with partisans. *** indicates $p < .01$; ** $p < .05$; * $p < .1$ (two-tailed tests).

The CAFE experiment provides a third setting in which to test the presidential polarization hypothesis, as well as an opportunity to examine the effect of a switch in president on evaluations of the policy. Table 2.3 presents results overall and by party for Obama, Bush, and Agency conditions, relative to the baseline government control condition. As in the previous experiments, the effect of the presidential and agency conditions are largely null, both overall and within party. Only one coefficient, representing the effect of the Bush condition on Democrats, relative to the government condition, approaches statistical significance ($p < 0.1$). Having the president or agency take action did nothing to shift support relative to a generic government actor. Polarization does not increase when moving from the control to either of the presidential conditions or the agency condition. The difference in support between the two parties expands by a statistically insignificant 0.03 when mov-

ing from the control to Obama and a statistically insignificant 0.13 when moving from the control to Bush. The CAFE experiment fails to reject the null and does not support the hypothesis that presidentializing bureaucratic policy increases polarization.

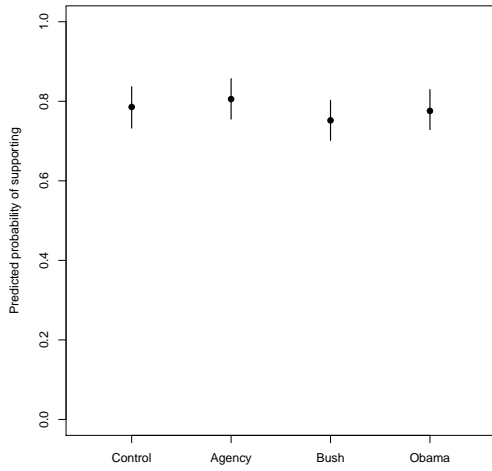
As before, the lack of treatment effects stand in contrast to the differences in support by respondent partisanship, with Democrats preferring CAFE standards overwhelmingly with 89 percent support, compared to 79 percent of independents and only about 61 percent of Republicans supporting. Support for this policy was high for all groups, despite strong differences. The results are displayed graphically in four plots in Figure 2.3, which show predicted probabilities of supporting the policy by party and treatment condition. There is no evidence to support the hypothesis that the impact of a president taking action should be greatest for the least salient issues. Indeed the results suggest that despite the lack of salience, partisan respondents are able to identify the partisan content of the policy and make ideologically consistent evaluations. This leaves little room for further influence from a presidential heuristic.

There is some suggestive support that a change in partisan signal, from a president of one party to a president of the other does cause some change in support among respondents. Switching attribution for the policy from President Bush to President Obama increased mean support among Democrats by 6 percentage points, from 84 percent to 90, and among independents by 12 percentage points, from 69 percent to 81 percent, but decreased support among Republicans by 11 percentage points, from 66 percent to 55 percent. These within-party differences are not statistically significant; however, the shift from Bush to Obama widens the support gap between Democrats and Republicans by a statistically significant 17 percentage points ($p < 0.05$). As can be seen in Figure 2.4, most of this widening is due to anti-CAFE movement on the Republican side, when the policy is attributed to President Obama.

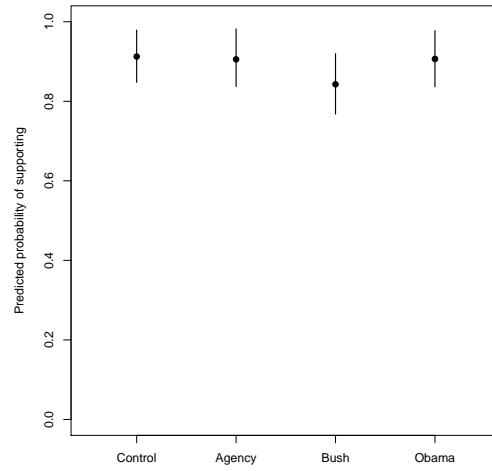
These party-switching results cannot speak directly to the core question of presidentializing bureaucratic policy. They do suggest, however, that sufficiently strong cues can affect policy evaluations, and indeed polarization. They should also be helpful in addressing any

concerns over null findings, as they provide a semblance of a manipulation check. Additionally, as in the transgender bathroom guidance experiment, the increase in polarization is driven mostly by a reduction in support among the partisans opposite the ideological direction of the policy (if we assume CAFE to be liberal in direction). This is further evidence that whatever presidentialization effect exists need not affect co-partisans and the opposition equally.

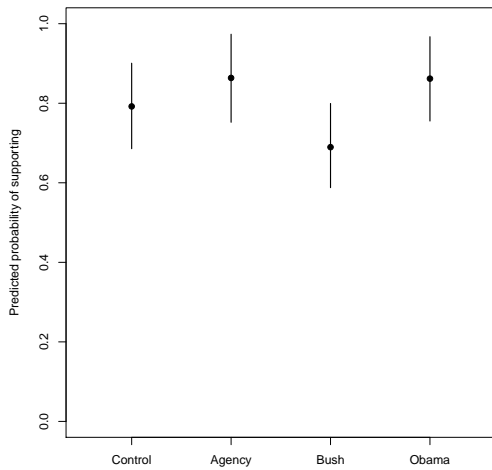
Interestingly, viewed as a transition from Obama to Bush, switching the presidential cue reduces polarization in evaluations (although support does not increase overall among Democrats and Republicans). There is insufficient evidence to claim this here, but this may suggest that a president embracing a policy from the opposite side of the ideological spectrum may produce this convergence effect. The results fit with an “only Nixon could go to China” perspective and may be worth additional investigation. However, even this attribution change is unable to override the preexisting ideological ordering. Republicans prefer CAFE more under Bush than Obama, but Democrats prefer it more than Republicans in all conditions. Presidential cues matter, but not more than respondent partisanship.



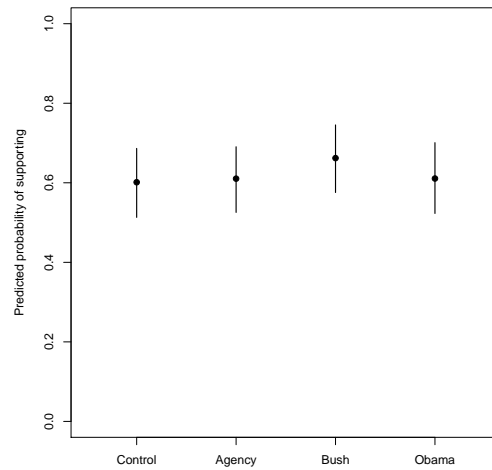
(a) All Respondents



(b) Democrats



(c) Independents



(d) Republicans

Figure 2.3: Support for increasing CAFE standards by party

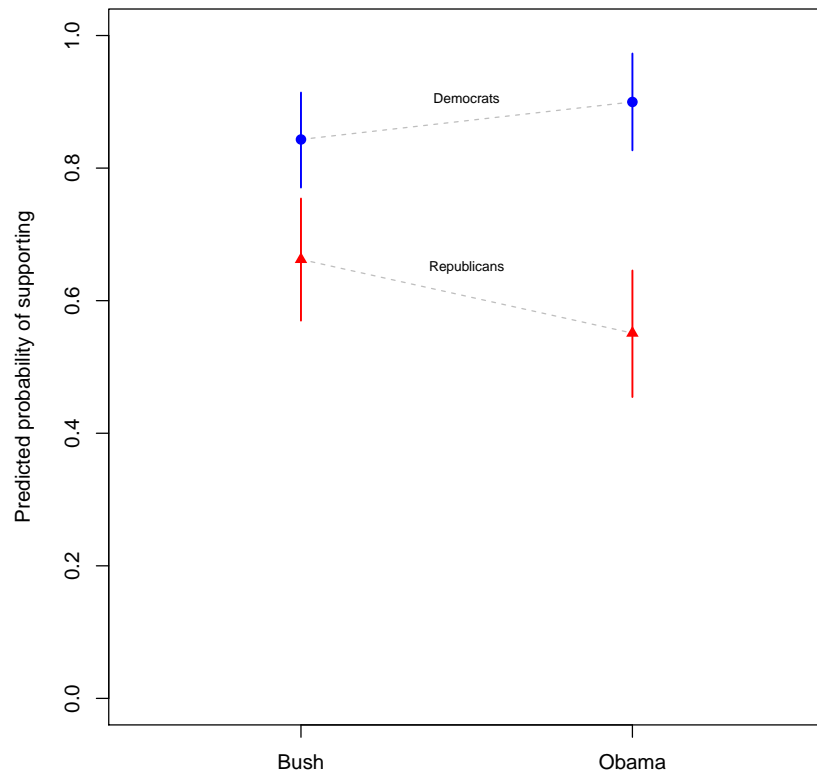


Figure 2.4: Support for increasing CAFE standards, Bush vs. Obama

2.6 Discussion and Conclusion

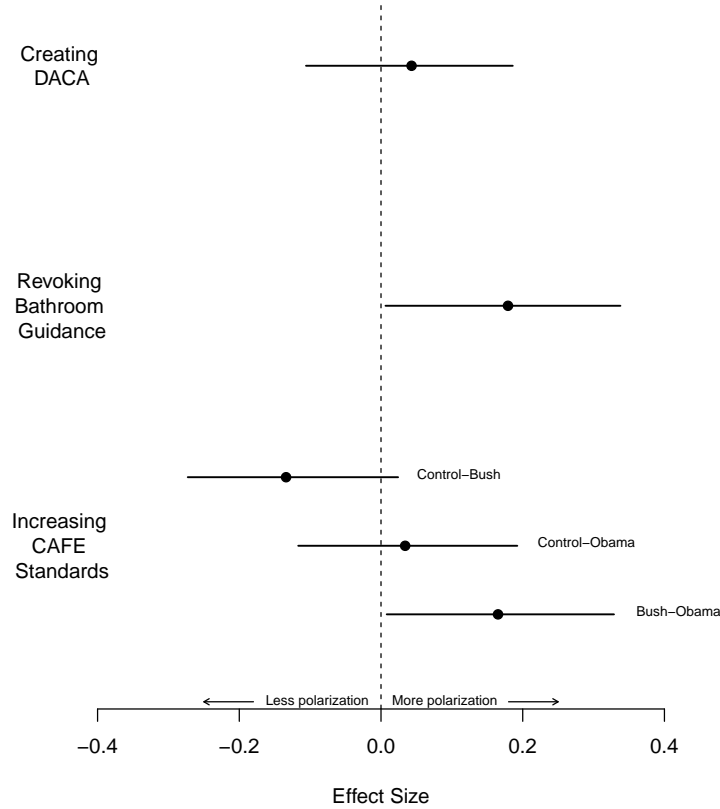


Figure 2.5: Effect of presidentializing policy on polarization of Democratic-Republican support

Taken together, the three experiments find some support for presidentializing policy increasing polarization in public support. When the president claiming a bureaucratic action does have an effect it moves evaluations in the expected direction. However, this effect does not obtain for all issues. Moreover, there is no immediate explanation as to why. Figure 2.5 summarizes the effects of the presidential treatment on the change in polarization for each of the experiments. Only in the trans policy experiment is there a significant effect.¹² The results of these experiments illustrate both the possibility and the limits of manipulating

¹²There is also an increase in polarization in the Bush-Obama CAFE experiment, but this does not speak to the primary hypothesis.

ownership of bureaucratic policy.

Salience is still the prime candidate to explain why presidents can manipulate opinion in some areas but not others, although it finds incomplete support from these three examples. Complexity is another factor that may prompt citizens to look to cues from elected officials.

A deeper cause may be the current, highly partisan climate. The stark differences in support by respondent partisanship contrast with the lack of a presidential effect, and these may have the same root cause. Given high levels of partisanship and polarization and the congruence between party labels and ideology, respondents likely already agree with the positions their presidents take. There is little room for presidential ownership to do more. In the current climate, we seem always to operate under presidentialized conditions.

It remains to be seen whether the president would have a greater independent effect in another environment. The results suggest that comparative study may be fruitful. They also suggest seeking out issues that, despite high polarization, continue to defy easy partisan categorization. DACA, trans policy, and fuel efficiency standards all have clear ideological directions. Less salient or less ideological policies (or both) may be more susceptible to this type of framing.

Issue selection may matter on other dimensions as well. For example, each of the policies examined here was a straightforward action, which would likely result in the same outcome regardless of who carried them out. In contrast, when policy is more complex or when discretion is a key factor in policy success, trust in the policymaker may affect support. This suggests testing these findings with policies that require more government discretion. Support for government surveillance, for example, might shift with different party or agency frames to a greater degree than fuel efficiency standards.

Different types of shifts in support should also be explored. Is it easier to move someone from opposition to support than from support to opposition? This may be what is observed in the CAFE case.

When polarization does change, these results suggest that this may be driven by the out party. I had assumed, and hypothesized, a symmetrical movement (although the theory

does not depend on it), but the results suggest that a president's actions may move support more among one group but not others. This may reflect the fact that certain issues are more central to some parties or it may represent a consequence of negative partisanship. It may be that a Democratic respondent, who is likely to support raising fuel efficiency standards in all circumstances, sees no reason to support the policy less when it is presented by a president from the opposing party. A Republican, however, who is less likely to support the policy innately, may be inclined to give it the benefit of the doubt upon learning that her own president supports it. This idea deserves further investigation.

This paper adds to the ongoing debate over whether the public imposes costs for “unilateral” administrative action. The results in this study contrast with those of other studies that find larger presidential or partisan effects on public evaluations, such as the growing literature on public responses to unilateral action. Unlike other experiments in this realm, this paper has sought to ground its experiments in a real world setting, examining a choice that presidents can actually make, holding all else equal. In this context, conditional on information about government action getting to the public, presidents, it seems, can do little to influence how their administrative actions will be received. Respondents have no generalizable preferences on the difference between presidential and agency policy. There are several important caveats to note here, however.

First, the experiments rely on a weak distinction made between each actor. In both the presidential and agency conditions, dates were given, allowing respondents to know what administration an agency was part of. This was by design, to avoid conflating non-presidential conditions with the current administration in historical examples, but it weakens the distinction between presidential and non-presidential, if respondents infer the administration. As a check on this, the additional government control was added, which does not change the conclusion.

Second, the survey measured support for the policy, rather than support for the president or the constitutionality of the policy. This, again, was by design, as the public is generally not equipped to judge constitutionality, independent of support, and questions

about the president might be odd in the control conditions, undermining the treatment effect. Constitutional qualms, if they entered respondents' calculations at all, would do so as instrumental arguments (Christenson and Kriner 2017). The result is that in circumstances typical to presidential choices and public policy discussions, there is no discernible cost to presidentializing bureaucratic action.

In terms of understanding the mixed results of this burgeoning field of survey experiments on presidential power it is important to heed the differences in design and differences in questions asked. Christenson and Kriner (2016), for example, show a big difference in supporting presidential power expansion to address terrorism for respondents of different parties, when comparing Bush and Obama. I did not find a similarly strong effect in the CAFE example comparing Bush and Obama.¹³ Their experiment explicitly asks about presidential power.¹⁴ Mine does not.

It may be that respondents see little daylight between presidents, agencies, and “government.” Compared to other contrasts presented in similar experiments (i.e. actions taken by Democrats vs. Republicans, executive orders vs. legislation) the differences I tested are quite small. It seems likely that a starker comparison would yield a starker result. The experimental design here was chosen so that any effect would be based on the president's association alone, holding all else equal, rather than any other differences between types of tools, which the public may have little understanding of, or which may imply differences in the underlying policy. The fact that no real differences were found here does not preclude that differences could not be found between wider divergences in presidential responsibility. It would be harder to discern what precisely determined the outcome there, however, given the multifaceted differences between tools like regulations and executive orders. Other studies have found differences in public support between legislation and executive action,

¹³Christenson and Kriner (2016) asked about a foreign policy area, but another experiment in the same paper showed separately that no difference was found in support for unilateral action across foreign and domestic policies, suggesting that issue selection does not explain this difference.

¹⁴Christenson and Kriner (2016) ask, “Do you think the Obama administration—has gone too far, has been about right, or has not gone far enough—in expanding the power of the presidency and executive branch to combat terrorism?” explicitly invoking unilateral concerns.

for example, but the decision between legislation and executive action is a much different and broader strategic decision than what this paper attempts to examine. The variation examined here is small but significant, in that it represents a strategic choice in which real variation occurs in how administrations present policy. The results suggest that presidents are unlikely to be able to move public opinion about administrative action given subtle shifts in policy framing. As weak as these are in this experiment, they will be weaker still in the real world, where media and other political actors diminish an administration's ability to craft a single policy narrative.

Although not a substitute for the current study, a more explicit investigation of constitutional costs in presidential appropriation should be undertaken in future work, given the debate between those who believe it brings clarity and political responsibility to bureaucratic policymaking and those who believe it muddies the waters of legal responsibility by invoking presidential power concerns when they are absent. The belief that some might view agency action as less unilateral than presidential action, following Shane's (2016) argument—and be able to gather this from a short vignette—was heroic in retrospect. Still, other studies demonstrate public preferences for certain types of presidential directives over others, which shows that unilateral concerns affecting policy support is still a plausible hypothesis, and a possible explanation of presidential choices to vary the use of their administrative toolkit (Lowande and Gray 2017). A solution would be to test agency/president unilateral considerations explicitly using an experiment that provided these explanations to respondents, similar in approach to Christenson and Kriner's recent experiments (Christenson and Kriner 2016, 2017).

What should we make, then, of the variation in presidential credit claiming that we see observationally? Why take credit or avoid blame, if public opinion is largely unaffected? A few ideas are most readily apparent, all of which beg further study in presidential communication. One, presidents may be trying to claim credit and thereby win support with subsets of the population smaller than their party or all voters. Obama's appropriation of DACA, for example, was seen as an attempt to win Latino approval prior to the 2012 election, which

had been damaged by years of increased deportations. Importantly, this mechanism may prompt presidents to claim credit regardless of any negative effects on other segments of the population, if the target population is deemed pivotal.

Second, even if there are limited direct effects, presidential appropriation likely produces downstream effects in terms of media coverage and salience. Given that presidents are covered in the media more than bureaucrats, if they want to highlight what their administration is doing they need to talk about it. How exactly they talk about these things doesn't seem to matter, whether they say "I", "we", or "they" did that, but whether they do at all likely does. To avoid blame, they may succeed by not talking about them. Outside of an experiment, of course, another actor may do this advertising for them, suggesting a greater capacity to claim credit than to avoid blame.

Third, presidents may be signaling not to the public at large but to bureaucratic agents tasked with carrying out these policy measures. This is suggested by Kagan (2001) who sees appropriating, in part, as a strategy to publicly commit agents to presidential objectives. For the purposes of the experiments I have assumed that policy remains constant regardless of presidential involvement, but that is clearly not the case in reality, where principal agent problems abound. Whitford and Yates (2009) discuss this further in reference to drug control policy.

This paper highlights the utility of survey experiment research for answering both new questions on the administrative presidency and longstanding ones of public opinion and attitude formation. It appears that in both questions of presidential power and opinion formation, partisanship predominates, with little room for even party leaders to shape how ideas are received.

3 | How Unilateral Is Unilateral Action? Two Cases of Delegated Proclamation Authority

3.1 Introduction

Presidents take administrative action within a system of “separated institutions sharing power” (Neustadt 1990). As such, they are cognizant of the limits imposed on them by other political actors, particularly Congress, the courts, the bureaucracy, and the public. Scholars, too, have focused on the constraints imposed by other actors, particularly Congress, in attempting to document the political conditions under which presidents are likely to take this type of action (Krause and Cohen 1997, 2000; Moe and Howell 1999a,b; Mayer 1999, 2002; Howell 2003, 2005; Lowande 2014; Chiou and Rothenberg 2014, 2017).

Do these constraints vary with policy domain? It is likely that they do. It is commonly held, for example, that presidents have more freedom of action in foreign than domestic policy (Wildavsky 1966). In addition, many areas of administrative policymaking have been delegated to the president by Congress. Baked into these delegations are varying levels of discretion. Scholars, however, have typically assumed a constant set of constraints, in trying to explain when presidents take unilateral action.

We do this to our detriment. Despite focusing on this question for over two decades, research has determined a multitude of sometimes conflicting answers to how constrained the president is by Congress, ranging from a highly constrained president who acts with tacit approval of majority party medians (Chiou and Rothenberg 2014) to a largely unconstrained president, acting alone as conflict with Congress increases (Christenson and Kriner 2015; Kaufman and Rogowski 2018). There is little consensus on even the simplest of factors,

such as whether divided government increases or decreases executive action (see Bolton and Thrower 2016; Howell 2003).

In contrast, this paper presents a theory that understanding when the president acts depends on understanding issue-specific constraints placed on him – someday her – through congressional delegation. I test this theory by examining the two largest areas of policy handled by presidential proclamation: the creation of national monuments and the setting of tariff rates, both of which were delegated to the president in the early 20th Century.

In land policy, presidents were given a broad grant of authority with no mechanism for additional congressional involvement. The data show that presidents use this power to evade Congress, exhibiting a pattern of use consistent with a strong theory of unilateral action: acting when Congress is weak and internally divided, potentially against its wishes. In trade policy, Congress left itself a continuing role by requiring reauthorization of presidential trade authority. Presidents, then, exhibit a cooperative pattern of proclamation use, acting when Congress is unified and able to participate in trade policy. The data support taking into account policy domain when studying administrative action. This has implications for our descriptive understanding of administrative policymaking, as well as our normative interpretation of the extent to which presidents are acting unilaterally or abusing their powers.

3.2 “Unilateral” Action and the Multifaceted Nature of Presidential Directives

Why should congressional constraints — and, therefore, presidential behavior — vary by policy domain? The central argument of this paper is that because much of executive branch policymaking is delegated by Congress, these delegations can vary in the amount of discretion given to the president. Policy areas also vary in the number of other actors and interests with which the president must contend, those actors’ ability and will to check the president, the network of existing laws (which executive action cannot overturn), and the

alternate tools available for achieving the same ends. President, therefore, may be operating in vastly different strategic environment when they take administrative action. Congress, through delegation, is the chief architect of these strategic environments.

This is not a new idea. Writing in 1952, in a concurring opinion in *Youngstown v. Sawyer*, Justice Jackson argued that presidential power is at its highest when acting with Congress's support and at its lowest when Congress had legislated against him.¹ Congress conditions presidential power.

Congressional delegations are part of a larger shift of responsibility to the executive that is well documented (Neustadt 1990; Schlesinger 2004; Rudalevige 2006; Epstein and O'Halloran 1999). But Neustadt reminds us that, "in form all Presidents are leaders nowadays. In fact this guarantees no more than that they will be clerks" (Neustadt 1990, 7). Understanding how they are able to exercise that responsibility is required to understand the nature, and extent, of presidential power.²

Beyond the broad differences between foreign and domestic policy embodied in the Two Presidencies theory, little work on the president's administrative powers has focused on the differences between policy domains (Wildavsky 1966; Marshall and Pacelle 2005). Instead, research has typically assumed a constant set of constraints on administrative action, at

¹Jackson argued that Truman had exceeded his authority in *Youngstown*, as Congress had explicitly failed to provide statutory authorization for seizure, instead allowing him to seek an injunction against the strike under the Taft-Hartley Act, a move Truman rejected.

²Throughout, I use the term administrative rather than the more typical term unilateral, as it better conveys the type of action taken by proclamation, executive order, or other directive. Although these actions are taken without the active participation of Congress or the courts, and are thus comparatively unilateral, they are taken within a system of shared powers, in which presidents must act cognizant of the limits imposed by other actor and their potential to respond. Administrative actions demonstrate tacit bargaining with other actors. Indeed, this is the key feature captured in most formal and empirical studies. Moreover, when acting administratively, presidents must contend with the 4,000-odd individuals that make up the institutionalized presidency, as well as a vast assortment of departments and agencies with multiple principals, totaling another two million civilians. Administrative policy does not spring from the president's pen alone. Rather, research suggests that directives are often sent up from the bureaucracy to the president for ratification rather than sent down to the bureaucracy as command (Rudalevige 2012). I use the terms administrative and executive interchangeably. I use unilateral to refer to theories of presidential action that have been labeled as such. In my view, unilateral is a label that should be used as a conclusion, if examination of the evidence warrants it, not a label to classify a broad system of actions that may not warrant its connotations.

least in empirical work.³

The typical theory of what is termed “unilateral” action is that the president acts alone to set policy as close to his ideal point as possible, subject to the constraints imposed by other actors, namely Congress and the courts, who can respond by passing bills or issuing rulings overturning executive actions.⁴ In equilibrium, the president moves policy as close as possible to his ideal point without triggering a response that would undo his move. In practice, scholars argue, this gives the president wide latitude to shift policy. Veto players made better off or indifferent by the president will block congressional attempts to reverse. Add to this the collective action problems Congress faces in responding even when sufficiently aggrieved and the president has wide latitude for action.⁵ The important feature of this framework is that it positions the president as an opponent of Congress, often acting against its wishes or at least in spite of its indifference to his agenda. This feature is captured in participant comments, like “stroke of the pen, law of the land, kind of cool.”⁶ This feature is also echoed in the normative concerns invoked in studies of administrative action. For example, Cooper subtitles his book “The use and *abuse* of executive direct action” (Cooper 2014). Even those who take a dimmer view of administrative action’s promise of *power* adopt the same perspective. Chiou and Rothenberg (2014, 2017) structure executive action as a game with Congress, differing from previous work only by finding that the pivotal member is the majority party median rather than the chamber median. Neustadt argues that direct action represents a “failure of attempts to gain an end by softer means” (1990, 24).

Presidential directives, however, do many things. Scholars acknowledge the multifaceted

³Howell (2003) for example includes a discretion term in his formal model but drops this complexity when testing the implications of the model empirically.

⁴More recently, scholars have also added to the model the possibility of costs being imposed by the public on executive action, although there is no mechanism by which the public can challenge the action except through elections (see Christenson and Kriner 2015, 2016, 2017; Reeves and Rogowski 2015, 2016, 2018).

⁵This summary derives most directly from Howell (2003), who formalizes this intuition, placing administrative action in a Krehbiel-style pivotal politics framework (Krehbiel 1998). Chiou and Rothenberg (2014, 2017) begin their modeling at this starting point. And it is typical of the intuition of most theories of unilateral action (e.g. Cooper 2014; Krause and Cohen 1997; Moe and Howell 1999b; Mayer 1999, 2002).

⁶Paul Begalla, aide to President Clinton, quoted in James Bennett, “True to Form, Clinton Shifts Energies Back to U.S. Focus,” *New York Times*, July 5, 1995.

nature of presidential directives, taking pains to separate the strategic actions for which their theories are derived from non-strategic actions that also share the labels executive order, memorandum, and proclamation (e.g. Howell 2003, 2005; Mayer 2002; Chiou and Rothenberg 2014; Lowande 2014; Kaufman and Rogowski 2018; Warber 2006). The full set of executive orders contains policy, routine, and symbolic actions (Warber 2006). For example, EO 11246 created the Peace Corps, while EO 11943 corrected a typographical error in EO 11941.

Administrative actions are multifaceted even within the set that are policy-related. Presidents are both administrators and independent actors (Belco and Rottinghaus 2017). Belco and Rottinghaus (2014), for example, find that executive orders both support and preempt legislation, and they more frequently support, contrary to the view that executive orders are used primarily to evade Congress or make policy when it is unwilling to go along (Belco and Rottinghaus 2014, 418). Viewing directives as solely antagonistic — and issued relative to a constant set of congressional constraints — fails to take full account of their strategic use.

3.3 Why Proclamations?

President Trump twice issued an executive order to prevent citizens of several largely Muslim-majority countries from entering the United States. He issued his third revised travel ban as a proclamation. Why change policy tool? In fact, a proclamation was the appropriate policy tool from the start. Section 212(f) of the Immigration and Nationality Act of 1952, the statute allowing the president to restrict entry into the United States, says he must do so by proclamation.

“Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may *by proclamation* and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate” (8 U.S.C. § 1182(f), emphasis added).

This example illustrates the potential potency of presidential proclamations as well as the

specificity of the domains to which they apply. Proclamations are a useful tool with which to study congressional constraints across different policy domains because their policy content is limited to a few issue areas, each stemming from a congressional delegation. Rottinghaus and Maier identify a “narrow set of uses” for proclamations (Rottinghaus and Maier 2007, 339-340). A proclamation relies on citing statute to have the force of law, and a consistent format makes it easy to identify the issue area and delegation it relates to. Both the broad assertions of executive power occasionally found in executive orders and simple requests for officials to take specific actions are absent here.

Indeed, policy proclamations have the advantage of being relatively self-executing, compared to other tools of administrative policymaking.⁷ National monument protections and changes to the tariff schedule take effect immediately upon the directive being signed. They depend less on bureaucratic compliance than executive orders or memoranda that strive to reinterpret how existing policy should be enforced.

In Justice Jackson’s typology, the policy proclamations studied here exist with clear support from Congress rather than in the “zone of twilight” where much of executive action lies. Researchers have long noted that formal powers are no guarantee of *power* (Neustadt 1990). More recent scholarship has underscored the extent to which executive actions often reflect presidential acquiescence to bureaucratic demands rather than presidential command (Rudalevige 2012) and the uneven way in which orders are implemented by the bureaucracy (Kennedy 2015). Issuing an order is no guarantee it will be followed, but the straightforward nature and clear authority of these proclamations reduce some of the concern over connecting executive actions to outcomes that have entered into the discussion in recent years.

Proclamations are a largely understudied form of presidential directive, but this does not make them less important. Most work on administrative powers focuses exclusively on executive orders (Bolton and Thrower 2016; Chiou and Rothenberg 2014, 2017; Fine and Warber 2012; Howell 2003, 2005; Krause and Cohen 1997, 2000; Mayer 1999, 2002; Warber 2006; Warber, Ouyang, and Waterman 2018). Executive orders were long assumed to be

⁷Thanks to Jon Rogowski for clarifying this point for me.

the most important form of presidential directive, as well as the most easily available to researchers. There is a growing understanding, however, that presidential directives take many forms, which have largely equivalent legal status and exhibit similar patterns of use. Research has broadened to consider memoranda (Cooper 2014; Lowande 2014) and larger collections of directives, including proclamations (Kaufman and Rogowski 2018).

Although most proclamations are ceremonial, denoting national holidays, declaring various awareness days, weeks, and months, or lowering flags to half staff upon someone's death, a significant number of proclamations contain policy content. (I identify 984 from 1945 to 2016). Moreover, the number of significant proclamations is increasing, relative to significant executive orders, so they may be playing an increasingly important role in the president's administrative toolkit (Kaufman and Rogowski 2018).

While they focus on a small number of issue areas, proclamations do not occupy a minor niche of policy. In addition to trade and land policy, proclamations declare national emergencies, sanction other countries, and declare who can enter the United States. Both President Trump's travel ban and trade war have been executed by proclamation. Nor is the substantive importance of proclamations a recent phenomenon. Washington's Neutrality Proclamation and Lincoln's Emancipation Proclamation are two of the most notable presidential acts in United States history. In the modern era, Nixon's wage and price controls and Ford's pardons of both President Nixon and Vietnam draft evaders were handled by proclamations (Rottinghaus and Maier 2007, 339).

A House of Representatives report from 1957 describes the difference between proclamations and executive orders as "more one of form than substance" (quoted in Dodds 2013, 7). And the courts have long recognized proclamations as equal to executive orders (*Wolsey v. Chapman*, 101 U.S. 755 (1880)). Proclamations are published alongside executive orders in the Federal Register.⁸ This equivalence is backed up by recent research. Dodds argues that executive orders, memoranda, and proclamations, the three most common forms of

⁸The Federal Register Act of 1935 requires that both executive orders and proclamations be published in the Federal Register. An executive order, E.O. 11030, governs the preparation of both executive orders and proclamations (Relyea 2008).

presidential directive, are similar in justification and usage (Dodds 2013, 10). Kaufman and Rogowski (2018) incorporate proclamations, along with other available memoranda and orders, in their analysis of unilateral actions. Researchers have frequently argued for the broadening of the data used to examine the president’s unilateral powers, despite the continued focus on executive orders (Kaufman and Rogowski 2018, 9).

What makes a proclamation unique? Several sources argue that executive orders concern the behavior of those inside government and proclamations concern those outside (Dodds 2013; Relyea 2008). However, this is not uniformly true. This argument may be in reference to ceremonial proclamations, which often exhort the public to join in commemorating a particular day. Policy proclamations, however, particularly the two areas under study here, address government action, although often with consequences for the public.⁹

The 1957 House report cited above notes that executive orders are essentially self-defining, saying that, “in the narrower sense Executive Orders are written documents denominated as such” (U.S. Congress, House of Representatives, Committee on Government Operations 1957, quoted in Cooper 2014, 21). The same is true for proclamations. In fact, the preparation and publication of proclamations and executive orders is managed by the same process, set out in the same executive order.

More practically, proclamations are proclamations (rather than executive orders or other directives) because statute says they should be. The statutes delegating power to the president specify the type of directive he may issue under that authority. Again, President Trump’s travel ban, twice issued as an executive order before being reissued as a proclamation, is the exception that proves the rule. As noted above, this feature is useful for the current study, as the policy domains under investigation are solely handled by proclamation, allowing for an exhaustive dataset of policy-specific directives.

⁹Trade proclamations make adjustments to internal government rules, like the generalized system of preferences, although with profound consequences for businesses and consumers. Some trade proclamations may approve or deny import relief to an industry. Certainly, proclamations may be targeted at those outside of government, but this is not unique to proclamations. Rottinghaus and Warber (2015) use both ceremonial executive orders and proclamations to explore constituent outreach. Lowande, Jenkins, and Clarke (2018) investigate trade proclamations as an example of particularist politics.

This specificity extends to proclamation structure. Cooper defines a proclamation as “an instrument that states a condition, declares a law and requires obedience to it, recognizes an event, or triggers the implementation of a law (by recognizing that the circumstances in law have been realized)” (Cooper 2014, 172). This unusual definition gives a sense of the form that proclamations take. Each typically begins with a series of findings or determinations, followed by proclaiming some action be taken. It is this structure that allows me to easily categorize them by topic and determine that they have policy content.

3.4 Congressional constraints in Land and Trade Policy

In December 2016, less than a month before leaving office, President Obama signed a proclamation declaring 1.35 million acres of land in southern Utah the Bears Ears National Monument. In March 2018, President Trump issued proclamations imposing a 25 percent tariff on steel and a 10 percent tariff on aluminum, beginning what many observers have called a trade war. Each act provoked significant rebukes, including from the presidents’ own parties, and cries of executive overreach.¹⁰ Of Bears Ears, one local Utah town council member asked, “What object is being protected that requires a landmass larger than Delaware to protect it?” (Lyman 2016). Tom Adams, the director of Utah’s Office of Outdoor Recreation said, “We only have 33 percent of our land to fund everything from roads to schools. Taking another 1.35 million acres out of that — that’s a big chunk of land the community didn’t have a say in” (quoted in Buhay 2017). House Speaker Paul Ryan said of the trade proclamations, “I disagree with this action and fear its unintended consequences....We will continue to urge the administration to narrow this policy so that it is focused only on those countries and practices that violate trade law” (quoted in Lynch, Rucker, and Werner 2018). Each action seems like an equally potent use of “unilateral power,” but they derive from dif-

¹⁰Democratic opposition to Bears Ears is hard to find, but occurred locally in Utah. Rebecca Benally, a Democratic commissioner of San Juan County, where Bears Ears is located, opposed the designation, even writing a resolution against it. See Darryl Fears, “As Zinke listens in on the monumental divide at Utah’s Bears Ears, natives feel unheard,” *The Washington Post*, May 14, 2017, and <http://utahdemocrats.org/our-dems/rebecca-benally/>.

fering grants of authority. Delegations from Congress vary in the temporary or permanent nature of the delegation, the scope of authority delegated, and the extent of its dependence on future legislation, such as for funding or ratification. Below, I discuss these qualities of delegated authority for the two policy areas.

3.4.1 Land management by proclamation

Presidential authority over national monuments derives from a single, permanent delegation of authority, with few practical limits. Any land under federal control can be converted to a national monument by proclamation, providing immediate protection from resource extraction, settlement, and other degradation. Monument proclamations provide an alternative, but not a replacement, to existing methods of conserving land via legislation, such as creating national parks.¹¹ They exhibit similar strengths and weaknesses as other tools of executive action, such as executive orders. As such, we should expect their use to follow similar patterns. Proclamations can be used when congressional and presidential preferences diverge, either as a substitute or the beginning of a future legislative process (as addressed in Chapter 1), or when Congress is simply unable or uninterested in legislating in this area.

The Antiquities Act of 1906 gave the president authority to create national monuments from federal lands, in order to protect “objects of historic or scientific interest” (16 U.S.C. § 431-433). At the time, the law was aimed at solving the immediate crisis of protecting Native American sites, particularly in the southwest, from being raided by private collectors (Schlossberg 2017). Concern over the preservation of Native American “antiquities”, as they were known, had become a political issue in the 1880s. Archeologists were increasingly turning their attention to the American southwest, particularly the sites of the Pueblo

¹¹The first national park was created at Yellowstone in 1872 and signed into law by President Ulysses S. Grant. This was followed by the creation of five additional parks (Sequoia and Yosemite in California, Mount Rainier in Washington, Crater Lake in Oregon, and Wind Cave in South Dakota) before the signing of the Antiquities Act in 1906. Congress has continued to establish national parks by legislation, including, most recently, Pinnacles National Park in California (previously a national monument), which became a park in 2013 and Gateway Arch National Park in Missouri (previously a memorial) which became a park in 2018). A complete list of the units in the National Park System is available at <https://www.nps.gov/aboutus/national-park-system.htm>.

Indians, and found areas badly damaged by “relic hunters” (Sellars 2007). One archeologist, Adolph Bandelier, described the Pecos Pueblo site as “thoroughly ransacked” (quoted in Sellars 2007, 275). His report attracted political attention from Senator George F. Hoar of Massachusetts, who recommended that the Senate take action to protect archeological artifacts, but no action was taken.

Initial attempts to protect these sites was done piecemeal and by legislation. Congress took action, again backed by Senator Hoar, to protect Casa Grande, one Pueblo site, between 1889 and 1892. For each protected site, however, many more were subject to excavations and looting by both actual archeologists and those motivated by commercial gain. A controversy involving the shipping out of the United States of artifacts by Swedish-Finnish scholar and nobleman Gustaf Nordenskiöld made clear that the US lacked legal authority to stop the removal of artifacts (Sellars 2007, 278).

Speed seemed to be the impetus for handing power to the president. Representative John F. Lacey (R-IA) sponsored the bill. He was a conservationist with long standing interest in preservation, having sponsored conservation bills that bear his name (Lacey Acts) in 1894, 1900, and 1907. He, in turn, seemed to be motivated by the advocacy of anthropologist Edgar Lee Hewett, who as chair of a committee formed by the American Anthropological Association and the Archaeological Institute of America to promote antiquities preservation, wrote the bill introduced by Lacey (Sellars 2007, 292). Hewett had previously invited Lacey to visit archeological sites in New Mexico in 1902 and see the crisis first hand (Sellars 2007, 291; Lee 1970, Chapter 6).

The General Land Office, the office in the Department of Interior tasked with protecting these sites, also favored executive proclamation authority to reserve land as monuments. As early as 1900, Binger Hermann, Commissioner of the General Land Office had emphasized “the need for legislation which shall authorize the setting apart of tracts of public land as National Parks, in the interest of science and for the preservation of scenic beauties and natural wonders and curiosities, by Executive Proclamation, in the same manner as forest reservations are created” (quoted in Lee 1970, Chapter 6).

At the time, opposition to the Antiquities Act centered on the scope of federal power, of which the balance of power between the president and Congress was an important component but not cited as the principle concern. By all accounts, this was not an authority that President Theodore Roosevelt personally sought, but was instead promoted by archeologists and anthropologists, conservationist members of Congress (chiefly Lacey), and the Department of the Interior's General Land Office (Sellars 2007). Westerners opposed the creation of new presidential authority because of the increase in federal control of western lands it would bring. Alternative legislation to deal with the antiquities crisis favored by representatives of western states proposed simply prohibiting the damaging or removal of antiquities, without setting aside land, or limiting monuments to 320 acres (Lee 1970, Chapter 6). The solution in the bill ultimately adopted was to limit monuments to "the smallest area compatible with proper care and management of the objects to be protected," although this ultimately had little effect on presidential power (16 U.S.C. § 431-433).

The Antiquities Act was passed during an era that saw significant environmental and conservation legislation, not all of which delegated to the president. The 1906 Mesa Verde Act protected several Pueblo antiquities equally threatened by pot hunters as a national park. It was passed the same month as the Antiquities Act. The era also saw the creation of Civil War battlefield parks and the creation of the National Park Service to manage the national parks in 1916 (Sellars 2007). In 1906, Republicans held majorities in both houses of Congress and the presidency. The 59th Congress saw other major legislation passed like the Pure Food and Drug Act of 1906.

Nonetheless, presidential delegation proved to be the critical component of the act, with no practical limits on the scope of presidential power to create monuments. The Antiquities Act was specifically designed to give power to the president to accomplish a goal "in a way that an often slow-acting Congress could not" (Woodall 2014). The act requires no consultation with state or local officials, or Congress. Although the act attempts to place size restrictions, saying that the monument must be the smallest possible size necessary to protect the important features, there is no mechanism by which Congress or any other actor

can enforce a limit. Rather, courts have repeatedly upheld the president's determinations, exercising only limited review over arguments that lands were of historical or scientific import (Squillace 2003).¹² Reversing any use of the act, or the power itself, would require new legislation and face a likely veto.

The legislative history suggests some of the drafters also had in mind a broad power to designate areas solely for their natural beauty and preservation. Hermann, the Commissioner of the General Land Office, in particular, had previously favored much more expansive legislative language (Squillace 2003, 477-482). Although the 1906 bill was narrowly tailored to achieve passage, the inclusion of language to protect "objects of historic or scientific interest" rather than simply Native antiquities allowed for broad interpretation. Indeed, the first use of the act was not, ironically, to protect a Native American site but to protect Devil's Tower, a unique rock formation in Wyoming, which was justified in terms of its scientific importance. Further, Sellars (2007) argues the Antiquities Act should be seen as part of a broad array of conservation efforts, which on the whole was not chiefly concerned with archaeological sites .

Despite the expansive grant of presidential authority, the use of proclamations to create national monuments is not without constraints. Congress may withhold funding. It may attempt to respond to abuses of power with new legislative constraints. And future presidents may reverse the actions of previous presidents. Indeed, each of these has come to pass. Congress withheld funding for the C&O Canal monument created by Eisenhower (Squillace 2003, 500). In response to FDR's designation of Jackson Hole National Monument, which drew the ire of Wyoming representatives, Congress legislated a new restriction barring the president from using the Antiquities Act ever again in Wyoming.¹³ President Trump issued proclamations significantly limiting the size of Bears Ears and Grand Staircase-Escalante,

¹²See, for example, *Cameron v. United States*, 252 U.S. 450 and *Cappaert v. United States*, 436 U.S. 128.

¹³Congress was able to get President Truman to sign this restriction into law in exchange for establishing Grand Teton National Park, of which the monument became a part.

two monuments created by presidents Obama and Clinton.¹⁴ These constraints should be familiar to students of executive orders (Howell 2003; Thrower 2017).

Examinations of individual cases suggest that presidents have acted via proclamation to create monuments in response to failed attempts to get the same via legislation. President Carter proclaimed 17 monuments in Alaska after Congress failed to act on a bill to protect the land in time before a deadline was reached that would have opened the land to development (Squillace 2003, 502-503). President Clinton created Grand Staircase-Escalante by proclamation after the administration was unable to find a legislative solution for the lands (Belco and Rottinghaus 2009, 609). For Belco and Rottinghaus (2009), who examine the creation of Grand Staircase-Escalante in detail, these examples demonstrate that delegated power can be used by a president to create policy as an alternative to legislation, often defying congressional preferences. Grand Staircase-Escalante generated significant opposition in Congress, with attempts to rein in delegated presidential authority over monument creation, although none succeeded (Belco and Rottinghaus 2009, 610).

In addition, land proclamations exist in conjunction, and as part of a bargaining process, with legislative action. Many monuments were later converted to National Parks by legislation, including Jackson Hole, despite the initial opposition it provoked in Congress (Schlossberg 2017).¹⁵ During the Clinton administration, Congress also agreed to designate some lands legislatively, rather than have them become monuments by presidential decree (Squillace 2003, 511). This suggests that there is some trade off between the two tools, with proclamations potentially able to move presidents closer to their ideal points but with legislation offering some advantages that presidents may prefer, all else equal.¹⁶

¹⁴Although this was the most drastic reduction ever undertaken, and raised questions about whether presidents have the power to reverse monument proclamations, presidents have reduced the size of monuments before. President Wilson reduced Mount Olympus National Monument in Washington and Franklin Roosevelt reduced the size of the Grand Canyon National Monument (Turkewitz 2017).

¹⁵For a complete list see <https://www.nps.gov/archeology/sites/antiquities/monumentslist.htm>.

¹⁶Bills introduced in the 104th Congress offered to reserve significant amounts of land in Utah as wilderness area, but Clinton administration officials opposed the bills because they left other areas unprotected. The administration believed it could protect more land by acting administratively, although this proved to be a controversial alternative (Belco and Rottinghaus 2009, 609).

Why have monuments been controversial? In terms of process, disagreements have centered around opposition to presidential power at the expense of Congress and Federal power at the expense of states. Alaska Representative Don Young and Senator Ted Stevens both argued that the federal government was at “war” with Alaska when Carter declared monuments there in 1978 (Cole 2013). Carter was even burned in effigy during protests (Raffensperger 2008; Cole 2013). In terms of substance, disagreements generally stem from the fact that monument designation precludes extractive use of the land. The creation of Grand Staircase-Escalante, for example, prevented coal mining in one of the largest known coal reserves in the United States (Raffensperger 2008). Lack of consultation with local officials has given presidential actions an even more imperial appearance. Clinton had notified neither the Utah governor nor the Utah congressional delegation before announcing Grand Staircase-Escalante (Belco and Rottinghaus 2009, 209; see also Raffensperger 2008). There is clear ideological content to the controversy over monuments, with monument proclamations generally seen as liberal environmental actions, although presidents of both parties have issued monument proclamations. The Carter administration argued that the monuments prevented Alaska from becoming “a private preserve for a handful of rape, ruin and run developers” (Interior Secretary Cecil Andrus, quoted in Squillace 2003, 504).

In sum, land management by proclamation offers similar advantages and costs as policymaking by other presidential directives like memoranda and executive orders. Their use, therefore, is likely to follow the typical logic set out in the “unilateral” politics literature. Presidents are likely to use land proclamations when the president’s position differs significantly from the position of Congress, or when Congress is weak and unable to respond (either to legislate in support of the land or against it) (Howell 2003). Land proclamations exist as an alternative to legislation, offering advantages in speed of execution, at the cost of durability, comprehensiveness, and perhaps political capital (see Chapter 1; Reeves and Rogowski 2018). They also exist as part of an extended interaction with Congress, similar to some executive orders, becoming codified by legislation at future bargaining opportunities.

3.4.2 Trade policy by proclamation

Trade policymaking by proclamation, in contrast, stems from a revocable delegation, making it more difficult for the president to act contrary to congressional wishes. It also depends on congressional action to generate additional proclamation opportunities, and unlike national monuments, trade proclamations are not an alternative to a legislative pathway with the same end. The result is that trade policymaking by proclamation should follow a more cooperative pattern.

Congress gave the president the power to reach bilateral trade agreements and to lower tariffs by proclamation in 1934 with the Reciprocal Tariffs Agreement Act (RTAA), but Congress made these powers subject to three-year renewals. As with the Antiquities Act, Congress's immediate goal was speed, particularly in concluding negotiations on agricultural trade agreements that might help end the Depression.

Prior to the RTAA, Congress had granted limited discretion over tariffs to the president beginning in 1890, culminating in 1922 with delegating the ability to raise and lower certain rates by proclamation, subject to recommendation by the Tariff Commission (Lowande, Jenkins, and Clarke 2018, 269). Trade was traditionally the domain of Congress and an important domain of distributive politics as well as the primary source of federal revenues prior to the enactment of the income tax in 1916. Congress had long recognized the efficiency that could be gained by delegating to the president, by preventing “over-logrolling” that resulted from the distributive politics of negotiating tariff rates in Congress (Epstein and O’Halloran 1999, 223, quoted in Lowande, Jenkins, and Clarke 2018, 268). According to Irwin (1998), the international nature of the Great Depression, which saw foreign nations increase their trade barriers, necessitated *reciprocal* trade agreements rather than a reduction in U.S. tariffs alone. The need to negotiate quickly with other countries seemed to be what pushed Congress to complete its delegation of trade to the president.

At the time, this was a highly partisan and controversial delegation of power. The act, along with renewals in 1934 and 1937, passed along party lines (Irwin 1998, 23). The 1936

Republican platform deemed the RTAA “destructive” for “flooding our markets with foreign commodities” and “dangerous” for its lack of congressional approval (quoted in Irwin 1998, 30). Senator Arthur Vandenberg (R-MI) called it “fascist.”

The key conflict, however, was more institutional than ideological. Perhaps surprisingly, the debate over the RTAA attracted “virtually no participation by interest groups” (Irwin 1998, 25). The RTAA did not promise any particular tariff changes, only that such changes could be implemented by the president. Despite initial opposition to lower tariffs, the Republican party came to view free trade as beneficial after World War II, as American export industries were poised to benefit from trade in a world where Asian and European industry had been decimated. Both labor and industry held similar views. Further, Anticommunist internationalism helped cement support for lowering tariffs (Irwin 1998, 38).

Concern about institutional prerogatives over trade policy prompted Congress to include safeguards, chief among them that trade authority would expire in three years. The three year expiration on the president’s authority “strengthened Congress’s hand because the threat of nonrenewal of negotiating authority would keep the executive branch politically sensitive to the legislature’s concerns” (Irwin 1998, 341). Unlike the difficulty of challenging a monument proclamation or executive order, trade authority routinely returned to Congress, allowing for the assessment of presidential performance. Anticipating this, a president should moderate his actions. In addition, and unlike with land policy, the act specified additional procedures designed to protect industry from trade liberalization. Scholars have argued that presidents are generally likely to be more in favor of free trade than Congress (Nielson 2003), but safeguards were embedded into the delegation to address this tension. Tariffs were to be reduced on a product-by-product basis, as part of a reciprocal agreement with other nations. Moreover, the president was required to justify reductions, as the act required showing that reductions will not result in “in material injury to any group of American producers” (quoted in Aaronson 1999; see also Zampetti 2006).

Later delegations continued the practices of periodic congressional involvement and guardrails on the extent of available actions (Irwin 1998, 348). The Trade Expansion Act

of 1962 allowed the president to negotiate multilateral agreements as well as bilateral agreements, but included additional protections for industry (Lowande, Jenkins, and Clarke 2018, 269). Carve outs exist for certain industries, for example restrictions on petroleum tariffs without congressional approval. In addition, most proclamations reference an investigation or recommendation made by the US Trade Representative, the Secretary of Commerce, the International Trade Commission, or another agency, suggesting that there is a deeper web of expertise and interest group action on which presidential decision making lies.¹⁷

The Trade Act of 1974 further broadened presidential powers, allowing him to negotiate to eliminate non-tariff barriers as well as tariff rates, but reinserted Congress by requiring congressional approval of trade deals, using a time-limited system called “fast track” and later “trade promotion authority”, which limited debate and ensured an up or down vote on passage (Fergusson and Davis 2018). Lowande, Jenkins, and Clarke (2018) note that Congress “provided itself with a formal role in the monitoring of executive action” (Lowande, Jenkins, and Clarke 2018, 270). This trade negotiation has been renewed several times, but with occasional lapses. Reauthorization is not a matter of course. For example, it was inactive between 1994, after the passage of NAFTA, until 2002, and again from 2011 until 2015.¹⁸

To be fair, trade offers the president many of the same “first mover advantages” theorized for other administrative powers (Howell 2003). He may choose to defy congressional will, paying a cost for an immediate policy gain. As Lowande, Jenkins, and Clarke argue, “the president has direct and observable influence [on trade], and opposing political forces in Congress, the Judiciary, and the mass public may be less likely to contest direct action” (Lowande, Jenkins, and Clarke 2018, 268). While it may be that trade delegation offers

¹⁷This is true even of Trump’s trade war tariff increases, which justify their national security concerns based on a report from the Secretary of Commerce.

¹⁸Tariffs can still be reduced by the president alone using proclamations. However, eliminating non-tariff barriers, which are trade barriers enshrined in other parts of law, such as environmental or safety requirements, requires changing legislation and, therefore, cannot be achieved by the president alone. (Proclamations, like executive orders, have the force of law but cannot change existing statute). The solution to addressing non-tariff barriers was to approve trade deals via legislation under this expedited process.

presidents opportunities to use their influence (through a first mover advantage), it can still be the case that trade offers the president *less* unilateral power than do other areas of delegated authority with fewer congressional constraints, and fewer required cooperative actions.

Despite the 1974 act returning trade to a partially legislative realm, presidents must still implement trade agreements by proclamation for them to take effect. There is no timetable under which they must do so (Fergusson and Davis 2018). Presidents continue to issue proclamations relating to trade that do not stem directly from trade agreements that require implementing legislation. Any principal-agent relationship offers the agent opportunities to pursue their own preferences, more so as informational asymmetry and uncertainty about the state of the world increase (Kiewiet and McCubbins 1991).

Presidents retain a great deal of power in negotiating and then implementing trade deals, but in comparison to other administrative tools, trade proclamations are likely to be the result of a less unilateral process. In fact, some scholars have concluded the president acts as an agent of Congress rather than a unilateral actor. As Congress has continued to legislatively delegate trade power to the president, legal scholar Kathleen Claussen argues that, “Unlike other areas of international law, the shift in authority between the branches in trade has tended toward escalated congressional involvement rather than executive dominance” (Claussen 2018, 318).

There are two additional factors that distinguish trade from other areas of administrative policymaking. The first is that trade proclamations are not an alternative pathway to legislative output. Theories of administrative action situate it as an alternative to legislation, often explicitly assuming a choice between seeking legislation and pursuing executive action (Howell 2003, 96; Mayer 2009; Moe and Howell 1999b, 132). Arguments go so far as to say that administrative action constitutes “a direct challenge to the strategic [i.e. Neustadtian] presidency” (Mayer 2009, 429). It follows from this work that when Congress is strong and aligned with the president, he prefers legislation. This either/or construction does not hold for trade. There is no direct legislative alternative to proclamations changing tariff rates.

One side of the unilateral calculus — the ability to achieve the goal by legislation — is absent in the present case. The choice to issue a trade proclamation is less likely to closely depend on congressional strength in the way unilateral actions have been theorized and, so far, seen empirically.

The second, and perhaps more compelling, distinction goes further. Trade proclamations may correlate *positively*, rather than negatively or not at all, with legislative productivity for the reason that legislation begets implementing proclamations. Two examples should illustrate. Congress passed NAFTA implementing legislation on November 20, 1993, which was signed by President Clinton on December 8, 1993. After that, NAFTA appears as the topic of 13 proclamations in my data. Clinton issued a proclamation implementing the agreement soon after signing the legislation, on December 15, 1993. Clinton, George W. Bush, and Barack Obama issued 14 more proclamations from 1995 to 2009 relating to NAFTA, either to modify the Harmonized Tariff Schedule (HTS), adjust rules of origin under the deal, or implement an accelerated schedule of duty reduction. The African Growth and Opportunity Act of 2000, signed on May 18, 2000, led to an entirely new set of trade proclamations eliminating tariffs with African countries on textiles and apparel (Rottinghaus and Maier 2007, 340) In these cases, president may still have been able to depart from Congressional wishes, but as measured as actions across time, they co-vary with legislation.

Nonetheless, previous grants of authority coexist with newer authority and TPA-based implementation. President Trump’s proclamation implementing tariffs on steel and aluminum imports references authority from the Trade Expansion Act of 1962, citing national security concerns.¹⁹ Trade is multifaceted. On the whole it appears to be a more cooperative enterprise than other policy areas of administrative authority, even other areas delegated to the president. In the terms of Belco and Rottinghaus’s (2017) typology of executive action, presidents are both independent actors and administrators. Executive action can either complement legislation or go it alone. Trade proclamations embody aspects of both roles,

¹⁹Proclamation 9705, available at <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states/>

to a greater degree than presidential proclamations covering land conservation. As trade is by far the largest category of policy proclamations and one of the most consequential areas of delegated policymaking, understanding that congressional constraints differ meaningfully is worth explicating and testing empirically.

3.5 Data and Empirical Strategy

3.5.1 Hypotheses

I have sketched the histories and politics of the two policy areas in order to argue that understanding the instances in which presidents will take administrative action requires understanding the policy domain in which the president acts, particularly because congressional delegations of authority vary significantly in the constraints Congress is able to impose. I now turn to testing this theory empirically, using a setup typical of the unilateral literature. I aggregate issuances of proclamations into counts and regress the counts on political variables likely to predict their use. I do this separately for trade and land. As argued above I expect the same variables to predict different uses of proclamations in each domain. I expect land to be the more prototypical unilateral domain. Use of proclamations to create national monuments should conform to the “strong” theory of unilateral action (Mayer 2009). More should occur when Congress and the president have conflicting views and more should occur when Congress is gridlocked, internally polarized and therefore unable to act either for or against the president’s objectives (Howell 2003).

Two papers foreshadow the current argument. Rottinghaus and Maier (2007), who produce the first catalog of the policy content of modern proclamations, suggest, based on a descriptive and qualitative view of the data, that presidents exercise trade power in coordination with Congress, and that they exercise federal land management against the will of Congress. In a second paper, Rottinghaus and Lim (2009) test whether trade proclamations conform to the expectations of the unilateral politics literature. They suggest that trade proclamations fall into a mixed category of “delegated unilateral powers,” and their

results suggest to them the importance of economic factors and (they assume) congressional wishes, rather than the typical political factors, in explaining their use.²⁰

The ability to issue a proclamation as an alternative to seeking equivalent legislation, such as a national park, suggests that presidents will pursue administrative action when Congress is unwilling or unable to act on the president's goals legislatively. Presidents are likely, all else equal, to prefer legislation to executive action, as it is more durable and potentially more expansive (as I argue in Chapter 1). When Congress is aligned with the president, and able to legislate effectively, presidents should prefer legislative action. Land proclamations thus are likely to follow the logic of the "either/or" hypothesis (Howell 2003).

Trade policy is different. First, it lacks an "either/or" legislative alternative. Trade policy is uniquely made in the shared process outlined above, wherein the president acts as Congress's agent. Second, presidents engage in a repeated game with Congress on trade. Acting against congressional wishes may jeopardize future grants of authority to negotiate trade deals.²¹ Third, making trade policy by proclamation requires, in some instances, participation by Congress to approve trade deals by legislation, which are then implemented by proclamation.

Trade should, therefore, appear relatively more cooperative. Use of trade proclamations should occur more frequently when the president and Congress share close preferences (as acting when conflicted may prompt future costs) and when Congress is internally unified (because a Congress able to legislate provides more opportunities for trade proclamations to be issued as implementation).

I operationalize these expectations with two hypotheses, each capturing a different element of Congress's relationship with the president and ability to legislate.

²⁰Their theory is reminiscent of the current theory, but their results do not directly speak to it because of an unusual set up that regresses whether each proclamation takes a certain form (modifying a rule, creating a new rule, or being protectionist) on political variables, none of which they find significant (Rottinghaus and Lim 2009, 1013).

²¹Taking executive action could always be seen as a repeated game, but the barriers for congressional response in the trade case are significantly lower as there are automatic and anticipated opportunities to revisit presidential trade powers.

H1: Gridlock in Congress will lead to an increase in land proclamations and a decrease in trade proclamations.

H2: Conflict with Congress will lead to an increase in land proclamations and a decrease in trade proclamations.

I define *conflict* between the president and Congress as the difference in DW-Nominate Common Space scores between the president and congressional median. I define legislative *gridlock* as the difference in DW-Nominate Common Space scores between party medians in Congress.

It may appear in the previous discussion that the theory is more heavily weighted toward conflict than gridlock. However, the decision to issue a proclamation is not only influenced by active opposition from Congress but also by the internal conditions within Congress that make legislation more or less likely to be produced, regardless of its political direction. When Congress is internally gridlocked, monument designation is a more viable path to protecting land than designating it a national park, which requires legislation. It is also less likely that Congress will respond to executive action to overturn it or to extract other costs, if gridlock is high, independent of the level of conflict between Congress and the president. Similarly with trade, even if there is no ideological conflict between the president and Congress, an internally gridlocked Congress will make the passage of trade deal implementing legislation less achievable and authorization of negotiating authority more likely to lapse, putting downward pressure on the need for many trade proclamations.

Additional political factors may determine a president's desire to pursue executive action. I control for the president's party, as Democratic and Republican presidents may have different views as to when to issue proclamations, particularly for land policy, to the extent that declaring national monuments is viewed as liberal.

Recent studies have highlighted the public as a potential check on executive action in addition to other branches of government (Christenson and Kriner 2015, 2016, 2017; Reeves

and Rogowski 2015, 2016, 2018; Reeves et al. 2017). I operationalize this by including a variable for public mood (Stimson 1991) which tracks the extent to which the public supports liberal or conservative policy. Public mood is likely to affect proclamation issuance conditional on presidential party, with Democrats more likely to act during liberal moods and Republicans more likely to act during conservative moods. Therefore, I include an interaction between party and mood.

Several factors may effect the president's ability to wield power generally. I include a control indicating years in which the U.S. is at war, as wartime tends to increase presidential influence relative to other branches of government.²² I also control for government spending (as a percent of GDP) as this approximates the size of the federal government, which might proxy for the scope of the president's administrative responsibilities.

Several previous studies suggest that presidents are more likely to take administrative action at the beginning of their administration (to set the tone or reverse decisions from the previous party) or at the end of their time in office (as attempts to efficiently cement their legacy). Therefore I include indicators for the first year of an administration that represents a change in the party controlling the White House (administration change) and for the last year of a president's term (lame duck).

Finally, I include a time trend to control for any unaccounted-for secular changes in presidential power over the period of study.²³

The dependent variables in the following analyses are yearly counts of land and trade proclamations from 1945 to 2016. I test my two hypotheses using negative binomial regressions of these yearly counts on the two main independent variables, *conflict* and *gridlock*, and the several controls.

²²I code the US as being in 1945 (World War II), 1951-1953 (Korea), 1964-1973 (Vietnam), 1991 (Iraq), 2001-2003 (Afghanistan and Iraq).

²³These modeling choices are largely borrowed from Kaufman and Rogowski (2018). The choices are similar to those made throughout this literature. Conflict and gridlock are notable improvements over using variables like majority size and divided government, as they capture continuously and separately, conflict within Congress and between Congress and the president. And they take into account the president's preferences beyond his party.

3.5.2 Coding proclamations

Testing these hypotheses requires isolating policy proclamations for land and trade, which I do by coding the texts of all proclamations and aggregating land and trade proclamations into yearly counts. Ceremonial and policy proclamations are published as a single series in the Federal Register. I scraped the titles, issuance dates, and texts of proclamations issued from 1945 to 2016 from Woolley and Peter’s *American Presidency Project* website, which contains an easily accessible and complete text-based repository of the documents.²⁴ To be included in this sweep, a proclamation was any document labeled as such and numbered. Because proclamations are numbered consecutively when they are published in the Federal Register, I am able to confirm that the data contain all available proclamations.²⁵

As with other studies of presidential directives, separating policy-significant documents from ceremonial and routine ones is a critical pre-processing step. For executive orders, this has typically involved relying on third-party citations (i.e. mentions in the media or by Congress or the courts) (Mayer 2002; Howell 2003, 2005), or, more recently, more sophisticated item response theory or textual methods (Chiou and Rothenberg 2014, 2017; Kaufman and Rogowski 2018). The consistent structure and small set of topics handled by proclamation makes this unnecessary. I first code documents as ceremonial or policy, following guidelines modified from Warber (2006).²⁶ As Warber writes, “an order is a policy initiative when its main function is presidential lawmaking” (Warber 2006, 143). I define this broadly as any proclamation related to a substantive policy area. Unlike with executive orders or memoranda, the divide between ceremonial and policy is stark for proclamations,

²⁴The American Presidency Project: <http://www.presidency.ucsb.edu/>

²⁵There are, of course, some errors in the numbering scheme employed by the Federal Register. There is one unnumbered proclamation, issued between proclamations 5068 and 5069. Two proclamations were each numbered 9364 and 9637. There is no proclamation 9494, which I confirmed by checking in the Federal Register. Having captured every consecutively numbered proclamation, plus a few additional ones, leads me to conclude that I have captured every publicly-available proclamation published in the Federal Register.

²⁶Warber included three categories: policy, routine, and symbolic. Under his coding, about a dozen proclamations would have been coded as routine. These included minor adjustments to previous policy-related proclamations. Because there is such a stark difference between ceremonial and policy-related proclamations, for parsimony I recoded these as policy proclamations.

as each proclamation references statutory authorization and makes concrete policy change. There are no proclamations exhorting bureaucrats to reduce regulations “to the extent legally permissible”, as is common in executive orders. There is little need here for more complicated probabilistic, expert, or continuous codings. Most proclamations could be coded by title alone.²⁷

By construction, this coding scheme does not include a “routine” category, as found in Warber (2006). I also sidestep the question of whether a proclamation is “significant” (Chiou and Rothenberg 2014, 2017; Howell 2003, 2005). Clearly, a trade proclamation may make minor changes to the tariff schedule for technical reasons or impose billions in costs to foreign (or domestic) manufacturers. My present purpose is to examine areas of delegated administrative policymaking in their entirety. Each proclamation citing statutory authority makes some policy change and is therefore included. As Lowande, Jenkins, and Clarke argue, each modification “bears the president’s signature — as such they are comparatively ‘unilateral’” (2018, 271). Whether congressional constraints or other conditions influence the *content* of policy rather than just its frequency is an important question I save for future research.²⁸ To the extent that my data contain noise from non-strategic proclamations, it should bias downward any potential findings.

Policy proclamations set specific policies of the federal government. This includes determinations on trade, sanctions, refugee numbers, import relief, pardons and clemency, the creation of national monuments and other land management, declarations of national emergencies, and changes to various waivers, procedures, and definitions. Ceremonial proclamations include commemorations of various days, weeks, and months honoring various causes, proclamations exhorting private action in service to a cause, such as volunteerism, notifications and commemorations of deaths and holidays, and proclamations raising and lowering

²⁷Those that could not were read in full.

²⁸Whether different dynamics exist for the most significant proclamations is a question worth further study, as Chiou and Rothenberg (2014) found slightly different behavior with higher cutpoints of significance when looking at executive orders. Nonetheless, even studies using continuous measures of significance must ultimately adopt a cutpoint from which to begin counting significant actions.

the flag.

After coding proclamations as ceremonial or policy, I then categorized the policy proclamations by topic, identifying trade, land, and other areas. The additional categories were constructed flexibly but result in a relatively parsimonious categorization, given the limited scope of proclamation policy. The vast majority focused on trade, with titles such as “temporary duty increase,” “amending the generalized system of preferences,” “to make changes to the harmonized tariff schedule,” and “to modify the list of beneficiary developing countries under the trade act of 1974.” The second largest category was land, again mostly concerning the creation of national monuments.²⁹ These two categories have previously been identified as the largest categories of proclamation policy by Rottinghaus and Maier (2007). The remaining pardons, declarations of national emergencies (or the waiving of certain requirements given a national emergency), and proclamations dealing with international relations (including setting immigration numbers and restrictions) were also readily identifiable categories. An other category, which I have titled “government/procedural” rounds out the list of categories. In this, I have placed documents dealing with when and where to appear to register for the selective service, as well as definition proclamations that seemed to have no other home. These chiefly dealt with definitions concerning bird migration regulations and categorizing certain substances as opiates, and they leave the data by the end of the Truman and Eisenhower administrations respectively.

The results of this coding exercise are displayed in Table 3.1. Of the 6,925 proclamations signed by Presidents Truman through Obama, 5,941 were ceremonial and the remaining 984 policy-related. Of the policy proclamations, the largest category was trade (609 proclamations, or almost 62 percent of the policy orders). The second largest category was land, with 145, or almost 15 percent of the total. Of the land proclamations, 125 dealt specifically with

²⁹Proclamations regarding land that did not create national monuments include discontinuing maritime control areas, redefining boundaries of national forests, granting federal land to localities for public use, and managing submerged land around the Northern Mariana Islands. I code all of these as land proclamations but subset to only those explicitly referencing authority from the Antiquities Act for the primary statistical analysis, although the results are unchanged if I include a broader set of conservation proclamations or all land proclamations.

Table 3.1: Categories of Policy Proclamations

| Issue | % | N |
|---------------|------|-----|
| Trade | 61.9 | 609 |
| Land | 14.7 | 145 |
| International | 11.3 | 111 |
| Government | 7.7 | 76 |
| Emergency | 3.6 | 35 |
| Pardon | 0.8 | 8 |
| Total | 100 | 984 |

national monuments under the Antiquities Act. Of the remaining 20, 15 concerned other conservation land management (mostly national forests) and five concerned war-related land management (such as discontinuing maritime control areas after World War II).

For the analysis in the next section, I aggregated proclamations by year. Presidents issued an average of about two monument and eight trade proclamations each year, ranging from zero to about 20 for each category. The usage of monument and trade proclamations is shown over time in Figure 3.1. No time trend or autocorrelation is apparent in the figure. What is apparent is that trade proclamations are issued more consistently throughout this period, with land proclamations used more rarely, and often in large yearly groupings.

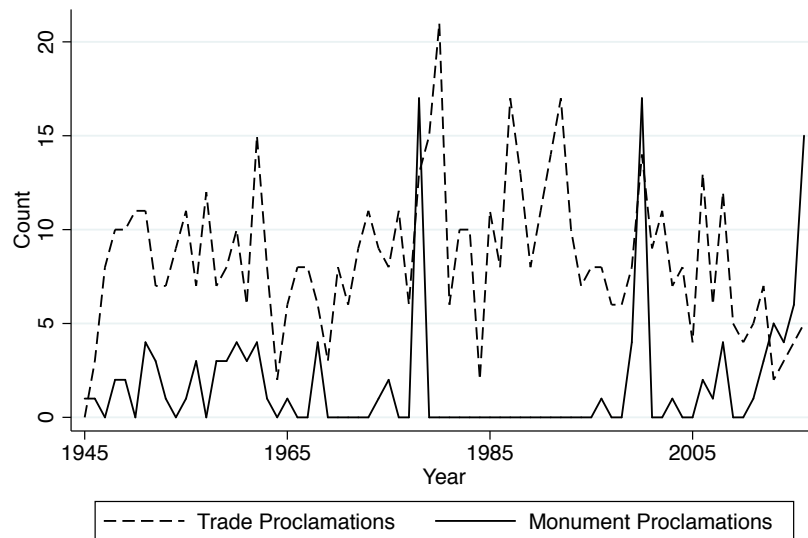


Figure 3.1: Usage of monument and trade proclamations over time

3.6 Results

Table 3.2: Descriptive statistics

| | Obs. | Mean | Std. Dev. | Min. | Max. | Years Available |
|------------------------|------|-------|-----------|-------|-------|-----------------|
| Monument proclamations | 72 | 1.736 | 3.440 | 0 | 17 | 1945-2016 |
| Trade proclamations | 72 | 8.458 | 3.860 | 0 | 21 | 1945-2016 |
| Legislative gridlock | 72 | 0.666 | 0.108 | 0.498 | 0.893 | 1945-2016 |
| Legislative conflict | 72 | 0.522 | 0.207 | 0.133 | 0.853 | 1945-2016 |
| Public Mood | 65 | 62.89 | 4.454 | 52.89 | 72.20 | 1952-2016 |
| Democrat president | 72 | 0.500 | 0.504 | 0 | 1 | 1945-2016 |
| Administration change | 72 | 0.111 | 0.316 | 0 | 1 | 1945-2016 |
| Lame duck | 72 | 0.139 | 0.348 | 0 | 1 | 1945-2016 |
| Spending (% of GDP) | 72 | 19.22 | 3.565 | 10.84 | 40.66 | 1945-2016 |
| War | 72 | 0.250 | 0.436 | 0 | 1 | 1945-2016 |

Descriptive statistics for all variables contained in this analysis are included in Table 3.2. The data contain 72 years of observations with the exception of the public mood variable, which is only available beginning in 1952.

Results from the analysis of monument proclamations are displayed in Table 3.3. I report models that include each of the key independent variables – gridlock and conflict – separately (columns 1 and 2) and together (columns 3 and 4). Column 4 includes the additional public mood control, interacted with whether the president is a Democrat. The main results are consistent across specifications. Legislative gridlock has a substantively large and statistically significant coefficient, indicating that an increase in gridlock predicts an increase in the use of land proclamations, although as Figure 3.2 will show, this relationship is not precisely estimated over the range of the data. Substantively, moving from one standard error below the mean to one standard error above the mean of gridlock results in an increase of approximately four monument proclamations issued by the president per year. Taking into account the lack of precision, this is suggestive support for hypothesis one.

Legislative conflict, in contrast, is not statistically significant and its point estimate is substantively small and in the direction opposite the one hypothesized, indicating no support for hypothesis two, that conflict should increase the issuance of land proclamations. Gridlock and conflict are closely related quantities, but conflict is neither significant when it

Table 3.3: President's issuance of monument proclamations, 1945-2016

| | (1) | (2) | (3) | (4) |
|---|--------------------|-------------------|--------------------|--------------------|
| Legislative gridlock | 13.322** (6.16) | | 13.572** (6.16) | 15.264** (7.62) |
| Legislative conflict | | -1.932 (1.51) | -1.937 (1.45) | -0.836 (1.87) |
| Public Mood | | | | -0.001 (0.11) |
| Public Mood \times Democratic president | | | | -0.053 (0.13) |
| Democratic president | 1.097** (0.40) | 1.065** (0.44) | 0.808 (0.45) | 4.383 (8.37) |
| Administration change | -0.797 (0.76) | -1.046 (0.78) | -0.895 (0.75) | -0.569 (0.88) |
| Lame duck | 1.235** (0.48) | 1.267** (0.49) | 1.331** (0.48) | 1.307** (0.51) |
| Spending (% of GDP) | -0.058 (0.06) | -0.049 (0.06) | -0.054 (0.05) | -0.242 (0.18) |
| War | -1.104** (0.54) | -0.938 (0.54) | -1.088** (0.54) | -1.755** (0.64) |
| Time trend | -0.072** (0.03) | 0.007 (0.01) | -0.064 (0.03) | -0.079 (0.05) |
| Constant | -5.474 (3.05) | 1.377 (1.19) | -4.931 (3.05) | -2.522 (8.79) |
| Observations | 72 | 72 | 72 | 65 |
| Pseudo R^2 | 0.117 | 0.096 | 0.120 | 0.150 |
| Log-likelihood | -116.4 | -119.1 | -115.9 | -98.00 |

Note: Entries are negative binomial regression coefficients with standard errors in parentheses. The dependent variable is the number of monument proclamations per year. *** indicates $p < .01$; ** $p < .05$; * $p < .1$ (two-tailed tests).

is modeled separately from gridlock nor does its inclusion moderate the relationship between proclamations and gridlock.

Despite the theoretical importance of the public as a check on the president's administrative powers, neither public mood nor its interaction with whether the president is a Democrat produces a significant coefficient. Democratic presidents do not appear more likely to issue land proclamations during liberal moods, nor do Republican president appear more likely to issue land proclamations during conservative moods. Democratic presidents, as seen in columns (1) and (2), are more likely than their Republican counterparts to issue land proclamations, at least when only one of the main independent variables is included in the regression. This is consistent with expectations, as land conservation is generally considered a liberal issue.³⁰

Presidents representing a new party in the White House were not more likely to issue land proclamations, but presidents in their final year in office were more likely, perhaps reflecting the desire to achieve additional policy success as the window for legislative accomplishments is closing. War consistently corresponded negatively with the issuance of land proclamations. War was included as a control as wartime may generally increase the propensity of the president to take administrative action, as well as increase the deference other branches may show such action. The negative coefficient here likely suggests a trade off between priorities, if anything, rather than a disinclination to act unilaterally generally during war. Government spending was also included as a control that may influence the overall propensity toward administrative action, but it does not appear to have a substantive or significant relationship to monument proclamations.

Results from the analysis of trade proclamations are presented in Table 3.4. The columns include the same variables as the corresponding columns in Table 3.3, and results mirror those found for land proclamations. As hypothesized, legislative gridlock is a consistently significant negative predictor of the number of trade proclamations issued in a given year.

³⁰With the exception of President Trump's recent decision to drastically reduce the size of Bears Ears and Grand Staircase-Escalante, proclamations have been used almost exclusively to create monuments rather than eliminate them.

The magnitude of the relationship is consistent across specifications, only increasing slightly when the public mood interaction is included in column 4. A typical increase in gridlock between consecutive Congresses corresponds to one additional trade proclamation issued per year. This is substantively large, as a typical year sees only eight trade proclamations issued. Moving from one standard error below the mean to one standard error above the mean of gridlock (a more typical comparison) results in a decrease of approximately 12.8 trade proclamations issued in a year.³¹ Unlike with land proclamations, the relationship between legislative gridlock and trade proclamations is significant across the entire range of the data.

In contrast to gridlock, legislative conflict again displays substantively small and statistically insignificant results. Public mood, similarly, has no effect on the issuance of trade proclamations. Unlike with land, there is no difference between Democratic and Republican presidents for trade. This is as expected, as neither party has consistently owned this issue, and presidents have the power to both increase and decrease trade barriers with proclamations. In contrast, land proclamations are used almost exclusively to create national monuments rather than eliminate them.

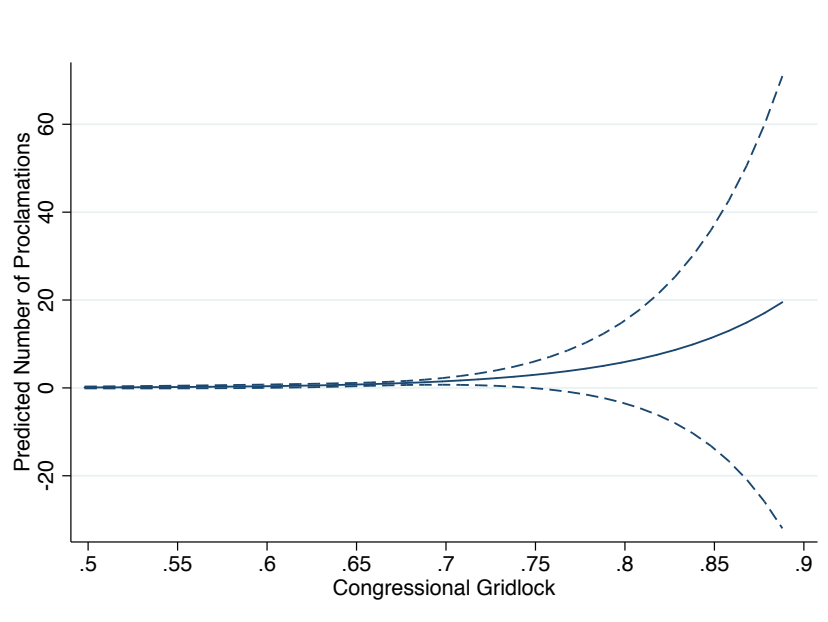
Political time variables behave similarly for trade and land. As with land, lame duck presidents issue an increased number of trade proclamations, but presidents of new parties do not issue more proclamations to set the tone of their administrations. Presidents seem to turn to proclamations across issues to generate late-term policy victories. For trade, in particular, though, the preference for lame duck action may also indicate the time needed to develop trade deals with other nations once in office. There is no relationship between war and trade proclamations. Spending, as a percent of GDP, correlates with a decrease in trade proclamations.

³¹Although this swing is typical of how these changes are described, mean changes in gridlock between congresses are an order of magnitude less than the two standard error swing. The mean difference in gridlock between Congresses has an absolute value of 0.0188, on a scale that runs from a minimum of 0.498 to a maximum of 0.893.

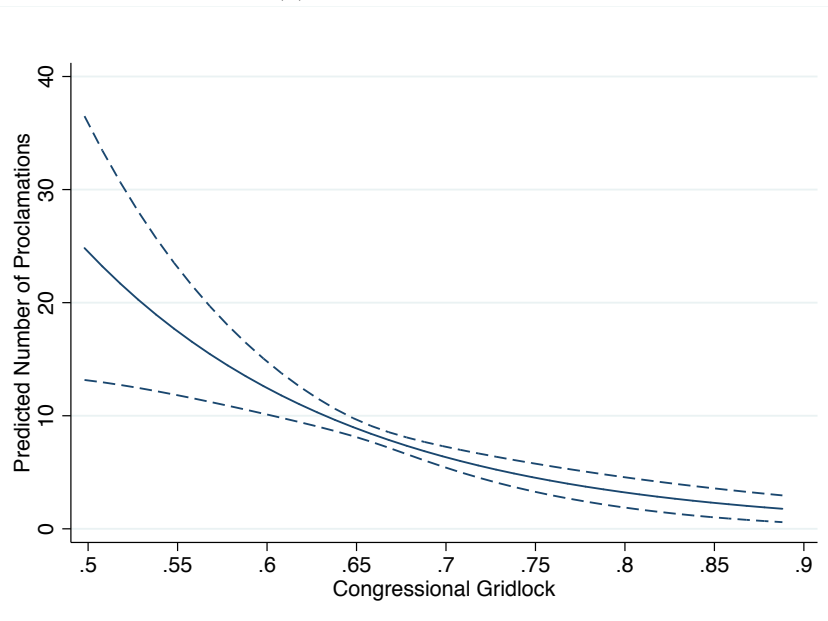
Table 3.4: President's issuance of trade proclamations, 1945-2016

| | (1) | (2) | (3) | (4) |
|------------------------------------|--------------------|--------------------|--------------------|--------------------|
| Legislative gridlock | -6.625** (1.46) | | -6.766** (1.47) | -7.501** (1.81) |
| Legislative conflict | | 0.050 (0.32) | -0.164 (0.28) | 0.014 (0.35) |
| Public Mood | | | | 0.027 (0.02) |
| Public Mood × Democratic president | | | | -0.030 (0.02) |
| Democratic president | -0.056 (0.09) | -0.208 (0.11) | -0.089 (0.11) | 1.900 (1.57) |
| Administration change | -0.200 (0.15) | -0.143 (0.17) | -0.213 (0.15) | -0.135 (0.17) |
| Lame duck | 0.284** (0.11) | 0.376** (0.13) | 0.287** (0.11) | 0.237** (0.11) |
| Spending (% of GDP) | -0.071** (0.02) | -0.052** (0.02) | -0.072** (0.02) | -0.052 (0.04) |
| War | -0.170 (0.10) | -0.185 (0.12) | -0.173 (0.10) | -0.178 (0.11) |
| Time trend | 0.034** (0.01) | -0.000 (0.00) | 0.036** (0.01) | 0.037** (0.01) |
| Constant | 6.656** (0.86) | 3.200** (0.37) | 6.810** (0.91) | 5.038** (1.79) |
| Observations | 72 | 72 | 72 | 65 |
| Pseudo R^2 | 0.108 | 0.061 | 0.109 | 0.097 |
| Log-likelihood | -176.7 | -186.1 | -176.5 | -159.0 |

Note: Entries are negative binomial regression coefficients with standard errors in parentheses. The dependent variable is the number of trade proclamations per year. *** indicates $p < .01$; ** $p < .05$; * $p < .1$ (two-tailed tests).



(a) Land Proclamations



(b) Trade Proclamations

Figure 3.2: Legislative Gridlock and Proclamation Issuance, 1945-2016

Estimates based on models from column (3) of Table 3.3 and Table 3.4, respectively. The solid lines show the the predicted number of proclamations issued for a given level of gridlock. The dashed lines represent the 95% confidence intervals for these estimates.

In sum, I find no relationship between conflict between the president and Congress and the number of proclamations issued, for either trade or land policy. There is support, however, for the relationship between gridlock in Congress and the number of proclamations issued, with opposite results for land and trade. Although this relationship is imprecisely estimated for land, the contrast between the two policy areas is clear. This can readily be seen in Figure 3.2, which plots the marginal effect of gridlock on the predicted number of monument and trade proclamations issued in a year. The figure also makes clear the lack of precision in the estimated relationship between gridlock and monument proclamations. Despite the large and statistically significant coefficient on gridlock, the change in the predicted number of land proclamations is not significant across the range of the gridlock variable. Even evaluated on its own, however, the statistically significant negative relationship between trade proclamations and gridlock is in contrast to the bulk of unilateral action theory, which expects a positive relationship between the issuance of administrative directives and congressional gridlock. Taken as a whole, there is sufficient evidence to support the argument that understanding when presidents take administrative action depends on understanding the policy context.

The importance of gridlock, rather than simply conflict, to a president's administrative calculus is surprising, but it is also consistent with some of the most thoroughly theorized treatments of unilateral action (Howell 2003, 2005; Chiou and Rothenberg 2017). This does, however, differ from more recent analyses that highlight the centrality of conflict (i.e. Kaufman and Rogowski 2018). As I explained when setting out the theory, the ability of Congress to legislate at all, regardless of whether it is in support or against the president's preferred policy agenda, exerts an independent effect on the propensity to take administrative action. The results support this conclusion.

Still, it is surprising that no relationship appears between proclamations and ideological conflict, for either issue area. Anecdotally, there is evidence of conflict prior to the issuance of monument proclamations. For Carter in Alaska, Clinton and Grand Staircase-Escalante, and Obama and Bears Ears, there were bills in the works to protect some of the same lands,

which either could not get passed or, in the president's view, did not go far enough, prompting the president to take action on his own. It may be that conflict in these issue areas is not captured clearly by a broad ideological scaling like DW-Nominate, which measures preferences across all issues as a single dimension. If disagreement on trade or land is orthogonal to the main ideological cleavage, it may not be captured by this conflict measure. Alternatively, the president may not consider whether Congress disagrees with his actions, as these are delegated areas of policy that the president might assume Congress has demonstrated it does not see central to its role. One might be skeptical of this explanation, given the continuing role Congress has sought for itself in trade and the negative reactions and occasional concessions (such as the Wyoming restriction) it has sought on monuments. Nonetheless, there is a degree of elite consensus on trade and to the extent there is disagreement, it may take institutional rather than party lines (Nielson 2003). And monuments are a relatively minor area of policy, of serious concern only to representatives from a few western states.

One final result worth noting is the positive relationship between lame duck years and an increase in proclamations in both issue areas. This was not a well-theorized prediction, so the analysis here is speculative. However, the result is notable because the possibility of a flurry of late term administrative activity (i.e. midnight appointments) is often discussed but not always found in studies of executive orders and other directives. Howell (2003) and Chiou and Rothenberg (2014) hypothesize and find more significant orders issued in the first rather than second term, whereas Mayer (2002) finds a spike of significant orders issued in the last month of an administration, but this may be influenced by the large number of orders President Carter issued in response to the Iran hostage crisis, a single event. Lowande (2014) finds that more memoranda are issued in the last two years of a term than the first two. The incentive to take administrative action as a quick way to cement one's legacy is clear, but this is counterbalanced with the ease with which the next administrative can halt or reverse these actions. It may be that this is less of a consideration for trade and monuments, although the actions of the current administration call this conclusion into question. Certainly, the variation in utility of various tools in the presidential toolkit

at different points in a president's tenure is worth further study, as is the longevity of proclamations in particular.

3.6.1 Robustness Checks

The results are robust to alternative specifications of the dependent variables. As can be seen in the annual depiction of the data in Figure 3.1, the distribution of land proclamations has some significant outliers. This includes one set of 17 proclamation issued by President Carter on Alaskan monuments all on the same day. We might be worried that these proclamations are not independent and that the decision to issue them amounts to a single action. Similarly, we might be concerned that any proclamations issued close together in time are related. To address this, I construct alternative counts, first counting the Alaskan proclamations as a single proclamation and, alternatively, counting all same day proclamations as single proclamations. I construct the same same-day count for trade proclamations. These alternative specifications do not change the results.

I also consider alternative counts of land proclamations that include other conservation-related proclamations not deriving from the Antiquities Act as well as all land-related proclamations. Both alternative counts produce substantively similar results to the main specification.

I test specifications for trade with additional domain-specific controls, as the models in the main results display a relatively modest goodness of fit overall and factors related to international trade, in particular, might play a large role in trade proclamation issuance. Rottinghaus and Lim (2009) argue for the preeminence of economic over political factors in explaining trade proclamations, although their analysis is different from mine in other important ways. Adding in controls that may influence a president's desire to act on trade, including inflation, unemployment, and the change in the balance of trade with other countries does not change the main results. Nor are any of the additional controls significant. The main results continue to hold when the public mood variable is supplemented or replaced with the number of survey respondents indicating that trade is the most important

problem facing the United States. When this variable is included without mood, it is a significant predictor of more trade actions, but does not change the primary gridlock result.

Standard errors in Tables 3.3 and 3.4 are not clustered on president, despite this being typical practice, as a small number of clusters may artificially deflate standard errors (Cameron and Miller 2015). Nonetheless, the results are robust to the use of robust or clustered standard errors (clustering on either president or the Congress). Gridlock is a significant predictor of proclamation use regardless of standard error specification. Standard errors are smaller when clustering on president for both land and trade, notably on land. The paper takes a conservative approach in reporting the results here without clustering.

Cognizant of the limited degrees of freedom available with only 72 observations, I do not include fixed effects for president in my results. When presidential fixed effects are included, gridlock is not a significant predictor of trade proclamations, although the coefficient remains positive. Gridlock remains a significant predictor of land proclamations even when presidential fixed effects are included. I caution against relying too much on these results, however, as looking within president for the relationship between proclamations and conflict or gridlock relies on small, potentially substantively insignificant shifts in the explanatory variables that occur within a single presidency. Moreover, characteristics of the individual presidents that may influence their issuance of proclamations are to some extent captured by the conflict variable, which is dependent on presidential DW-Nominate scores, as well as the various controls, including public mood and the time trend.

3.7 Conclusion

This paper is a case study of two policy domains within a much larger portfolio of presidential actions. Despite somewhat mixed results, this analysis suggests the importance of considering policy domain in understanding how presidents take administrative action and the extent to which Congress constrains their actions. Some policy areas, including large areas of policy like trade, exhibit a cooperative pattern of administrative action not

well explained by theories of unilateral action. Some areas of administrative policy do not conform to the assumption of an either/or choice between seeking legislation and going it alone. This is an important descriptive point. It also has normative implications, in terms of understanding the extent to which administrative action represents a challenge or a complement to the system of separated institutions sharing power.

It is important to state what these data do not show. I don't show that land proclamations more often defy congressional wishes than do trade proclamations. That would require coding the content of proclamations as well as congressional desires. Instead, I show that the pattern of use for land proclamations matches patterns of use found for executive orders and memoranda consistent with the predictions of a "unilateral politics" model, albeit with uncertainty (Howell 2003, 2005). Namely, when Congress is gridlocked, presidents have more freedom and need to act administratively, and they take advantage of that. In contrast, the use of trade proclamations does not follow the predictions of unilateral theory. Rather, presidents issue more proclamations when Congress is unified and less when Congress is gridlocked. Although this is not dispositive evidence that presidents do not behave unilaterally in the content of their trade actions, it shows that when presidents have the most opportunity to engage in unilateral behavior, they do not do so on trade. I argue that this is because trade requires a more cooperative approach.

The results of this study are, in one sense, not very surprising. In the policy area where Congress delegated greater authority to the president, presidents have more freedom to act alone. In the policy area where Congress delegated less, presidents have less freedom to act. Nonetheless, these results contribute to our understanding of administrative actions as assertions of presidential power. First, rather than the level of conflict between the president and Congress or the ability of Congress to sanction or support presidential actions, the key variable for understanding when proclamations are issued is the degree to which a policy area is independent from legislation, such that gridlock creates opportunities in one area and not the other.

In studies of executive orders, the degree of independence from legislation is theoret-

ically constant, but also murky, as executive orders are often used to nudge other actors toward a certain interpretation of a policy or lay out policy markers that are more bargaining positions than commands.³² Executive orders can make law in broad areas of policy, but their effectiveness – their relationship to actual president *power* – often depends, as Neustadt explains, “on others who have power to resist” (1990, 28). As I argued at the outset, the clear statutory authority and limited scope of the proclamations here make the degree of independence more explicit, but this is an insight that can be brought to understanding administrative action more generally. Proclamations are particularly noteworthy, however, because as cases of delegated authority, Congress itself determines this degree of independence.³³

How should we view an act in each domain, in terms of whether it constitutes “unilateral” power? For land, the president is acting alone to create something that Congress could have created by other means but did not. In this sense, it is comparatively unilateral. Trade proclamations are less likely to be unilateral acts of power. Although we don’t observe a relationship between conflict and the number of proclamations issued, nor do we consider the content of proclamations, trade proclamations are issued more frequently at times of high congressional capacity, when Congress would be most able to respond to actions it opposed. And in general, Congress can more readily sanction the president for actions it opposes. Moreover, for much of the period under study, there was a degree of elite consensus on trade. Although less likely, trade actions against the wishes of Congress are more costly than in other areas of administrative policymaking, making them particularly notable.

This paper has additional implications for the wider study of executive action. An important development over the last few years has been the consideration of directives beyond

³²Consider President Obama’s order closing the prison at Guantanamo Bay or President Trump’s order promising reductions in regulations, both of which indicated a desire to achieve a policy goal but were insufficient on their own to bring it about.

³³To be clear, I refer to independence from legislation in the short term, as following the logic described in Chapter 1, the president does often return to Congress seeking legislation to codify his administrative actions, having first moved to shift the status quo in his favor. A number of monuments, for example, have been converted to National Parks by legislation, suggesting that this is often an eventual goal of a monument declaration.

executive orders, such as memoranda (Lowande 2014) and proclamations. Most research suggests these directives follow similar patterns of use to those identified for executive orders. However, we should be sensitive to the possibility that we obscure smaller, contrasting trends within the larger universe of presidential directives. This is particularly important as we develop methods to combine different sets of documents into larger datasets to be analyzed as a whole (e.g. Kaufman and Rogowski 2018; Woolley and Peters 2017). This study also motivates the importance of investigating whether presidents strategically adjust the tools they use, or the areas they attempt to make policy in, given changing political conditions (Lowande and Gray 2017).

Future work should delve deeper into the substance of policy created by administrative order. It may be that presidents manipulate the ideological direction or the size of policy shifts in response to political conditions, even if the number of orders does not change. Future work should also seek to expand this type of analysis to additional issue areas. Proclamations, given their reliance on delegated authority and the small number of policy areas they cover, provided an easy first test for this argument. Similar content analyses could be done on executive orders, memoranda, additional proclamations, as well as the various smaller sets of directives now available to researchers. There is no need to silo studies of each tool of administrative policymaking.

Administrative actions represent an increasing share of the president's agenda, particularly as major legislative accomplishments become more infrequent. Understanding their use is of critical import to how we understand the operation of American democracy. As political scientists, political observers, and the public continue to grapple with the extent to which other actors check the president's seemingly unilateral actions, it is critical that scholars continue to grapple with the details of administrative policymaking beyond the numbers. This paper represents a small step forward in that regard.

A | Appendix to Chapter 1

This appendix contains two sections. The first explains in more detail the coding decisions and model used in our statistical analysis. The second section provides the complete list of executive orders and corresponding legislative proposals discussed in the penultimate section of the paper.

A.1 Counts of Events in Unequal Observation Intervals

As we explain in the paper, the offset between the congressional and presidential calendars complicates the aggregation of counts of executive orders (or legislative proposals) by fixed time intervals such as congress, year, or quarter, because we want to include both congressional covariates and presidential fixed effects. We address this problem by (1) re-aggregating the data to create unique observations for each pairing of congressional and presidential variables and (2) accounting for the resulting unequal observation intervals with an exposure parameter in our negative binomial regression model. The motivation for both processes is explained below.

A.1.1 Correctly Identifying Observations

Departing from a fixed-interval observation scheme addresses a number of potential misspecifications that arise when an interval contains more than one president or Congress. These problems are explained in the paper. However, we illustrate them here in more detail.

Consider the tables below, which display data from three presidential transitions, one expected and two unexpected. We first display the data as they appear with equal observa-

tion intervals.¹ Table A.1 makes clear that equal observation intervals result in observations shared by two presidents. Table A.2 displays the data after separating these mixed observations into unique observations for each president. The result is an additional observation each time a correction is made. This allows us to correctly specify the president and Congress, as well as the number of significant executive orders and legislative proposals each president issued and the time in which they did so.

This modification of typical aggregation schemes is essential, in our view, because the identity of the president and the makeup of Congress are substantively important to understanding the issuance of executive orders and legislative proposals. Our models include congressional majority size as the main independent variable. Likewise, we include presidential fixed effects to account for differences among presidents in their overall levels of activity and preferences for proposing legislation or issuing executive orders. Failing to correct the shared observations introduces measurement error into these covariates.

Table A.1: Presidential Transitions with Equal Observation Intervals

| Year | Quarter | President | Congress | EOs | Proposals | Obs. Interval (Days) |
|------|---------|-----------------|----------|-----|-----------|----------------------|
| 1963 | 3 | Kennedy | 88 | 2 | 24 | 92 |
| 1963 | 4 | Kennedy/Johnson | 88 | 4 | 0 | 92 |
| ⋮ | ⋮ | ⋮ | ⋮ | ⋮ | ⋮ | ⋮ |
| 1974 | 2 | Nixon | 93 | 0 | 4 | 91 |
| 1974 | 3 | Nixon/Ford | 93 | 1 | 27 | 92 |
| 1974 | 4 | Ford | 93 | 0 | 36 | 92 |
| ⋮ | ⋮ | ⋮ | ⋮ | ⋮ | ⋮ | ⋮ |
| 1980 | 4 | Carter | 96 | 0 | 1 | 92 |
| 1981 | 1 | Carter/Reagan | 97 | 11 | 25 | 89 |
| 1981 | 2 | Reagan | 97 | 1 | 8 | 91 |

The main consequence of this coding decision is the creation of observations with unequal observation intervals. Table A.2 displays greater variation in the observation interval than table A.1. In our data, the observation interval ranges from 19 to 92 days, with a mean of 87.5 and standard deviation of 14.5. Aggregating by three-month intervals generates observation intervals ranging only from 89 to 92. This greater variability comes from

¹In this case we present quarters, as used by Howell (2005), but any fixed scheme will result in similar issues.

Table A.2: Presidential Transitions with Corrected Observations

| Year | Quarter | President | Congress | EOs | Proposals | Obs. Interval (Days) |
|------|---------|----------------|----------|----------|-----------|----------------------|
| 1963 | 3 | Kennedy | 88 | 2 | 24 | 92 |
| 1963 | 4 | Kennedy | 88 | 0 | 0 | 53 |
| 1963 | 4 | Johnson | 88 | 4 | 0 | 39 |
| ⋮ | ⋮ | ⋮ | ⋮ | ⋮ | ⋮ | ⋮ |
| 1974 | 2 | Nixon | 93 | 0 | 4 | 91 |
| 1974 | 3 | Nixon | 93 | 0 | 5 | 39 |
| 1974 | 3 | Ford | 93 | 1 | 22 | 53 |
| 1974 | 4 | Ford | 93 | 0 | 36 | 92 |
| ⋮ | ⋮ | ⋮ | ⋮ | ⋮ | ⋮ | ⋮ |
| 1980 | 4 | Carter | 96 | 0 | 1 | 92 |
| 1981 | 1 | Carter | 97 | 9 | 5 | 19 |
| 1981 | 1 | Reagan | 97 | 2 | 20 | 70 |
| 1981 | 2 | Reagan | 97 | 1 | 8 | 91 |

Note: Modified values are in bold.

the addition of only 11 observations. However, these shorter observations are potentially substantively important, representing either lame duck periods (in which presidents may attempt to cement their legacy by administrative action) or times of crisis, following assassination or resignation. We account for the differences in observation intervals in our statistical models.

A.1.2 A Model for Unequal Observation Intervals

The motivation for controlling for unequal observation intervals should be clear. All else equal, presidents are likely to issue more executive orders or legislative proposals over a long period of time than over a short one. Moreover, issuing nine executive orders during a 19 day period, as President Carter did in January 1981, represents a significantly higher rate of activity than issuing nine orders over three months. This difference would be ignored in a model that failed to account for the length of time in which we observe each count.

Several options exist for controlling for these unequal intervals. Our approach follows a solution provided by King (1989).² Recall that the expected value of the dependent variable

²This section is heavily indebted to King (1989). We include several of the same equations here that are provided in King 1989 (Chapter 5.8, pp. 124-126) to give our readers the same intuition for the model. King's approach starts from the Poisson model, but the method can be applied to the negative binomial as well.

(the number of orders or proposals issued) in a negative binomial (or Poisson) model can be written

$$E(Y_i) = \exp(x_i\beta).$$

We can modify the functional form to divide out the influence of time by including it in the equation and rewriting it as

$$\frac{E(Y_i)}{t_i} = \exp(x_i\beta),$$

where t_i is the length of the observation interval, in days. Manipulating this equation algebraically, we can again write the expected number of orders or proposals as

$$E(Y_i) = \exp(x_i\beta + \ln t_i).$$

As King explains, “this latter expression implies that the log of $[t_i]$ be included as an explanatory probability, with its coefficient constrained to 1” (King 1989, 125). In Stata, the model is implemented by running `nbreg` with the `exp()` option which allows the inclusion of an *exposure* term, the number of days in the interval, in the manner that King describes.

Alternatively, one could include the length of the observation interval in the list of covariates, unconstrained. We prefer the approach outlined here because it lends the other coefficients an intuitive interpretation. The resulting negative binomial regression coefficients represent the linear change in the logged *rate* of issuance (the logged number of EOs per day) for a one unit change in the covariate value. Recall that a typical poisson or negative binomial coefficient represents the linear change in the logged *count* of orders issued in a given interval. Including the length of the observation interval adds an additional predictor, but the interpretation of the coefficients is unclear, because they refer to a change in a set interval, but this interval is not actually constant.

A.2 Identifying legislative proposals that follow from executive orders

Table A.3 includes the full list of executive orders and subsequent legislative proposals that we describe in section 1.4. The table includes all orders in our sample of significant orders that we identified as having led to the issuance of a legislative proposal by the president, either to codify or expand the policy initiated by the order. The executive orders and legislative proposals are sorted by president and topic, with brief summaries of each issue included. Presidents Truman and Carter do not appear in the table, as neither submitted a legislative proposal that could be linked to an earlier or concurrent executive order.

Table A.3: Executive orders that subsequently generated legislative proposals to codify or expand their authority

| President | Date | EO Number | Title |
|-------------------|----------|-------------------|--|
| Eisenhower | 8/25/55 | 10634 | Disaster Loans Providing for loans to aid in the reconstruction, rehabilitation and replacement of facilities which are destroyed or damaged by a major disaster and which are required for national defense |
| | 1/16/56 | <i>Leg. Prop.</i> | Budget: Amend Small Business Act to include authority for disaster loans |
| | 3/5/57 | <i>Leg. Prop.</i> | SpM on drought and other natural disasters <i>EO establishes disaster loans for reconstruction "whenever...required for national defense", whereas proposals request expanded disaster loan funds through Small Business Administration, where legislation is required.</i> |
| Kennedy | 1/21/61 | 10914 | Food Stamps Providing for an expanded program of food distribution to needy families |
| | 1/17/63 | <i>Leg. Prop.</i> | Budget: authorize continuation of food stamps at FY63 level <i>EO calls for expanded food stamp program. Budget requests to continue program.</i> |
| | 3/1/61 | 10924 | Peace Corps Establishment and administration of the Peace Corps in the Department of State |
| | 5/30/61 | <i>Leg. Prop.</i> | Peace Corps |
| | 7/4/63 | <i>Leg. Prop.</i> | Strengthening Peace Corps <i>EO establishes Peace Corps and funds out of existing State Dep funds. Proposal in May requests budget and codification by legislation. 1963 proposal is another request to fund the program.</i> |
| | 3/6/61 | 10925 | Equal Employment Opportunity Establishing the President's Committee on Equal Employment Opportunity |
| | 6/12/63 | <i>Leg. Prop.</i> | SpM on Civil Rights and Jobs <i>EO establishes equal employment requirement for federal contractors, while proposal includes requesting permanent statutory basis for Committee on Equal Employment Opportunity and expanded federal action on equal employment in other government-involved areas.</i> |
| Nixon | 3/5/69 | 11458 | Minority Business Prescribing arrangements for developing and coordinating a national program for minority business enterprise |
| | 10/13/71 | 11625 | Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise |
| | 10/13/71 | <i>Leg. Prop.</i> | SpM urging expansion of minority business enterprise programs <i>EOs establish mechanisms for federal government to promote minority businesses, while the proposal requests a broader expansion of programs, including larger budgets.</i> |
| | 2/4/70 | 11507 | Environment Prevention, control, and abatement of air and water pollution at federal facilities |
| | 2/10/70 | <i>Leg. Prop.</i> | SpM on Environmental Quality <i>EO addresses air and water pollution at federal facilities. Proposal requests broader regulation of air and water pollution nationwide.</i> |
| | 6/29/73 | 11726 | Energy Energy Policy Office |
| | 6/29/73 | <i>Leg. Prop.</i> | Create new independent Energy Research and Development Admin |
| | 6/29/73 | <i>Leg. Prop.</i> | Recommends Cabinet Department of Energy and Natural Resources <i>Proposals ask for independent and Cabinet-level agencies to supplement the WH office.</i> |
| | 10/26/70 | 11566 | Consumer Protection Consumer product information |
| | 2/24/71 | <i>Leg. Prop.</i> | SpM on consumer protection ("Buyer's Bill of Rights") <i>EO makes consumer product info compiled by the government available to consumers, including pilot program for Defense. Proposal is broader, including expanded access to government-collected information.</i> |
| | 6/17/71 | 11599 | Drug Abuse Establishing a special action office for drug abuse prevention |
| | 6/17/71 | <i>Leg. Prop.</i> | SpM on Drug Abuse Prevention and Control <i>EO establishes office. Proposal asks for stronger legislative establishment of the same.</i> |
| Ford | 2/18/76 | 11905 | Intelligence United States foreign intelligence activities |
| | 2/18/76 | <i>Leg. Prop.</i> | SpM re reforming US foreign intelligence |
| | 3/23/76 | <i>Leg. Prop.</i> | re use of electronic surveillance in obtaining foreign intelligence info <i>EO sets out policies for intelligence, while proposals ask for more statutory authority, i.e. making it a crime to assassinate, which the EO banned as policy.</i> |
| Reagan | 9/15/86 | 12564 | Drug Abuse Drug-free federal workplace |
| | 9/15/86 | <i>Leg. Prop.</i> | Drug Free America Act <i>EO deals with drugs in federal workplace, while proposal deals with drugs everywhere.</i> |
| | 2/17/81 | 12291 | Regulatory Review Federal regulations |
| | 2/1/84 | <i>Leg. Prop.</i> | Budget: strengthen central oversight of federal regulations <i>Budget message asks for EO to be enacted into law.</i> |

Table A.3 (continued)

| President | Date | EO Number | Title |
|----------------|----------|-------------------|---|
| | | | Ethics |
| Bush 41 | 4/12/89 | 12674 | Principles of ethical conduct for government officers and employees |
| | 4/12/89 | <i>Leg. Prop.</i> | Government-wide Ethics Act <i>EO sets out policies, while proposal requests them in stronger form, by establishing rules, penalties, and prohibitions in much more detail.</i> |
| | | | Civil Litigation |
| | 10/23/91 | 12778 | Civil justice reform |
| | 2/4/92 | <i>Leg. Prop.</i> | Access to Justice Act <i>EO establishes guidelines for civil litigation, while proposal recommends broader legislation to achieve the same goal.</i> |
| | | | Child Support |
| Clinton | 2/27/95 | 12953 | Actions required of all Executive agencies to facilitate payment of child support |
| | 3/18/95 | <i>Leg. Prop.</i> | enhanced child support enforcement provisions <i>EO tackles child support enforcement in the federal workforce, while proposal asks for greater enforcement powers nationwide.</i> |
| | | | Faith Based Initiative |
| Bush 43 | 1/29/01 | 13198 | Agency Responsibilities with respect to faith-based initiatives |
| | 1/29/01 | 13199 | Establishment of White House Office of Faith-Based and Community Initiatives |
| | 12/12/02 | 13279 | Equal protection of the laws for faith-based and community organizations |
| | 1/28/03 | <i>Leg. Prop.</i> | SofU: pass Faith-Based Initiative |
| | 1/28/08 | <i>Leg. Prop.</i> | SofU: permanently extend charitable choice (faith-based access to federal funds) <i>EOs establish policy. Proposals request permanent codification of the program in statute.</i> |
| | | | Homeland Security |
| | 10/8/01 | 13228 | Establishing the Office of Homeland Security and the Homeland Security Council |
| | 6/18/02 | <i>Leg. Prop.</i> | Legislation To Create the Department of Homeland Security <i>EO establishes a White House office, whereas proposal expands the office into a Cabinet-level department.</i> |

Note: Issue areas are listed chronologically by the first relevant executive order. Issue areas are titled in bold. Notes about the relationship between executive orders and legislative proposals are italicized. "SpM" = Special Message to the Congress. Executive orders considered are from the top 10% of significant orders, as coded by Chiou and Rothenberg (2014). Legislative messages come from the Public Papers of the Presidents, as compiled by Rudalevige (2002). EO must proceed or be issued concurrently with the legislative proposal in time to be included in this table.

B | Appendix to Chapter 2

B.1 Issue Salience and Complexity

The issues used in the survey experiments were chosen to provide variation in president, salience, complexity, policy direction, implementing agency, and perceived unilateralism. Salience is of particular concern, as highly salient issues may overwhelm the treatment. In the following appendix, I further consider salience and complexity.

Following previous research, one way to determine whether a policy is salient is if it received front page coverage in the New York Times the day after it was announced (Epstein and Segal 2000). This is a one-shot, dichotomous measure of salience, which might not reflect salience at the time the survey was fielded. I supplement this with two additional measures: whether the issue received additional news coverage in the month the survey was fielded (November 2017) and whether the issue was polled in the month the survey was fielded.

Issue complexity is harder to measure objectively. One could look at policy document itself and try to measure this. The number of words or pages is often used here. Alternatively, one could examine complexity as it appears to the public. I do that here, by examining the number of “undecided,” “not sure,” or “don’t know” responses to survey questions about the issue. This is an imperfect measure, as it correlates with both salience and respondent indifference, but it likely gives a sense of many persuadable people are out there, which is the issue that the experiment is concerned with.

I also consider whether the media has chosen to cast these issues as presidential or bureaucratic. This is not designed to be exhaustive, but to give a sense of the preexisting relationship between the public and the issues used in the experiments.

B.1.1 Deferred Action for Childhood Arrivals

DACA is the most salient issue of the three. DACA received front page print coverage in the New York Times on June 16, 2012, the day after President Obama and Secretary of Homeland Security Janet Napolitano announced the policy on June 15, 2012.¹

The issue has also been consistently associated with President Obama. Preston and Cushman's New York Times article begins with the headline "Obama to Permit Young Migrants to Remain in U.S." The article further describes DACA as an "executive action the Obama administration announced on Friday." Only towards the end of the article, 17 (short) paragraphs in, do the authors include specifics about the Department of Homeland Security memorandum that implemented the decision and the fact that the action falls within the prosecutorial discretion given to the department. Although not the case in this article, the action is frequently described erroneously in the media as an executive order.

Critics of the policy have opposed it on constitutional as well as substantive grounds. Senator Charles E. Grassley was quoted in the New York Times article calling the action "an affront to the process of representative government," with other Republicans questioning its legality. The policy was challenged in court as well.

The issue has remained salient through the survey period. Newspapers continued to cover DACA and polls continued to ask the public about the issue. Of course, much of this attention is due to the fact that President Trump announced the end of DACA on September 5th, 2017, prompting additional discussion and legal challenges. However, Trump's action seemed to have no effect on overall support for DACA. Two YouGov polls were fielded immediately before and after the September 5th announcement. Prior to the announcement, 55 percent of respondents supported DACA, with 27 percent opposed and 18 percent saying they didn't know. After, 58 percent supported, 25 percent opposed, and 16 percent didn't know.

Interestingly, it looks as though support for DACA among all partisan groups has contin-

¹Julia Preston and John H. Cushman Jr., Obama to Permit Young Migrants to Remain in U.S., June 16, 2012, <https://www.nytimes.com/2012/06/16/us/us-to-stop-deporting-some-illegal-immigrants.html>.

ued to increase. A Washington Post-ABC News survey later in September showed 86 percent support for allowing DACA recipients to stay in the US.² A CNN/SSRS poll in February 2018 found similar support, which included strong majorities of Democrats, Independents, and Republicans.³

Trump’s continued involvement in DACA likely further raised the salience and “presidentialization” of the issue. However, this should be consistent across randomized treatment and control groups, so as not to invalidate the survey experiment.

Surprisingly, 16 to 18 percent of respondents in the surveys I examined respond “don’t know” when asked about DACA. This was consistent before and after Trump’s September 5 announcement. And it remains higher than the don’t know proportions for the topics discussed below, despite DACA’s salience. This might be viewed as a measure of the issue’s complexity. It might also be viewed as a large pool of people who could possibly be shifted by survey wording or an experimental cue.

B.1.2 ED/DOJ Transgender Guidance

By the simplest measure, revoking federal transgender guidance was also a salient issue. The issue received front page New York Times coverage on February 23rd, 2017, with the headline “Trump Rescinds Rules on Bathrooms for Transgender Students.”⁴

Likely due to the one-shot nature of the policy change, this issue has not stayed in the news as prominently as DACA. Transgender rights, particularly bathroom access, continue to be in the news and continue to be the subject of polling. However, the specifics of the Trump administration decision have not been the focus of this coverage.

Although clearly linked to President Trump, this issue has not been described as unilat-

²Poll was conducted September 18-21, 2017. Full results can be found here: https://www.washingtonpost.com/politics/survey-finds-strong-support-for-dreamers/2017/09/24/df3c885c-a16f-11e7-b14f-f41773cd5a14_story.html?utm_term=.1c2280e74147

³Full results can be found here: <https://cdn.cnn.com/cnn/2018/images/02/26/re13b.-.2018.pdf>

⁴Jeremy w. Peters, Jo Becker, and Julie Hirschfeld Davis, Trump Rescinds Rules on Bathrooms for Transgender Students, New York Times, 23 Feb 2017, <https://www.nytimes.com/2017/02/22/us/politics/devos-sessions-transgender-students-rights.html>.

eral or overreaching in the way DACA has been. The New York Times article cited above led with Trump's name, saying, "President Trump on Wednesday rescinded protections for transgender students that had allowed them to use bathrooms corresponding with their gender identity, overruling his own education secretary." Later, however, it described the decision as a combined effort between Attorney General Jeff Sessions, Education Secretary Betsy DeVos, and Trump. It appears that it was a Sessions led process, only escalating to the White House when DeVos disagreed with Session's position. Bureaucratic actors received much more ink in this story than in DACA, likely because of the disagreement. Trump, although siding with Sessions to revoke the guidance, had historically voiced conflicting opinions about the issue, and had made positive statements about transgender rights on the campaign trail. No opposition to the administration's decision described their opposition in unilateral terms, although federalism concerns were cited.

The issue was not polled during the survey period. However, in previous surveys approximately 10 percent of respondents said they did not know how they felt about the policy.

B.1.3 Corporate Average Fuel Economy Standards

Fuel economy standards represent the least salient issue in the experiment. Raising CAFE standards during the Bush administration did not receive front page coverage. Instead, several articles appeared in the Business Day section of the New York Times.⁵ The same was true for the Obama administration.⁶ In each case, the specific action cited in the experiment was the release of a Notice of Potential Rulemaking (NPRM) by the National Highway Transportation Safety Administration, not something designed to be the most salient form of action. However, President Obama had earlier issued several directives

⁵See, for example Bill Vlastic, "Early Target for Fuel Economy Is Expected," <https://www.nytimes.com/2008/04/22/business/22auto.html>, which appeared April 22, 2008 on page C2; Matthew L. Wald, "Administration Seeks a Quicker Increase in Fuel Standards," <https://www.nytimes.com/2008/04/23/business/23cafe.html>, which appeared April 23, 2008 online; and by the Associated Press, "Government Sets New Fuel Economy Standard," <https://www.nytimes.com/2008/04/22/business/apcafe-web.html>, also online on April 22, 2008.

⁶The Times printed an article by Reuters, "U.S. Raises Mileage Standards for 2011," <https://nyti.ms/2I5BBrG>, which appeared in print on page B4 on March 27, 2009.

on environmental policy, one of which was to the Department of Transportation (of which NHTSA is a part), urging increased fuel efficiency standards. These actions were covered on the front page of the times.⁷

Unlike DACA, CAFE standards have not continuously been in the news and were not regularly reported on or polled at the time the survey experiment was fielded. There had been reports of a potential reversal of fuel economy rules under President Trump, but these actions were not taken until after the experiment.

CAFE standards are consistently described in less presidential and unilateral terms than the above issues. During the BUSH administration, CAFE articles in the Times consistently ran with headlines describing actions taken by the “government” or the “administration.” The NPRM during the Obama administration was also described as a “government” action, although Obama’s earlier directive was described as presidential.

Neither action was criticized as unilateral. The Bush administration action was pursuant to legislation passed in 2007. Reactions, as reported in the Times, consisted of whether the standards were too low or too high. The Obama action was pursuant to the same legislation, as the Bush regulations were never implemented before the end of the administration, and were also spurred on by the president’s directive. Opposition was cited from automakers. In none of the New York Times coverage was there opposition mentioned from government, although the action taken was during unified government. (Of course, there was greater opposition to later Obama-era actions on fuel efficiency, which were both more restrictive and undertaken during divided government).

Surveys on this issue have been less frequent. However, the evidence that does exist suggests the issue is popular and only minorly polarized. A June 2016 Consumers Union poll placed Democratic support for government efficiency standards at 80 percent and Republican support at 60 percent. Only 11 percent of respondents answer that they don’t

⁷John M. Broder, January 26, 2009, “Obama Directs Regulators to Tighten Auto Rules,” <https://www.nytimes.com/2009/01/27/us/politics/27calif.html>.

know, suggesting that this is a relatively uncomplicated issue for the public.⁸

B.2 Experimental Vignettes

B.2.1 DACA Experiment

Control Condition: The federal government gave temporary legal status to many undocumented immigrants. Federal policy allows certain undocumented immigrants to the United States who entered the country before their 16th birthday and before June 2007 to receive a renewable two-year work permit and exemption from deportation.

Agency Condition: On June 15, 2012, the U.S. Department of Homeland Security gave temporary legal status to many undocumented immigrants. The policy allows certain undocumented immigrants to the United States who entered the country before their 16th birthday and before June 2007 to receive a renewable two-year work permit and exemption from deportation.

President Condition: On June 15, 2012, President Barack Obama gave temporary legal status to many undocumented immigrants. The policy allows certain undocumented immigrants to the United States who entered the country before their 16th birthday and before June 2007 to receive a renewable two-year work permit and exemption from deportation.

Question Wording: Do you support or oppose this policy to give temporary legal status to many undocumented immigrants?

- a. Strongly support
- b. Somewhat support
- c. Somewhat suppose

⁸Survey results appeared in an online article by Jason Kuruvilla on June 22, 2016, “Survey: Strong Public Support for Improving Fuel Economy In New Vehicles,” <http://consumersunion.org/2016/06/2016-fe-consumer-survey/>.

d. Strongly oppose

B.2.2 CAFE Standards Experiment

Control Condition: In recent years, the federal government has raised Corporate Average Fuel Economy standards, which increase the required fuel efficiency of cars and light trucks produced for sale in the United States.

Agency Condition: In recent years, the National Highway Traffic Safety Administration has raised Corporate Average Fuel Economy standards, which increase the required fuel efficiency of cars and light trucks produced for sale in the United States.

Bush Condition: On April 22, 2008, President George W. Bush raised Corporate Average Fuel Economy standards, which increased the required fuel efficiency of cars and light trucks produced for sale in the United States.

Obama Condition: On March 27, 2009, President Barack Obama raised Corporate Average Fuel Economy standards, which increased the required fuel efficiency of cars and light trucks produced for sale in the United States.

Question Wording: Do you support or oppose this policy to increase the fuel efficiency of cars and light trucks?

- a. Strongly support
- b. Somewhat support
- c. Somewhat suppose
- d. Strongly oppose

B.2.3 DOJ/ED Transgender Bathroom Guidelines Experiment

Control Condition: Federal government guidelines do not specify that transgender students have the right to use public school restrooms that match their gender identity. Instead, federal policy leaves restroom policies and the interpretation of anti-discrimination laws up to states and local school districts. Schools may choose to allow transgender students to use the restrooms of their choice, or they may not.

Agency Condition: On February 22, 2017, the Departments of Education and Justice revoked guidelines specifying that transgender students have the right to use public school restrooms that match their gender identity. The new policy leaves transgender restroom policy and the interpretation of anti-discrimination laws up to states and local school districts. Schools may choose to allow transgender students to use the restrooms of their choice, or they may not.

President Condition: On February 22, 2017, President Trump revoked guidelines specifying that transgender students have the right to use public school restrooms that match their gender identity. The new policy leaves transgender restroom policy and the interpretation of anti-discrimination laws up to states and local school districts. Schools may choose to allow transgender students to use the restrooms of their choice, or they may not.

Question Wording: Do you support or oppose this policy to leave transgender restroom guidelines up to states and local school districts?

- a. Strongly support
- b. Somewhat support
- c. Somewhat suppose
- d. Strongly oppose

B.3 Alternative Tables and Figures

This section of the appendix contains fully-saturated models of the results of the three experiments. They are substantively equivalent to the party subset results presented in the chapter.

B.3.1 DACA

Table B.1: Support for DACA

| | (1) | (2) |
|----------------------------------|-----------------------------|----------------------|
| Obama condition | 0.022 (0.038) | -0.015 (0.070) |
| Agency condition | 0.016 (0.038) | -0.026 (0.069) |
| Obama condition x Democrat | | 0.051 (0.085) |
| Obama condition x Republican | | 0.007 (0.090) |
| Agency condition x Democrat | | 0.051 (0.084) |
| Agency condition x Republican | | 0.021 (0.090) |
| Democrat | | 0.287*** (0.059) |
| Republican | | -0.258*** (0.063) |
| Constant | 0.612*** (0.026) | 0.568*** (0.048) |
| Observations | 991 | 991 |
| R ² | 0.0004 | 0.268 |
| Adjusted R ² | -0.002 | 0.263 |
| <i>Note:</i> | *p<0.1; **p<0.05; ***p<0.01 | |

B.3.2 Transgender Bathroom Guidance

Table B.2: Support for revoking transgender bathroom guidance

| | (1) | (2) |
|----------------------------------|-----------------------------|---------------------|
| Trump condition | -0.049 (0.039) | -0.008 (0.083) |
| Agency condition | -0.082** (0.038) | -0.110 (0.079) |
| Trump condition x Democrat | | -0.122 (0.099) |
| Trump condition x Republican | | 0.059 (0.107) |
| Agency condition x Democrat | | -0.049 (0.096) |
| Agency condition x Republican | | 0.156 (0.103) |
| Democrat | | -0.136** (0.069) |
| Republican | | 0.019 (0.074) |
| Constant | 0.520*** (0.028) | 0.577*** (0.057) |
| Observations | 995 | 995 |
| R ² | 0.005 | 0.077 |
| Adjusted R ² | 0.003 | 0.069 |
| <i>Note:</i> | *p<0.1; **p<0.05; ***p<0.01 | |

B.3.3 CAFE standards

Table B.3: Support for increasing CAFE standards

| | (1) | (2) |
|----------------------------------|---------------------|----------------------|
| Obama condition | -0.014 (0.037) | 0.011 (0.077) |
| Bush condition | -0.036 (0.037) | -0.104 (0.077) |
| Agency condition | 0.016 (0.037) | 0.066 (0.077) |
| Democrat | | 0.117* (0.065) |
| Republican | | -0.196*** (0.070) |
| Obama condition x Democrat | | -0.025 (0.093) |
| Obama condition x Republican | | -0.059 (0.100) |
| Bush condition x Democrat | | 0.032 (0.093) |
| Bush condition x Republican | | 0.166* (0.099) |
| Agency condition x Democrat | | -0.074 (0.093) |
| Agency condition x Republican | | -0.056 (0.100) |
| Constant | 0.788*** (0.026) | 0.796*** (0.054) |
| Observations | 989 | 989 |
| R ² | 0.002 | 0.099 |
| Adjusted R ² | -0.001 | 0.088 |

Note: *p<0.1; **p<0.05; ***p<0.01

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