
SYMPOSIUM ON POLICYMAKING, ACCOUNTABILITY, AND EXECUTIVE ACTION

Symposium on Policy Making, Accountability, and Executive Action: Introduction

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Nearly two decades ago, current Supreme Court Associate Justice Elena Kagan (2001, 2246) famously (some may argue *infamously*) wrote, “The history of the American administrative state is the history of competition among different entities for control of its policies. . . . We live today in an era of presidential administration.” Today, it is plainly evident that presidents place great emphasis on directing the administrative state, its agenda, and its outputs. While the struggle for political control over administration is not new, as Kagan points out, the president’s capacity to shape administrative outcomes now plays a central role in determining a president’s degree of policy and political success. Because they are often (though not always) the means through which presidents attempt to direct executive branch activities, presidential directives, in the form of proclamations, executive orders, memoranda, and the like, are increasingly important indicators of presidents’ attempts to achieve their goals.

For reasons that are not altogether surprising, therefore, presidential unilateral action is arguably more politically and publicly salient than it ever has been. Figure 1 provides some basic context for evaluating this claim by displaying the volume of coverage of presidential unilateral action in the *New York Times* from 1922 through 2018. Several patterns are immediately clear. First, the presidency of Franklin Roosevelt appeared to usher in a new era of media attentiveness to direct presidential action. The first two years of the Roosevelt administration garnered more coverage (698 stories) than the previous decade combined (564 stories). Second, while patterns of attentiveness have waxed and waned throughout the years, media coverage has recently resurged. Nearly 750 stories on unilateral action appeared in 2017, the first year of the Trump administration. While

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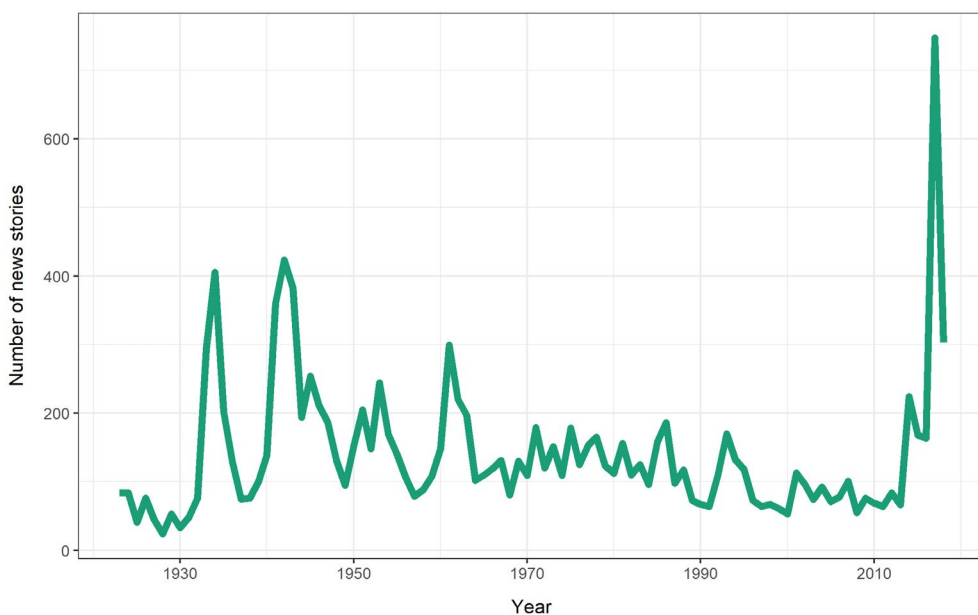


FIGURE 1. News Coverage of the Unilateral Presidency, 1922–2018. *Note:* Figure shows the annual number of stories in the *New York Times* that referenced the president and either “executive order,” “executive action,” or “unilateral action.”

that figure fell quite a bit (to 303) in 2018, the volume of coverage was the second highest in more than a half century. The impeachment hearings of President Donald Trump as of this writing suggest that questions of presidential power hardly receded in 2019.

Arguably, the stakes of presidential unilateral power are higher today than in previous eras. This is due largely to increasing partisan polarization within Congress (McCarty, Poole, and Rosenthal 2016) and the increasingly narrow partisan majorities that govern the chambers of Congress (Lee 2016). These twin phenomena render the legislative process increasingly less available to presidents who enter office with a robust list of policy objectives. Under these circumstances, unilateral power holds increased appeal for presidents seeking to use the options available to them to achieve their goals. At the same time, however, conflict on partisan and ideological grounds that normally accompanies debates over the president’s policy agenda is extended to debates over the president’s degree of control over the executive branch and normative questions about the scope of presidential authority.

The last two decades of scholarship have demonstrated the power and promise of unilateral action for contemporary presidents. Focusing particularly on the institutional constraints on the use of unilateral power, empirical and theoretical research has provided new and important insight into how the adjoining branches of government constrain presidential behavior (a very partial list includes Bolton and Thrower 2016; Chiou and Rothenberg 2017; Howell 2003; Kennedy 2015; Lowande 2018; Mayer 1999; 2001; Moe and Howell 1999; Thrower 2017). More recently, scholars have investigated how unilateral power may also be responsive to public opinion (Christenson and Kriner 2017;

Judd 2017; Lowande and Gray 2017; Posner and Vermeule 2011; Reeves and Rogowski 2015; 2016), electoral and partisan constituencies (Rottinghaus and Warber 2015), and interest groups (Foster 2019).

As such, scholarship on the unilateral presidency not only provides insight into the means by which presidents seek to control the administrative state. It also addresses questions that have long been central to both normative and positive political science, including the separation of powers, representation, accountability, and the political influence of organized groups. The articles in this volume contribute to this enterprise by advancing our collective understanding of unilateral power. Importantly, they do so by presenting new conceptual understandings of unilateral power and new theoretical lenses through which to study it. The articles also discuss how the use of new methodological tools and a wider empirical focus can further enhance the theoretical and substantive insights produced by scholarship in this area. In so doing, the contributions in this issue point the way forward for new waves of scholars and toward new lines of inquiry.

Contributions from This Issue

Most institutional perspectives on unilateral action emphasize the president's relationship with adjoining branches of government. These perspectives generally emphasize the president's strategic calculations about whether a potential unilateral directive may be able to withstand scrutiny from adjoining branches of government. For instance, if the president were to issue an executive order to which a large majority of Congress was opposed, Congress could respond to the president by passing a new law and overturning the president's directive. This threat of congressional retaliation would thus deter the president from issuing unilateral action. Accordingly, a large literature explores the relationship between unilateral action and divided government (e.g., Bolton and Thrower 2016; Chiou and Rothenberg 2017; Howell 2003), following the intuition that divided government characterizes periods of preference divergence between presidents and Congress.¹ A smaller literature operates from a similar framework to study how judicial review affects presidents' decisions to use unilateral power (e.g., Howell 2003; Thrower 2017). The predictions from this literature are more mixed; however, this scholarship shares the view that presidents will anticipate reactions from the judiciary and adopt unilateral strategies that minimize the chances of orders being overturned.² This literature has made important contributions to understanding how interbranch politics shape patterns of unilateral policy making and provides a new perspective on the president's policy influence in a separation of powers system.

1. Kaufman and Rogowski (2017) argue that this literature overstates the impact of congressional constraints relative to the expectations for presidential action. However, Deering and Maltzman (1999), among others, employ a different strategic logic to argue that interbranch conflict should *increase* rather than decrease the use of unilateral power.

2. Fox and Stephenson (2011) approach the role of judicial review from a different perspective and argue that the possibility of judicial intervention may lead executives to engage in "posturing," in which they enact bold yet unwise policies in an effort to project competence.

The policy process does not end, however, with the creation of a new policy through either statutory or unilateral means. Policy implementation depends, of course, on the executive branch. This observation and the possibility of bureaucratic drift from congressional preferences motivate a class of theories that consider the conditions under which legislators delegate authority and discretion to executive branch agencies (e.g., Epstein and O'Halloran 1999; Huber and Shipan 2002; Volden 2002; for a review, see Gailmard and Patty 2012). A key insight from these models is that legislators write policy in anticipation of how it will be implemented.

Implementation concerns are likely to motivate executives just as they do legislators. Policy-motivated presidents, after all, depend upon effective implementation by bureaucrats to achieve their preferred policy outcomes. In many cases, Joshua Kennedy (2015) shows, bureaucratic agencies fail to implement the orders contained in presidential directives. This finding echoes Neustadt's (1990, 9) recounting of President Harry Truman's prescient prediction that General (and later President) Dwight D. Eisenhower would be frustrated with his inability to dictate orders to those around him and expect them to be followed accordingly. Research by Andrew Rudalevige (2012; 2015) calls attention to the process through which unilateral directives are devised and shows that many of their provisions flow *up* from agencies to the White House, rather than being imposed upon agencies by the president. In all, these findings suggest that presidential decisions related to unilateral action are dependent not only upon *interbranch* politics but are also shaped by *intra*branch concerns.

"Policy Durability, Agency Capacity, and Executive Unilateralism" by Ian R. Turner shows how incorporating the bureaucracy into a model of unilateral policy making may affect a president's strategic calculations. Turner introduces a framework for considering how presidents make trade-offs on ideological grounds between policies that can be pursued together with Congress and those that are implemented unilaterally, and on the basis of how effectively policies are implemented by bureaucrats. In doing so, Turner's framework shows how *intra*branch politics affects *interbranch* bargaining by changing the relative appeal of unilateral action to presidents. Turner formalizes this logic, presents a number of new theoretical predictions generated from a simple formal model, and discusses opportunities for empirical testing and further theoretical extensions. Turner's article lays the groundwork for future scholarship to more fully integrate bureaucratic politics into models of presidential behavior and interbranch bargaining. Moreover, building upon a large literature that emphasizes the relationship between presidential power and the growth of the administrative state, Turner's model provides fresh insights into how bureaucratic capacity figures into a president's exercise of executive prerogative.

Most scholarship views directives such as executive orders as substitutes—however imperfect—for legislation. Turner explicitly leverages the degree of "substitutability" to generate predictions about how bureaucratic implementation affects a president's choice of strategy. Once the legislative process has been completed and the president has signed a bill into law, however, the president can directly shape how that statute is implemented. Ashley Moraguez's contribution to this issue, "Policy Making in the Shadow of Executive Action," addresses how presidents use executive action to shape bureaucratic

implementation and how legislators will anticipate the use of this ex post means of presidential influence.

Moraguez focuses on the case of signing statements and, in doing so, makes at least two important contributions. First, Moraguez recasts the focus of the unilateral politics literature from specific types of directives—for instance, executive orders and memoranda—to instead examine their functional role. According to Howell (2003, 14–15), two features of unilateral power are particularly important: presidents move first, and presidents move alone. While signing statements surely meet the latter criterion, they do not provide presidents with the first-mover advantages afforded by other types of directives. Viewed from another perspective, though, signing statements may represent yet another of the president’s mechanisms of control over policy implementation. As Cooper (2002, 517) instructs, signing statements generally provide the president’s interpretation of statutory language or constitutional limits on some of its provisions, or indicate to bureaucratic personnel how the president would like for it to be administered. Whereas executive orders and memoranda (along with other kinds of directives) direct bureaucratic action in the absence of congressional action, signing statements provide instructions—either directly or indirectly—about how to implement laws passed by Congress. Moreover, there is nothing that prohibits presidents from using executive orders and similar directives to implement laws passed by Congress. For instance, days after signing the Patient Protection and Affordable Care Act in 2010, President Barack Obama issued Executive Order 13535 to establish mechanisms for prohibiting the use of federal funds for abortions in ways consistent with the Hyde Amendment. This example highlights the use of presidential directives for implementation purposes and suggests a similar role for signing statements.

The second important contribution of Moraguez’s article concerns the relationship between ex post presidential action and interbranch bargaining. In the context of this case, Moraguez asks why legislators commit to deals with the president despite the possibility that the president can unravel or undo provisions of those agreements through executive action. Moraguez presents a theoretical framework that emphasizes the dual nature of legislators’ incentives, who seek to balance their constituency-induced preferences against their own policy views. When these two dimensions come into conflict, Moraguez posits that legislators may have incentives to support bargains with the president that their constituents support even if the president may subsequently act to weaken or alter some of the provisions. By doing so, legislators retain electoral support while avoiding accountability for later actions taken by the president. This framework generates a number of novel predictions and raises a number of provocative questions about Arnold’s (1990) notion of “traceability” in the context of interbranch bargaining. Moraguez focuses on testing one particular hypothesis, which concerns the relationship between legislative fragmentation or polarization and the use of signing statements. Moraguez argues that bargains between legislators and the president are less likely to be struck as preferences within the legislature become more heterogeneous, which evokes the familiar prediction from Krehbiel (1998) that polarization is likely to increase gridlock. Moraguez expands upon this prediction to argue that as polarization increases, it will be more difficult to assemble coalitions of legislators who all stand to gain from a particular bargain in the

shadow of a presidential signing statement. While signing statements might help facilitate such deals when preferences within Congress are relatively homogenous, they are less helpful—and thus less likely—as preferences polarize. Using bill-level data from 1981 to 2012, Moraguez’s empirical findings support this theoretical implication. In an interesting contrast from existing literature, this account predicts that congressional fragmentation or polarization is associated with *less* frequent, rather than more frequent, use of executive action, and identifies an electorally focused mechanism that generates this result.

The third contribution to this special issue concerns the relationship between theories of executive action and empirical tests. In “Measuring the Content of Presidential Policy Making: Applying Text Analysis to Executive Branch Directives,” Aaron R. Kaufman provides an introduction to the use of text analysis for studies of the presidency. Measurement is an important—and often overlooked—component of any empirical inquiry. The operationalization of key measures has implications for the credibility of empirical tests of theoretical claims. For example, as Cameron (2009, 369–70) describes, theories of policy making generally focus on the production of substantively important policies. If empirical tests of these theories rely on data that conflate important and trivial policies, then it is unclear whether the theory of interest provides insight into the production of genuinely important policies. In the context of unilateral action, distinguishing important from trivial directives has been a focus of considerable research, particularly with respect to executive orders. The vast majority of executive orders concern relatively mundane administrative affairs that do not have significant implications for substantive policy outcomes. For the purposes of descriptive inferences, distinguishing important from trivial directives has implications for how we characterize presidents’ use of unilateral powers; this enterprise also has implications for which directives are used to test theories about the conditions under which they are produced.

Kaufman’s article points out that the institution of the presidency generates an extraordinary number of documents: administrative directives, congressional correspondence, public speeches, and the like. The sheer volume presents challenges for systematic study of presidential behavior. While a simple count of the number of documents may suffice in some instances—for example, to answer questions related to a president’s public appearances (Eshbaugh-Soha 2003; Hager and Sullivan 1994) or legislative requests made of Congress (Cohen 1999)—for many other research enterprises, a more qualitative assessment of these documents is required. Moreover, while media mentions of presidential directives (see, e.g., Chiou and Rothenberg 2017; Howell 2003) may be sufficient in some instances, in others this indicator may introduce its own measurement challenges. Political scientists and scholars in related disciplines have made tremendous progress in the development and application of methods of text analysis in recent years; however, these methods have been applied only infrequently to research concerning the presidency and the executive branch (for prominent exceptions, see, e.g., Katagiri and Min 2019).

Kaufman’s article discusses how text analysis can be used to answer substantive questions in the context of the presidency. Text analysis can be used to answer fundamentally *qualitative* questions about the nature of presidential behavior. For instance, how

substantively important is a directive, how liberal or conservative is it, what policy area does it address, to whom is it directed, and how clear are its instructions? As Kaufman shows, text analysis can be used to answer these questions along with a number of others. This article lays the groundwork for future studies of presidential behavior to use text-analytic methods to systematize the coding process such that measurement strategies are used to provide the moprovides an introduction to text analysis and how its methodsst appropriate empirical tests of theoretical claims.

The Trump administration's embrace of unilateral power as a means of accomplishing its campaign promises has been a noteworthy departure from previous administrations. The frequent media events around President Trump's use of unilateral power raise questions about the president's motivations. Myunghoon Kang takes on this question directly and considers when presidents will use unilateral power given their electoral motivations. In "Presidential Unilateral Action as a Tool of Voter Mobilization," Kang posits that unilateral action achieves two, potentially countervailing, responses. Among all voters, unilateral action activates constitutional concerns. That is, voters penalize the president for unilateral action due to their sense that the president has violated separation of powers arrangements (see, e.g., Reeves and Rogowski 2016). At the same time, however, unilateral action can mobilize the president's supporters through the provision of expressive benefits. Therefore, Kang's model directly evaluates how the public's democratic values interact with their support for specific policies or presidents.

Kang's model contributes to an increasingly important and robust literature that explores how electoral motivations affect a president's strategic behavior. In the context of veto politics, for instance, Groseclose and McCarty (2001) demonstrate that Congress will sometimes pass legislation that it knows the president will veto because doing so will reveal that the president is out of step with public opinion. More recently, Gleason Judd (2017) develops a model in which presidents may use unilateral power to demonstrate their competence to the electorate even though such action may produce inferior policy. In contrast with these models, Kang studies a setting in which voters are perfectly informed about the president and focuses on when presidents will use unilateral power to appeal to a heterogeneous electorate. In so doing, Kang's model generates new theoretical insights about how accountability mechanisms operate based on the electorate's substantive *and* procedural values.

A second important theoretical contribution from Kang's article concerns the interpretation of unilateral action. The model shows that the president's decision to act unilaterally is guided by expectations of electoral support. In a friendly political environment, for example, presidents may decide to act unilaterally precisely because the action taken by the president will be rewarded by voters. While normative concerns about presidents' use of unilateral power generally focus on concerns about constitutional legitimacy, Kang's model implies that electorates may confer popular legitimacy. Moreover, voter response to unilateral power also depends on the magnitude of their constitutional objections to its use. As voters place less emphasis on constitutional considerations relative to their policy interests, presidents stand a greater chance of receiving a positive reception from voters following unilateral action. Overall, by integrating an attentive electorate into a model of presidential decision making to show how public opinion constrains or

incentivizes the use of unilateral power, Kang reveals that normative conclusions about unilateral action may need to be justified on grounds that extend beyond solely constitutional considerations.

In the final contribution to this symposium, Stephen D. Ansolabehere and Jon C. Rogowski study the relationship between unilateral action and presidential accountability. Many prominent normative assessments of unilateral power lament the degree to which presidents are held unaccountable for their use of power. Ansolabehere and Rogowski provide an empirical assessment of the accountability mechanism by focusing on how the public's evaluations of presidents reflect their support for policies achieved via unilateral action.

Drawing from scholarship developed mostly in the context of legislative politics, Ansolabehere and Rogowski argue that the public's evaluations of unilateral directives extend beyond their partisan assessment of the president. Instead, voters consider the specific policies advanced by presidents. The authors further argue that unilateral action is a particularly useful context for evaluating how and to what degree presidential accountability operates. While a large literature debates the extent to which presidential election outcomes are responsive to, for example, economic conditions, the state of war and peace, and victories by local sports teams, these outcomes represent (at most) an arm's-length assessment of the president's specific policies. Because unilateral directives are not separable from the president—the official who issued them—they provide an opportunity to evaluate how the public reacts to presidential policy making.

Analyzing nine salient directives issued by President Trump in 2017 and 2018, Ansolabehere and Rogowski report several new results. First, support for Trump's unilateral actions varies fairly considerably. While Republicans were more supportive of the directives than Democrats, support among Republicans was far from unanimous, nor were Democrats in unified opposition. Moreover, Republicans and Democrats were in far more agreement on some directives than others. Second, overall assessments of President Trump were strongly responsive to evaluations of the president's unilateral policies. While this relationship is strongest among political independents, even Democrats and Republicans were more likely to approve of the president's job performance when they supported a greater share of his directives. Finally, they show that evaluations of the president's unilateral directives were also associated with congressional vote choice in the 2018 midterm elections, providing a link between presidential action and party electoral fortunes. Their findings suggest that voters apply their policy views when evaluating presidential behavior; more speculatively, they suggest that aggregate public opinion could constrain the unilateral ambitions of presidents whose policy views are at odds with the public's.

Conclusion

Understanding how, when, and to what effect presidents use unilateral powers is a central question for scholars of the contemporary presidency. Answering these questions has important implications not only for how we understand the functioning of the separation of powers, but it also provides insight into the policy outcomes produced by the

American political system. Put this way, existing research has paved the way for a new generation of scholars and scholarship to explore new theoretical and empirical possibilities. The contributions in this issue provide an important step forward in doing just that.

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