Divided Government, Strategic Substitution, and Presidential Unilateralism

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Abstract

Presidents select from a range of instruments when creating new policies through executive action. We study strategic substitution in this context and argue that presidents use less visible means of unilateral instruments when Congress is likely to scrutinize presidential action. Using data on unilateral orders issued between 1946 and 2020, we report two main findings. First, analyzing presidents' choice of instruments, we show that presidents are more likely to substitute memoranda and other less visible instruments for executive orders and proclamations during periods of divided government. Second, after accounting for the substitution of executive orders with other instruments, we find that presidents issue greater numbers of directives during divided government than during unified government. These findings provide new evidence about the limitations of the separation of powers as a constraint on presidential unilateralism and highlight the importance of accounting for the variety of instruments through which presidents create unilateral policies.

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Policymakers often select from a range of tools when pursuing their policy goals, and must balance the costs and benefits of each possible option. For example, re-election-seeking executives may substitute monetary policy for fiscal policy, weakening central bank independence while promoting their electoral fortunes (e.g., Clark 2002). A policymaker seeking to set trade policy may impose tariff schedules or enact non-tariff barriers (e.g., Grossman and Helpman 1994). And officials who wish to advance their country's international interests select from a variety of foreign policy instruments, such as sanctions, economic aid, immigration restrictions, and military deployments (e.g., Milner and Tingley 2015). While the available options may not be perfect substitutes, political incentives often structure not only the choice of policy but also the instrument through which it is enacted.

In this paper, we study strategic substitution in the context of presidential unilateral action. Presidents make new policies without involving Congress through a variety of instruments, including executive orders, memoranda, proclamations, determinations, and others. While procedural requirements may vary across directive categories, in practice these lines are blurred if not indistinguishable as they are often used to achieve functionally equivalent outcomes (Cooper 2002; Dodds 2013; Lowande 2014; Woolley and Peters 2017). Studying aggregate trends in unilateral activity, recent scholarship argues that presidents increasingly have replaced executive orders with other directive types (Cooper 2002; Lowande 2014; Rudalevige 2021). We build on this research to examine when presidents create a particular unilateral policy through one instrument rather than another.

While unilateral action can confer policy and electoral benefits to presidents (e.g., Howell 2003; Judd 2017), it can also lead to greater congressional scrutiny and reductions in public approval (e.g., Cooper 2002; Christenson and Kriner 2020b; Reeves and Rogowski 2018). We argue that these political costs and benefits vary across types of directives and that presidents balance these incentives when creating new policies via executive action. For example, executive orders are generally the most prominent and visible form of unilateral instrument (Cooper 2002;

Lowande 2014). We hypothesize that presidents choose whether to issue a particular directive as an executive order rather than a less visible instrument like a memorandum based on their incentives to minimize any political costs and maximize any policy victories that may be associated with a unilateral order.

We study directive substitution using data on unilateral orders issued between 1946 and 2020 and present two main findings. First, political context is associated with a president's choice of instrument. Presidents are more likely to substitute memoranda and other less visible instruments for executive orders and proclamations during periods of divided government. Second, we show that presidents' strategic use of directive substitution may undermine congressional constraints on presidential unilateralism. While our results confirm the negative association between divided government and executive orders (Bolton and Thrower 2016; Chiou and Rothenberg 2017; Howell 2003), we also find that presidents issue greater numbers of less visible unilateral instruments during divided party control. Aggregating across directive categories, then, we find that presidents exercise unilateral power more frequently when Congress is controlled by the opposite party. These findings highlight the importance of accounting for the range of instruments through which presidents create unilateral policies and the strategies presidents use when choosing among them. Our results also suggest the limitations of the separation of powers as a constraint on presidential unilateralism.

Mechanisms of Presidential Policymaking

Conventionally, presidents pursue their policy goals by formulating robust legislative agendas and attempting to rally Congress and the public behind them (Cohen 2012; Kernell 1997). Yet legislation is not the only means through which presidents secure new policy outcomes, as unilateral power offers an alternative mechanism through which presidents can effect policy change. As Cooper (2002, ix) observed, "There is virtually no significant policy area in which presidents

operate that has not been shaped to one degree or another by the use or abuse of [unilateral] tools." By exercising unilateral power, presidents may be able to secure policy outcomes that better reflect their preferences relative to legislation and to address policies on which Congress is gridlocked (e.g., Howell 2003).

While executive orders may be the most commonly understood tool of unilateral power, they are only one of many avenues through which presidents exercise unilateral power. As Rudalevige (2021, 15) points out, "Executive orders are hardly alone in their basic function...there is a wide range of tools with similar effect." These tools include proclamations and memoranda, among others. Despite their different names, these instruments are often functionally equivalent and used for similar purposes (Cooper 2002; Lowande 2014; Woolley and Peters 2017).[1] According to the Congressional Research Service (2021, 21), "any distinction among these instruments— executive orders, presidential memoranda, and proclamations—is muddied by the fact that all three may be employed to direct and govern the actions of government officials and agencies." An opinion issued by the Office of Legal Counsel (2000) likewise concluded that "there is no substantive difference in the legal effectiveness of an executive order and a presidential directive that is not styled as an executive order."

Recent scholarship suggests that presidents strategically select between various instruments when issuing unilateral directives. Lowande (2014) documents the greater use of memoranda over time and argues that presidents have increasingly used them as replacements for executive orders. As Cooper (2002) elaborates, memoranda have been used "as substitutes for executive orders" (114) and have "in some ways displaced proclamations" (134). Similarly, Rudalevige (2021, 288) observes that memoranda "seem to be in frequent use as substitutes for executive orders." Studying 237 proposed executive orders that were never issued between 1945 and 2001, Rudalevige

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[1]According to Cooper (2002, 16), while the "traditional interpretation has held that executive orders are used internally while proclamations are directives issued to those outside the government...the situation in practice is somewhat more complex and not nearly so neatly defined."

(2021, 177-8) shows that in about 18 percent of cases these proposed orders were subsequently issued as memoranda or some other instrument. And while Chiou and Rothenberg (2017, 7) focus their analysis on executive orders, they also point out that "other forms of unilateral action...may serve as substitutes for executive orders under certain circumstances."

While previous research studies the president's choice to issue executive orders rather than pursue their objectives via the legislative process (Belco and Rottinghaus 2014; Byers, Carson, and Williamson 2020), no existing scholarship evaluates what we refer to as *directive substitution*.[2] Yet scholarship in other domains of the presidency documents a range of contexts in which presidents substitute one action for another. For example, presidents use both signing statements and Statements of Administration Policy (SAP) to express their preferred interpretations of laws passed by Congress (Rice 2010). The choice of which to use may reflect strategic considerations, as Crouch, Rozell, and Sollenberger (2013) argue that the Obama administration replaced signing statements with SAPs and Office of Legal Counsel opinions as less visible means of expressing the president's interpretation of legislation (see also Sievert and Ostrander 2017). In the domain of foreign policy, presidents' choice of policy instrument—such as economic sanctions, trade restrictions, military deployments, and aid provision—is constrained by the domestic politics associated with each instrument and thus leads presidents to substitute one instrument for another (Milner and Tingley 2015). And scholarship on bureaucratic management theorizes the tradeoffs in presidents' decisions to substitute centralization for politicization (Gibson 2021; Rudalevige 2021) and to fill open positions with new appointees rather than leaving them vacant (Kinane 2021). We study directive substitution by analyzing the factors associated with a president's choice of instrument for creating a new unilateral policy.

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[2]Martin (2005) is a notable exception, who studies a president's choice to use executive agreements rather than treaties. Like Martin (2005), we analyze directive level data on the choice of instrument. But by studying unilateral directives rather than international commitments, we present a different set of theoretical considerations and study a wider range of policy areas.

Incentives for Directive Substitution

We argue that presidents strategically choose among unilateral instruments based on their incentives to pursue their preferred policies while limiting the potential costs. The distinctions between directive types have implications for a president's strategic calculation. First, while executive orders and proclamations are legally required to be published in the *Federal Register*, no such obligation applies to instruments such as memoranda (Cooper 2002). Second, in comparison with executive orders (see Rudalevige 2021), the process for issuing memoranda is not well developed. Third, the "malleability" of administrative tools other than executive orders and proclamations enables presidents to "determine the definition of these instruments and how they ought to be used" (Lowande 2014, 725). Together, these facts suggest that the costs of unilateral action vary across directive categories (see also Lowande 2014, 724).

We posit that presidents consider these variable costs and are more likely to issue less visible forms of directives as the costs of unilateral action increase. These costs are linked with the political environment. Highly visible forms of unilateral action are likely to attract the most attention and scrutiny, which presidents may seek to avoid during periods of disagreement between them and Congress. In this circumstance, legislators may criticize both the substance of a unilateral directive and the president for overstepping their authority in issuing it.[3] Congressional criticism and investigations can subsequently undermine the president's political standing (Christenson and Kriner 2020*b*; Kriner and Schickler 2016). Given their incentives to avoid negative attention, Djourelova and Durante (2022) argue that presidents strategically time their executive orders to minimize the publicity they receive through the media, especially during divided government.[4] Congress can also use its powers to attempt to constrain presidents through the appropriations

[3]Previous research suggests Congress' capacity and willingness to subject presidents and their actions to greater scrutiny during periods of interbranch conflict (Kriner and Schwartz 2008; Kriner and Schickler 2016).

[4]Similarly, Sievert and Ostrander (2017) argue that congressional and public outcry has led to

process (MacDonald 2010) and by blocking administrative activity (Acs 2019), each of which may be especially likely when presidents issue directives with which Congress disagrees. In these circumstances, presidents may prefer to avoid inciting congressional ire.

Yet presidents have policy goals of their own and also face pressures to act despite congressional opposition or recalcitrance. Rather than forgo unilateral action during these periods, presidents may instead use instruments that are more likely to escape attention or scrutiny such as memoranda. Compared with executive orders, memoranda receive less media coverage (Christenson and Kriner 2020a) and are mentioned publicly by presidents less frequently (McLain 2022). As Cooper (2002, 86) explains, "Few members of Congress are even aware of this presidential direct action tool," with memoranda "often go[ing] unnoticed unless the White House really seeks to gain publicity for them" (Cooper 2002, 105).[5] Presidents may also use memoranda rather than executive orders to capitalize on the perception that the former are less significant than the latter (Woolley and Peters 2017). Presidents' incentives to avoid congressional scrutiny and downplay the policy significance of their directives are likely to be greatest during periods of interbranch conflict, when they may instead choose to use memoranda and other less visible instruments.

We test the hypothesis that presidents are more likely to substitute less visible directive types for executive orders and proclamations during divided government. Understanding how presidents engage in directive substitution has several implications for scholarship on the presidency. First, the possibility of strategic substitution raises concerns about selection bias for previous empirical work. For example, if presidents are more likely to issue executive orders during divided government, then conclusions about the relationship between divided government and executive orders may not generalize to other types of orders (see also Bolton and Thrower 2021, 126;

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declines in the use of signing statements in recent years.

[5]Similarly, Howell (2003, 7) notes: "If presidents choose to avoid the reporting requirements Congress has placed on executive orders, they can repackage their policies as executive memoranda, determinations, administrative directives, or proclamations."

Lowande 2021; Rudalevige 2021, 81).

Second, presidents' strategic decisions to sometimes choose less visible means of unilateral policymaking may raise questions about transparency, the separation of powers, and democratic accountability. If actors outside the executive branch are unaware of the president's actions, then it may undermine Congress's ability to effectively oversee the president's activities and the public's ability to hold the president to account for them. Thus, our argument identifies a theoretical basis for presidents to exercise power in ways that may be less than fully transparent, concerns about which have figured prominently in legal scholarship (e.g., Kitrosser 2015; Shane 2009).

In addition, unilateral action is a particularly useful context for studying policy substitution. While previous scholarship has studied substitution in foreign affairs by studying the president's choice of policy instrument (such as economic sanctions, foreign aid, and military deployments; see Clark 2002; Milner and Tingley 2015), these instruments can generate radically different outcomes even as they represent an overall foreign policy strategy. But because presidents have considerable discretion in selecting among unilateral instruments that could each generate similar policy outcomes, the case of unilateral action provides greater leverage for studying how political context is associated with policy substitution.

Implications of Directive Substitution for Interbranch Relations

Our argument has implications for considering how the separation of powers constrains presidential unilateralism. While presidents have the power to make new law through unilateral power without consulting the legislative branch, Congress has the authority to pass legislation that change or overturn presidential directives.[6] Accordingly, some theories of unilateral action

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[6]Likewise, courts, bureaucratic agencies, and future presidents can all undermine or invalidate policies created through unilateral action.

posit that presidents are less likely to use unilateral power when they anticipate that Congress is likely to act in this way (e.g., Deering and Maltzman 1999; Howell 2003; Moe and Howell 1999). Given certain assumptions about the distribution of status quo policies, these accounts predict that presidents issue fewer unilateral directives as the policy preferences of Congress and the president diverge. This prediction contrasts with the "evasion hypothesis" which posits that presidents use unilateral power more frequently when their preferences conflict with congressional preferences (e.g., Light 1998 [1982]; Peterson 1990).

A sizable empirical scholarship studies the relationship between presidential unilateralism and interbranch conflict.[7] This research often finds that presidents issue fewer unilateral directives when their preferences diverge from those of Congress (e.g., Chiou and Rothenberg 2017; Howell 2003; Mayer 1999), usually (though not always) operationalized with an indicator for periods of divided government. However, other scholarship provides a more mixed assessment, finding that the relationship between interbranch conflict and presidential unilateralism is null (Krause and Cohen 2000; Mayer and Price 2002) or that it varies across measures (Deering and Maltzman 1999; Krause and Cohen 1997; Ouyang and Waterman 2015), time (Bolton and Thrower 2016), types of directive (Fine and Warber 2012; Ouyang and Waterman 2015), and issue area (Marshall and Pacelle 2005). And other findings support the evasion hypothesis by showing that presidents issue more executive orders as ideological disagreement between presidents and Congress increases (Deering and Maltzman 1999) and during divided government (Fine and Warber 2012).

If presidents are less likely to issue directives as executive orders during divided government, as we argue, the decrease in executive orders during divided government documented by the studies noted above may be offset by increases in other directives during these periods. Depending on the rate at which presidents issue less visible directives, the aggregate result may be *more* unilateral activity during divided government. Thus, our argument suggests that strategic substitution may weaken congressional constraints on presidential unilateralism and that accounting

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[7]See Lowande and Rogowski (2021) for a summary of this literature.

for directive substitution could lend support to the evasion hypothesis.

Data and Methods

We examine our hypotheses regarding directive substitution using extensive data and measures on presidential unilateralism from 1946 to 2020.[8] Our data include 33,921 directives issued during this period which were obtained from the *CIS Index to Presidential Executive Orders & Proclamations* (1987) (*CIS*) and extended through 2020 by *ProQuest Legislative & Executive Publications.* Each document is either a presidential directive or a message which contains evidence of presidential action.[9] The documents represent a diversity of unilateral tools, including memoranda, public land orders, executive agreements, and agency directives in addition to executive orders and proclamations.

Not all unilateral directives meaningfully affect policy outcomes, however, and previous studies of unilateralism focus their empirical tests on "significant" directives. For example, Howell (2003) identifies significant directives as those that were covered by the media and/or mentioned by Congress or the courts. However, most measures of directive significance apply only to executive orders and not other types of directives.

We use measures of directive significance developed by Kaufman and Rogowski (2021) to dis-

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[8]Most research on the unilateral presidency scholarship studies the post-WWII era (see, e.g., Chiou and Rothenberg 2017; Howell 2003; Lowande 2014). As we discuss below, we also analyze more limited time periods when accounting for additional covariates beyond the partisan composition of Congress.

[9]According to the Office of Legal Counsel (1945), presidential directives need not be issued formally as government policy can be created and communicated through informal presidential communications.

tinguish important directives in our data.[10] These measures characterize document significance using supervised learning methods for text analysis (Kaufman 2020). The measure of significance is based on estimates of the significance of executive orders issued between 1947 and 2003 (from Chiou and Rothenberg 2017) along with handcoding of a selection of other directives. Chiou and Rothenberg (2017) aggregate 19 independent measures from newspapers, law reviews, and historical overviews in an item-response framework; however, their measure only applies to executive orders from 1947 to 2003, omitting other directive types and years. Kaufman and Rogowski (2021) extend this measure with supervised learning: they first train a random forest model (Kaufman, Kraft, and Sen 2019) to learn the relationship between a directive's word usage and its significance among the executive orders captured by Chiou and Rothenberg (2017), then use that model to estimate the significance of the remaining, unlabeled directives based on their text. Through cross-validation exercises and comparisons to human coders they show that their supervised method measures directive significance for both in-sample and out-of-sample documents with low error rates. The intuition is that a directive whose text is similar to an executive order in the Chiou and Rothenberg (2017) data will have a similar significance estimate. For each directive, this procedure provides an estimate between zero and one, where larger values indicate a higher probability of significance. Significant unilateral actions are identified as those whose probability estimates are greater than 0.355, which identifies the top 18 percent of significant directives in the data during the period of study.

As we describe below, in our statistical models we also use indicators of the policy area corresponding to each directive developed by Kaufman and Rogowski (2021). These indicators are produced from codings of issue areas for executive orders from Policy Agendas Project (2021*a*) and a sample of hand-labeled documents, which are used to train a model on recovering the relationship between the text of the directives and their associated policy area. That model then applied the same classification scheme to identify the policy areas for the remaining directives

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[10]Additional details about the sample and estimation procedure are provided in Appendix A.1.

in the data. Kaufman and Rogowski (2021) also perform rebalancing methods to ensure that the model performs well in predicting uncommon policy areas, and validate the results with additional cross-validation and human-coder exercises.

Figure 1 shows the annual number of unilateral directives in our data.[11] The light-shaded line shows the annual number of all directives. Overall, presidents issued an average of 452 directives per year, ranging from a minimum of 229 in 1949 to a maximum of 797 in 1969. The dark-shaded line shows the annual number of directives that were estimated to be significant. The average number of significant directives per year is 80, which ranged from 32 in 1968 to 309 in 2020.

Figure 1: Annual Number of Unilateral Directives, 1946–2020
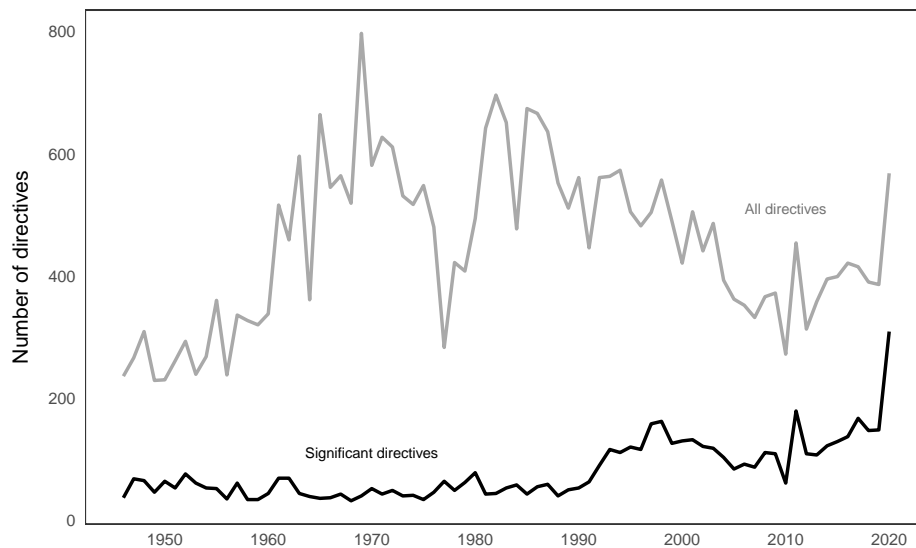
Note: Lines show the annual number of unilateral directives. Gray line shows the annual number of all directives and black line shows the annual number of significant directives.

Our account regarding directive substitution concerns the president's choice of directive conditional on issuing a unilateral order. We create an indicator that distinguishes whether each directive was issued as an executive order or proclamation (= 1) or as a memorandum or some other directive type (= 0).[12] Figure 2 displays the annual values of this measure. The plotted

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[11]Figure A.1 in the Appendix shows the number of orders across each directive category.

[12]Appendix A.2 describes how document categories from *ProQuest Legislative & Executive Pub-*
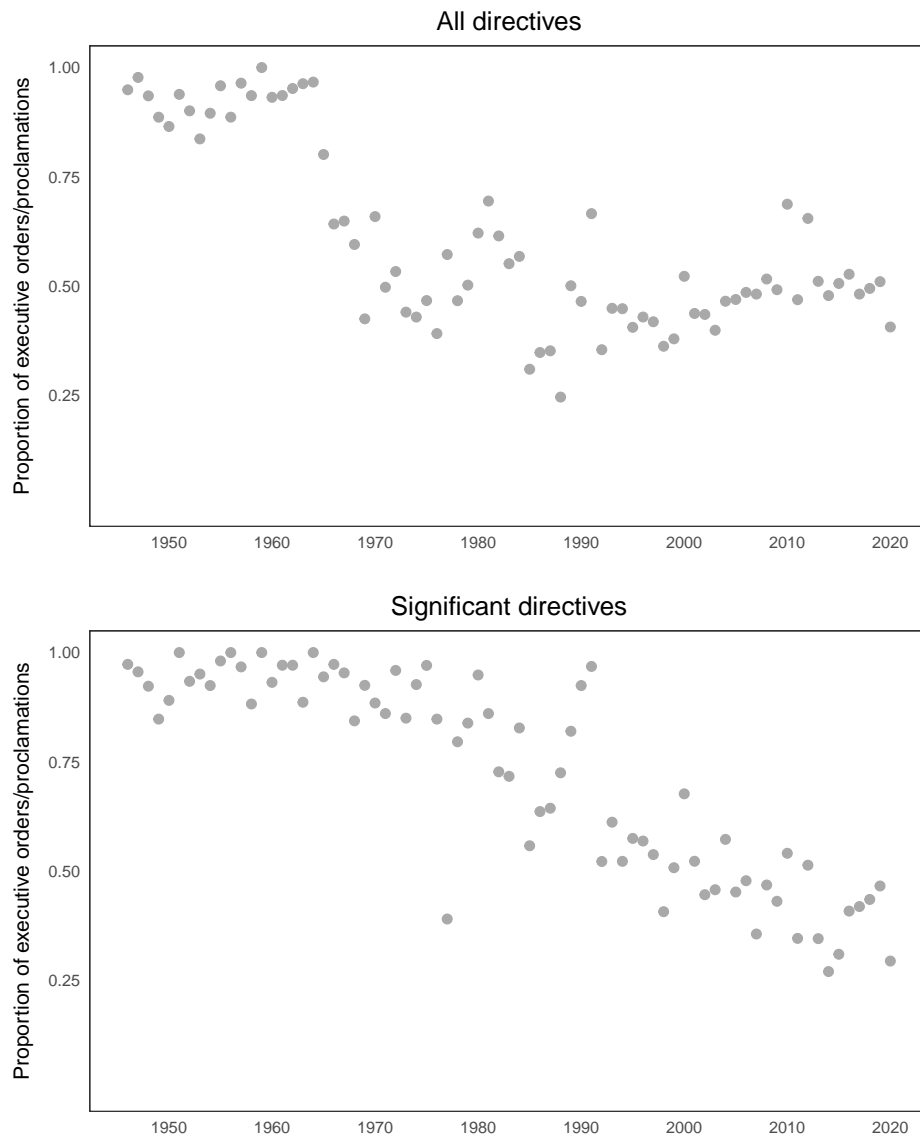
points show the share of unilateral directives that were issued as alternative directives rather than executive orders or proclamations. The top plot shows values for all directives in our data and the bottom plot shows values for significant directives.

Figure 2 reveals several key patterns. Among all orders, 61 percent of directives in an average year were issued as either executive orders or proclamations. There is some temporal variation, however, as memoranda and other administrative directives have accounted for increased shares of presidential unilateralism in recent decades. [13] As the bottom plot shows, this pattern is especially clear in the case of significant directives, where the annual share of significant directives issued as executive orders or proclamations has declined at a steady rate. While more than 90 percent of significant unilateral directives were issued as executive orders or proclamations prior to 1980, since then this figure has declined to around 52 percent. Thus, memoranda and other instruments have comprised an increasingly large share of presidents' important unilateral directives.

Based on the data summarized in Figure 2, simple cross-sectional comparisons suggest that presidents use different instruments depending on the context. Across the 75 years in our data, 52 percent of directives were issued as either executive orders or proclamations during divided government compared with 67 percent during unified government ($t = 26.03$, $p < .001$). We also observe similar patterns when comparing directive choice among significant directives, where 58 percent were issued as either executive orders or proclamations during divided government compared with 68 percent during unified government ($t = 7.82$, $p < .001$). These initial compar-

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lications were used to categorize directives in our analysis. For the purposes of this analysis, we characterized Public Land Orders as executive orders because they are all published in the Federal Register and thus are just as visible as executive orders (and proclamations). However, our findings do not depend on this coding decision; see Table A.1.

[13] A bivariate linear regression of the annual proportion of alternative directives on time reveals a positive but extremely small coefficient which is not statistically distinguishable from zero.

Figure 2: Annual Rates of Directive Choice, 1946–2020

Note: Plotted points show the share of unilateral directives in each year that were issued as executive orders or proclamations. The top plot shows the annual proportions of executive orders and proclamations among all directives and the bottom plot shows the annual proportions among only significant directives.

isons are consistent with our claim that presidents consider the composition of Congress and its potential reaction when deciding what form their directives should take.

Empirical Strategy

We test our argument about directive substitution more formally by studying the president's choice of instrument for each document in our data. Following previous research (e.g., Chiou and Rothenberg 2017; Howell 2003), we focus on studying the relationship among the significant directives in our data. We estimate linear probability models of the general form:[14]

$$y = \delta + \alpha + \gamma + \beta \text{Divided government} + \mathbf{X}\Omega + \epsilon, \tag{1}$$

where the unit of analysis is each significant directive issued from 1946 to 2020 and the dependent variable is the indicator for whether it was issued as an executive order or proclamation ($= 1$) rather than an alternative instrument ($= 0$). The main independent variable, *Divided government*, characterizes congressional sessions when one or both chambers are controlled by a different party than the president. The estimate of β is the main quantity of interest. If, as we argued, presidents substitute alternative directive forms for executive orders and proclamations during contexts in which they anticipate greater congressional scrutiny, the coefficient for *Divided government* will be negatively signed.

We estimate models that contain several varieties of fixed effects to address potential confounding. In our first model, we include fixed effects for each president (δ). This accounts for potential differences across presidents in directive choice. The inclusion of president fixed effects means that our estimates of β are identified with changes in *Divided government* that occur within a given presidential administration. Additionally, president fixed effects help account for secular trends in unilateral activity that span multiple presidencies.

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[14]Logistic regression also provides evidence of directive substitution. See Appendix A.4.2.

Our second model adds fixed effects the twenty issue areas (α) in our data. The inclusion of these fixed effects accounts for the possibility that some types of directives are more likely to be used to address some issues than others. For example, given the use of proclamations to announce tariff schedules (Lowande, Jenkins, and Clarke 2018), it would not be surprising if baseline levels of directive substitution varied between trade policy and environmental policy. By including fixed effects for issue area, then, estimates of β reflect the average within-issue difference in directive substitution that is associated with changes in *Divided government.*

Our third, and most-preferred, model adds fixed effects for the quarter of each presidential term (γ). Previous research suggests that the opportunities for presidential influence and incentives to produce popular policy vary across their terms in office (Light 1998 [1982]; Mayer 2001), and the components of these political cycles may be associated with variation in how presidents issue unilateral directives. Thus, we associate the date on which each directive was issued with the quarter (from 1 to 16) of the four-year presidential term and include fixed effects corresponding to each quarter. Given this specification, our estimates of β account for cyclical variation in presidents' choice of directives.

In all our models, we account for factors (**X**) that may be associated with directive choice and could serve as potential confounders. First, we include an indicator (*Significant directive*) for whether each directive was estimated to be significant according to the estimates from Kaufman and Rogowski (2021), as the importance of a unilateral policy could be associated with the instrument through which it is created. Second, we include a monthly measure of the unemployment rate in percentage points (*Unemployment rate*), which could be associated with the need for presidential action.[15]

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[15]These data were obtained for 1948 through 2020 from the Federal Reserve Economic Data website hosted by the St. Louis Fed. (See https://fred.stlouisfed.org/series/ UNRATE.) Data for 1946 and 1947 were obtained from the National Bureau of Economic Research Macrohistory Database, section VIII (Feenberg and Miron 1997). (See https://data.

In additional models, we account for other political factors that may be associated with a president's choice of directive. We account for presidential popularity by including each president's monthly approval rating, which we rescale to range between zero and one (*Approval rating*). These data were obtained from Christenson and Kriner (2019) for the period from 1956 to 2018, and we extended them through the end of 2020 using monthly data from Gallup. Christenson and Kriner (2019) show that increased presidential approval is associated with the greater use of executive orders. We build upon their research and include this measure to account for the possibility that more popular presidents are less sensitive to any potential costs of issuing executive orders. Second, we include the annual public salience of each issue area using data from the Policy Agendas Project (2021*b*). This measure, *Issue salience*, reflects the annual percentage of the US population who indicated that each of the issue areas was the "most important problem" based on surveys conducted by Gallup. The most important problem responses were associated with the issue area of each directive. Rogowski (Forthcoming) argues that presidents have incentives to address issues of public concern through executive orders, and thus it is possible that presidents may prefer to address these issues through executive orders (and proclamations) rather than other directive types in expectation that they will receive greater public attention for doing so. Third, we account for policy areas that are on the president's agenda and appear to be priority issues for the president (*Presidential priority*). Following Light (1998 [1982]), we calculate the share of sentences in each year's State of the Union address that concern each issue area using data from Policy Agendas Project (2022). Larger values of this measure indicate issue areas that are more critical to the president's policy agenda.

Though this latter set of covariates is less central to our core theoretical interest, by including them we provide a more comprehensive assessment of the political factors that may shape how presidents exercise unilateral power. However, the measure of issue salience is available contin-

nber.org/databases/macrohistory/rectdata/08/m08292b.dat and https://data.nber.org/databases/macrohistory/rectdata/08/m08292c.dat, respectively.)

uously only beginning in 1956. Thus, our regression tables show three sets of models: (1) models that include the various fixed effects described above and the unemployment measure for the period from 1946 to 2020, (2) a model with a full set of fixed effects and the unemployment measure for the period from 1956 to 2020, and (3) the same model and time period with the additional political covariates described above. The vector of coefficient estimates corresponding to the covariates other than *Divided government* is represented by Ω. Finally, ϵ is a random error term, which we cluster on a variable indicating the numbered congress during which the directive was issued, since our primary independent variable (*Divided Government*) is assigned at the level of each congress.

Before proceeding, we emphasize that our analysis is firmly in the camp of observational research. We do not claim that our design allows us to recover an unbiased estimate of the causal effect of divided government on a president's decision to exercise unilateral power with a particular type of instrument. Instead, our primary interest is in understanding whether presidents tend to issue certain types of directives in ways that systematically correspond with the legislative context. Finding that presidents are more likely to issue directives as executive orders or proclamations (rather than memos or other directives) during divided government would provide evidence consistent with our argument. This result would suggest that presidents anticipate the congressional response to their unilateral directives when deciding how to issue them, and this hypothesis is concerned with evaluating what ultimately is a descriptive claim.

Results

Table 1 shows results of the models described above. Columns (1) through (3) report results for the period from 1946 to 2020. The coefficients for divided government are negatively signed and statistically significant, indicating that presidents are less likely to issue unilateral orders as executive orders or proclamations during divided government than they are during unified

government. The coefficients indicate that the probability that a directive is issued as an executive order or proclamation is four to six percentage points lower during divided government. In other words, during periods of greater interbranch conflict, presidents are more likely to use less visible directives when issuing unilateral orders.

Column (4) reports the same specification shown in column (3) but for the period 1956-2020. The coefficient is again negative and statistically significant, and somewhat larger in magnitude compared with the estimates in the prior columns. Column (5) shows results for the same time period when including the measures of presidential approval, issue salience, and presidential priorities. The coefficient for divided government is again negative and indicates that presidents are about six percentage points less likely to issue a unilateral order as an executive order or proclamation during divided government. Across all model specifications, therefore, we find evidence of directive substitution which supports our argument that presidents consider the composition of Congress when choosing unilateral instruments.

The coefficients for the other covariates are also of substantive interest. First, the estimates for the unemployment rate are consistently negative, indicating that presidents are more likely to issue directives through alternative means as unemployment increases. This could suggest that presidents make use of the additional flexibility of alternative unilateral instruments during periods of worsening economic conditions.

Second, column (5) shows that the president's approval rating is negatively associated with the probability of issuing a directive as an executive order or proclamation. Given that other research shows that presidents issue more executive orders as their approval ratings increase (Christenson and Kriner 2019), this finding could suggest that the link between unilateralism and popularity is even stronger when accounting for the wider range of directives issued by presidents. However, we do not wish to overinterpret this relationship since the coefficient is not statistically distinguishable from zero and relatively small in substantive magnitude.

Third, the coefficient for *Issue salience* is positive and statistically significant. This suggests

that increases in an issue's public salience is associated with a greater likelihood that a president will issue a directive to address it as an executive order or proclamation. This could reflect the greater attention presidents expect they will receive for doing so. The coefficient suggests that a ten percentage point increase in salience increases the probability of an executive order or proclamation (relative to another instrument) by about four percentage points.

Finally, the coefficient for *Presidential priority* is positive, suggesting that increases in an issue's prominence on the president's policy agenda is associated with a reduced likelihood that presidents use executive orders or proclamations to create unilateral policies to address that issue area. This could indicate that presidents are likely to choose higher profile directive types to address issues that they view as especially important. However, we offer this only as speculation since the estimate is also small in magnitude and not distinguishable from zero.

The results provide consistent evidence of directive substitution. *How* presidents make new policies through unilateral action depends on the political context. Most importantly for our argument, we find that presidents are more likely to use executive orders and proclamations—and thus less likely to issue less visible instruments of unilateral power—when the composition of Congress reflects their own partisan interests. But during divided government, a common phenomena in contemporary American politics—the president is more likely to issue directives as memoranda and other less visible means of unilateral action.[16] These findings are consistent with our argument that presidents consider the threat of congressional scrutiny when strategizing around which unilateral instrument to use in creating new policies.

In addition, because non-significant orders are unlikely to generate especially large costs or benefits for presidents, we expect that presidents' choice of directive is not sensitive to political context for these orders. Appendix Table A.6 confirms these expectations. When estimating the same model specifications shown in Table A.6, the coefficient estimates for divided govern-

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[16]These findings hold when using the share of congressional seats held by the party opposite the president. See Table A.5.

Table 1: Divided Party Control and Choice of Unilateral Directive

	Dependent variable:				
	Issued as executive order or proclamation				
	(1)	(2)	(3)	(4)	(5)
Divided government	-0.045^*	-0.043^*	-0.064^*	-0.070^*	-0.064^*
	(0.017)	(0.012)	(0.016)	(0.017)	(0.018)
Unemployment rate	-0.011^*	-0.008^*	-0.009^*	-0.008^*	-0.007
	(0.005)	(0.003)	(0.004)	(0.004)	(0.004)
Approval rating					-0.093
					(0.097)
Issue salience					0.442^*
					(0.211)
Presidential priority					0.006
					(0.165)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	6,012	6,012	6,012	5,437	5,437

Note: Entries are linear regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a unilateral directive was issued as an executive order or proclamation (y=1) or some other directive type (y=0). *p<0.05 (two-tailed tests).

ment are small in magnitude, inconsistently signed, and statistically indistinguishable from zero. Viewed (informally) as a placebo test, these results suggest that presidents have the greatest incentives to engage in substitution when the potential political costs of unilateralism are higher.

Comparability of Directive Types

While our findings above included all directive types in the data, we also estimate models that compared a president's choice to issue a memorandum rather than an executive order. We focus on these two directive types because the scholarship in this area is clearest about the equivalence

of memoranda and executive orders. To ensure our findings reported above do not result from comparing what may be more incommensurate directive types, we estimated the models from Table 1 but included only memoranda and executive orders. This reduces the number of observations by about a quarter. The dependent variable is an indicator for the choice to issue a directive as an executive order.

Table 2 shows the results. Overall, the findings are consistent with those shown above. The coefficient for divided government is negatively signed and statistically significant in each of the five. During divided government, presidents are four to five percentage points less likely to issue a directive as an executive order rather than as a memorandum. When focusing on the choice between directives for which previous research emphasizes their substitutability, our findings suggest that presidents' choice of instrument is associated with the partisan congressional context.

Finally, we explored potential variation in the relationship between political context and directive substitution. To do so, we estimated a series of models that interacted the indicator for divided government with the measure of presidential approval and indicators for presidential election year and whether the incumbent president was seeking re-election in that year.[17] The results are shown in Appendix A.4.5. We find some evidence that divided government is less negatively associated with directive choice when presidential approval ratings are higher (Table A.7.). That is, presidents are less likely to substitute memoranda and other directives for executive orders and proclamations under divided government when they are more popular, though we point out that the coefficients are not consistently distinguishable from zero. We do not find any systematic evidence that divided government operates differently on directive choice during election years generally (Table A.8), though we do find that the negative associated between divided government and directive choice is larger in magnitude in years when an incumbent president is up for re-election (Table A.9). This result is consistent with our general argument

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[17]We coded Truman in 1952 and Johnson in 1968 as not seeking re-election.

Table 2: Political Context and Directive Choice: EOs and Memos

			Dependent variable:		
			Issued as executive order		
	(1)	(2)	(3)	(4)	(5)
Divided government	-0.052^*	-0.040^*	-0.054^*	-0.052^*	-0.051^*
	(0.019)	(0.010)	(0.015)	(0.015)	(0.014)
Unemployment rate	-0.009	-0.007^*	-0.008^*	-0.007^*	-0.007^*
	(0.006)	(0.003)	(0.003)	(0.003)	(0.003)
Approval rating					-0.003
					(0.082)
Issue salience					0.150
					(0.189)
Presidential priority					-0.035
					(0.095)
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	4,668	4,668	4,668	4,379	4,379

Note: Entries are linear regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a significant unilateral directive was issued as an executive order (y=1) or a memorandum (y=0). *p<0.05 (two-tailed tests).

and suggests that when standing for re-election presidents have particular incentives to avoid the political costs of highly visible unilateral directives.

We have argued that presidents have political incentives to minimize potential backlash to their unilateral directives and hypothesized that presidents are less likely to issue orders as executive orders and proclamations when the opposition party controls Congress. During these contexts, Congress may be more likely to mobilize the public against the president by calling attention to directives with which they disagree, since Congress and the president will share different political views and policy goals. Our empirical analysis provides evidence of directive substitution, as presidents' choice of unilateral instrument is associated with the congressional

context in which their directives are issued. These findings suggest an important implication: how do we understand congressional constraints on presidential action if presidents use different forms of unilateral power depending on the composition of Congress? Our next set of analyses address this question.

Reconsidering Congressional Constraints

Our data show that presidents are more likely to use less visible directives when making unilateral policies during divided government. But what might this imply about the total volume of unilateralism during divided government, and how does it compare to patterns of unilateralism during unified government? It is possible, for example, that the decrease in the likelihood of issuing executive orders during divided government is offset by greater use of alternative directives. Investigating this possibility has important implications for evaluating theories of unilateralism that emphasize interbranch checks as a constraint on executive power.

We aggregate the data reported above to measure the *annual* number of significant directives from 1946 to 2020. Our empirical approach closely mirrors the modeling decisions used in previous research so that the results from our models can be compared with the findings from scholarship that focuses on executive orders.[18] First, while we focus on directives that are measured as significant according to Kaufman and Rogowski (2021), we also explore the sensitivity

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[18]So that our directive classification strategy is consistent with previous scholarship, our main results omit Public Land Orders rather than classify them in the executive order category as we did above. However, our results are substantively identical when including Public Land Orders in our analysis and combining them with executive orders. Perhaps the most important result from this additional analysis is that we continue to find strong evidence that divided government is associated with a significant increase in unilateral activity when accounting for the full range of directive types. See Table A.10.

of our results to alternative thresholds of significance. Second, we adopt the model specification from Bolton and Thrower (2016) and regress our measure of the annual volume of unilateral activity on an indicator for divided government and a series of control variables, including the annual inflation rate, annual federal spending as a percentage of gross domestic product, and indicators for US involvement in major wars, the last year of an eight-year term, and the first year of a new administration from a different party than its predecessor.[19] We also include a linear time trend and presidential fixed effects.[20] With this specification, the coefficient for divided government is identified using changes in party control of Congress within a given presidential administration. We estimate negative binomial regressions and cluster standard errors on each congress.

Table 3 shows the results.[21] The table reports results for the four categories of directives in our data, which are shown in first three pairs of columns. For each directive category, the first model reports results from a bivariate regression with president fixed effects and the second column shows results when estimating the full model specification.

The first two columns analyze the predictors of significant executive orders. Replicating findings from previous research (Bolton and Thrower 2016; Howell 2003), we find a negative relationship between divided government and nonceremonial executive orders indicating that presidents tend to issue fewer executive orders during divided government, although neither coefficient estimate is statistically significant.

The next four columns of Table 3 illustrate how studying the full corpus of directives produces different conclusions about the relationship between divided government and unilateral action compared with previous scholarship. For each of the other categories of directives, we find a *positive* relationship between divided government and significant directives. To be sure, only one of the coefficients for proclamations is statistically significant. Yet the positive correlation

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[19]We extend the values of the covariates in Bolton and Thrower (2016) through 2020.

[20]Our conclusions do not depend on this specification, as we discuss below.

[21]Full results for all covariates are shown in Appendix Table A.11.

is consistent across each of the four models, and is statistically distinguishable from zero for both models that analyze significant memoranda, perhaps the most important alternative tool to executive orders.

The rightmost columns aggregate the annual number of significant directives across all categories including executive orders. Strikingly, we find a positive relationship between divided government and the use of unilateral power.[22] In the postwar era, presidents have issued significant unilateral directives at higher rates during years when the opposition party controlled Congress. These findings contrast with theoretical claims that argue that presidents scale back their unilateral ambitions in contexts where Congress is controlled by the opposite party (Bolton and Thrower 2021; Chiou and Rothenberg 2017; Howell 2003). Instead, they provide support for the evasion hypothesis, which argues that presidents make heavier use of unilateral powers in contexts where Congress is likely to oppose their policy agendas.

Table 3: Divided Government and Significant Unilateral Action, 1946–2020

	Executive orders		Proclamations		Memoranda		All directives	
Divided government	−0.189	−0.047	0.174*	0.161	0.287*	0.438*	0.151	0.225*
	(0.127)	(0.113)	(0.077)	(0.124)	(0.112)	(0.166)	(0.079)	(0.075)
President Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Controls	No	Yes	No	Yes	No	Yes	No	Yes
Observations	75	75	75	75	75	75	75	75

Dependent variable is the annual number of directives indicated at the top of the columns.
Estimates are negative binomial regression coefficients with standard errors clustered on
Congress shown in parentheses. * indicates $p < 0.05$ (two-tailed tests).

The substantive conclusions from Table 3 are robust to considerations related to measurement, specification, and the time period under investigation.[23] First, we re-estimate our model while accounting for the share of seats held by the president's party rather than divided gov-

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[22]The coefficient in the first of these columns falls short of significance at conventional levels (p < .06), but the second column provides the clearest set of results for comparing with the findings from previous scholarship.

[23]Appendix A.5 shows full results for these analyses.

ernment. This measure parallels our earlier analysis of directive substitution. We also estimate models that substitute a continuous measure of interbranch conflict (based on the absolute difference in NOMINATE scores between the president and the median member of each chamber) for divided government. The findings from these models support our conclusions from Table 3. Whether measured on the basis of partisan composition or ideological disagreement, we find that presidents issue more memoranda during periods of interbranch conflict, and when aggregating across categories of directives we continue to find a positive relationship between interbranch conflict and presidential unilateralism.

Second, as we noted above, our findings are not driven by the specific model specification shown in Table 3. Based on the full model specification from the last column of Table 3, we re-estimate the model while including every possible combination of predictors and plotted the distribution of coefficients for divided government. Figure A.2 shows the distribution of coefficients and p-values for *Divided government* for each of 64 possible combinations of the other predictors.

Third, we estimate models that exclude 2020 given the large (though not unprecedented) number of directives issued that year. The patterns from these models are consistent with those reported in Table 3, though some of the coefficients are estimated less precisely than in the models above. In no instance, however, do we find evidence that unilateral directives aside from executive orders are negatively associated with interbranch conflict.

Finally, the positive relationship between divided government and unilateral action is robust to alternative designations of significant directives. Based on the specification from the last column of Table 3, we estimate models that use increasingly strict deciles of policy significance to identify nonceremonial directives. Across all ten models, the coefficient for *Divided government* is positive and statistically significant. When studying either the universe of unilateral actions or the most significant directives in the data, we find no evidence that divided party control of

government is associated with overall decreases in presidential unilateralism.[24] To the contrary, our evidence suggests that presidents exercise unilateral power more frequently in divided government than during unified government.

These results indicate that presidents' increased use of directives other than executive orders more than offsets any negative association between divided government and executive orders. By taking seriously the possibility that presidents' choice of unilateral directives is conditioned by the context in which those directives are issued, we have provided new evidence about the relationship between presidential unilateralism and interbranch conflict.

Conclusion

Presidential unilateralism is an increasingly important source of policymaking in the contemporary United States. While previous scholarship emphasizes the diversity of ways through which presidents create unilateral policies, it does not analyze the factors that affect the president's choice of unilateral instrument. Our theoretical argument posits that presidents consider the potential political reaction to their unilateral directives and strategically select instruments that may be less likely to garner publicity when Congress is controlled by the opposite party. We find support for this claim using the most comprehensive dataset to date on presidential unilateralism since the end of World War II. Presidents are less likely to issue directives as executive orders or proclamations during divided government, instead appearing to prefer memoranda and other less visible—but, potentially, no less impactful—policy instruments.

By accounting for directive substitution, we further show that presidents issue considerably greater numbers of unilateral directives during periods of divided government. These findings offer a corrective to previous scholarship that emphasizes the constraining effect of Congress

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[24]We also explore a model that characterizes the dependent variable as the number of directives weighted by their estimated significance.

on unilateral power (e.g., Bolton and Thrower 2021; Chiou and Rothenberg 2017; Howell 2003). Instead, our results suggest that interbranch conflict is an accelerant on, rather than a deterrent of, unilateral action. These results complement other research that shows that presidents are more aggressive (Lowande 2021)—and, we show, more strategic—in using unilateral action than conventional accounts portray.

Our argument and findings point to a source of the president's institutional advantage that has been overlooked in previous literature. Presidents do not choose only whether to pursue policies via legislation or through executive action. Within the context of executive action, they also decide through what instruments to enact their policies. And while many unilateral instruments may achieve similar if not identical policy goals, the political environment is unlikely to be equally attentive to all of them. These conditions allow presidents the option not only to attempt to evade institutional or public scrutiny, but also to evade the potential constraints through which legislators might ordinarily attempt to limit presidents' ability to create unilateral policies. Our account of directive substitution thus suggests that unilateral action conveys more power to the presidency than previous scholarship has acknowledged.

Our results also have several important normative implications. On the one hand, they may raise troubling concerns about transparency and democratic accountability. The use of less visible unilateral instruments may make it more difficult to monitor presidential behavior not only for legislators, but also for citizens, organized groups, and other interested parties. In turn, these instruments may reduce the prospects for presidential accountability. In a certain sense this scenario results from the unintended consequences of Congress' efforts to formalize reporting requirements for presidents through the Federal Register Act of 1935. Though this legislation codified the requirement that executive orders and proclamations are published in the *Federal Register*, it did not anticipate the ways that future presidents would innovate in the development of unilateral instruments.

On the other hand, directive substitution could reduce concerns about pandering, in which

presidents' electoral concerns lead them to enact policies that are contrary to voters' interests (see, e.g., Canes-Wrone, Herron, and Shotts 2001). If presidents can create policies through unilateral action that are less likely to attract scrutiny, these alternative instruments may allow them to avoid the political costs of selecting unpopular policies that will generate favorable outcomes in the long run according to presidents' private information. Thus, our findings suggest a trade-off between the information available to voters about presidential actions and the information presidents use when making policy decisions.

Finally, we emphasize that our analyses are observational in nature. In the context of directive substitution, our findings reflect the association between divided government and unilateral instrument conditional on a president's decision to issue a directive. Yet our analysis does not account for the possibility that a president might like to issue a directive but chooses not to do so due to the political consequences. Similar limitations are associated with our analysis of divided government and aggregate patterns of unilateralism. Though we employed a variety of empirical strategies to address these issues, our research designs do not permit strong causal inferences about the effect of congressional composition on presidential decision making. However, we hope that our use of individual directives as the unit of analysis will spur additional research into examining how the characteristics of particular unilateral instruments, issue areas, and policies are associated with the politics of presidential unilateral action.

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ONLINE APPENDIX

Supporting Information for

"Divided Government, Strategic Substitution, and Presidential Unilateralism"

Contents

A.1 Directive Data and Estimation

Our data and measures come from Kaufman and Rogowski (2021). That paper reports data on presidential directives from 1877 to 2020 and describes a text analytic approach to estimating the policy significance of each directive. Based on the data from that paper, we study directives issued between 1946 and 2020 along with their associated significance estimates. Here, we briefly describe the data and methods from Kaufman and Rogowski (2021) that are relevant for the measures used in this paper.

A.2 Data source and descriptive patterns

The data on presidential directives used in Kaufman and Rogowski (2021) were obtained from the "Legislative and Executive Publications" section of the ProQuest Congressional database. The dataset includes either an original document announcing a presidential action or a message from the president containing evidence of presidential action. The *CIS Index to Presidential Executive Orders and Proclamations* (1987) inspected documents to ensure there was no duplication. Documents that did not have policy consequences or did not reflect unilateral action (such as pardons, nominations, Statements of Administration Policy, etc.) were excluded. The remaining directives included executive orders, proclamations, memoranda, public land orders, treaty proclamations, administrative directives, presidential policy directives, and the like.

For our primary analyses, directives were grouped into the following categories (ProQuest "source record group" identifiers shown in parentheses):

- Executive orders: numbered executive orders (EO), Public Land Orders (03)

- Proclamations: numbered proclamations (PR), treaty proclamations (29)

- Memoranda and other directives: presidential documents (04), Secretary of Interior Orders (06), Public Papers of the Presidents (21), Weekly Compilation of Presidential Documents

(53), Presidential Policy Directives and National Security Decision Memoranda (56)

This provided 33,921 directives issued by presidents between 1946 and 2020 (inclusive), which includes 11,641 documents classified as executive orders and 7,779 proclamations. The remaining 14,501 directives are memoranda, department or administrative directives, and the like.

A.3   Measuring directive significance

Kaufman and Rogowski (2021) measure the significance of each directive based on their text. First, they extracted the full text of each of the directives in the data. Then, they use significance estimates from Chiou and Rothenberg (2017)[25] along with hand-coded significance measures for a sample of directives to recover the relationship between words and phrases in the text and the estimated significance of the documents; these documents comprise the training set (10,574 of the directives). Finally, they use standard machine learning techniques to model the relationship between the text of the remaining 23,347 documents and evaluate its performance using k-fold cross validation. Based on this procedures, two directives will have similar significance estimates to the extent they contain similar lexical features.

The resulting estimates of directive significance range between zero and one, and they distinguish significant directives as those whose significance scores are greater than 0.355. This value equalizes the false-negative and false-positive rates, which means that even though document significance is measured with error, the error is unlikely to be systematically biased in either the positive or negative direction. Using this threshold, about 18 percent of the directives are identified as significant for our purposes. This choice of threshold identifies a similar proportion of directives as significant relative to other research that characterizes the significance of executive

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[25]Chiou and Rothenberg (2017) use an item-response model to estimate the significance of executive orders from 1947 to 2002 based on their appearance in media outlets and historical accounts, along with a set of exogenous variables.

orders (Chiou and Rothenberg 2017; Howell 2003; Mayer 2001). Among significant directives, 2,350 were classified as executive orders, 1,344 were classified as proclamations, and 2,318 were classified as memoranda.

Figure A.1: Annual Number of Unilateral Actions by Directive Type, 1946–2020
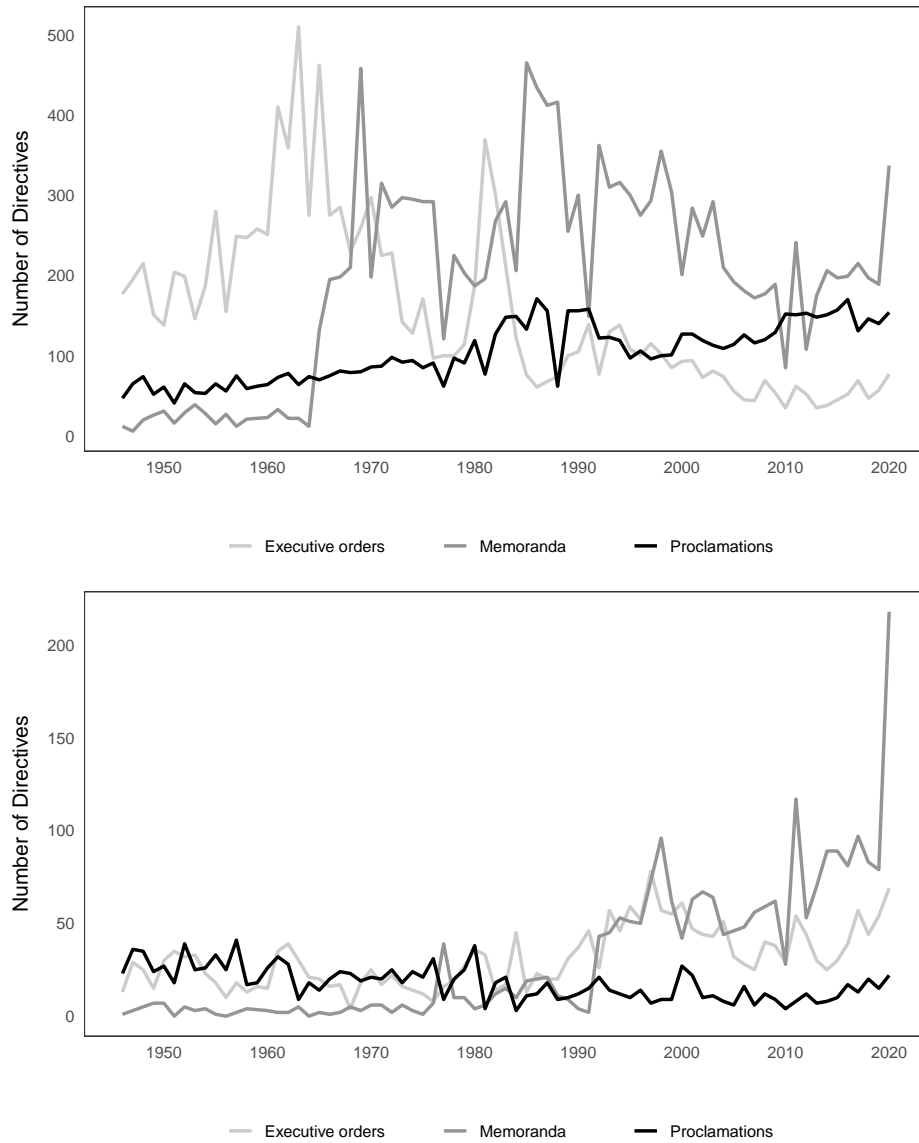
Note: Lines show the annual number of unilateral directives by each directive type. The top plot shows data for all unilateral directives and the bottom plot shows data for those identified as policy significant.

A.4 Robustness Checks for Table 1

A.4.1 Omitting Public Land Orders

Table A.1: Political Context and Directive Choice: Omitting Public Land Orders

	Dependent variable:				
	Issued as executive order				
	(1)	(2)	(3)	(4)	(5)
Divided government	−0.064*	−0.053*	−0.079*	−0.089*	−0.083*
	(0.025)	(0.017)	(0.021)	(0.023)	(0.022)
Unemployment rate	−0.010*	−0.009*	−0.011*	−0.010*	−0.009*
	(0.005)	(0.003)	(0.004)	(0.004)	(0.004)
Approval rating					−0.083
					(0.118)
Issue salience					0.414*
					(0.190)
Presidential priority					0.003
					(0.159)
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	5,080	5,080	5,080	4,552	4,552

Note: Entries are linear regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a significant unilateral directive was issued as an executive order (y=1) or a memorandum (y=0). Public Land Orders are omitted from the data. *$p<0.05$ (two-tailed tests).

A.4.2 Estimates from Logistic Regression

Table A.2: Divided Party Control and Choice of Unilateral Directive (Logistic regression)

	Dependent variable:				
	Issued as executive order or proclamation				
	(1)	(2)	(3)	(4)	(5)
Divided government	−0.221*	−0.307*	−0.514*	−0.546*	−0.524*
	(0.080)	(0.106)	(0.137)	(0.138)	(0.131)
Unemployment rate	−0.054*	−0.054*	−0.067*	−0.062	−0.062
	(0.025)	(0.026)	(0.031)	(0.033)	(0.032)
Approval rating					−0.331
					(0.782)
Issue salience					-0.002
					(1.180)
Presidential priority					−0.041
					(1.132)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	6,012	6,012	6,012	5,437	5,437

Note: Entries are logistic regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a unilateral directive was issued as an executive order or proclamation (y=1) or some other directive type (y=0). *p<0.05 (two-tailed tests).

Table A.3: Divided Party Control and Choice of Unilateral Directive (Nonsignificant directives, using logistic regression)

	Dependent variable:				
	Issued as executive order or proclamation				
	(1)	(2)	(3)	(4)	(5)
Divided government	0.176	0.162	0.171	0.077	-0.116
	(0.117)	(0.087)	(0.104)	(0.101)	(0.176)
Unemployment rate	0.139*	−0.013	−0.014	−0.022	0.001
	(0.046)	(0.042)	(0.041)	(0.044)	(0.044)
Approval rating					2.024*
					(0.792)
Issue salience					6.198*
					(1.383)
Presidential priority					−1.174
					(0.723)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	27,909	27,909	27,909	25,793	25,793

Note: Entries are logistic regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a unilateral directive was issued as an executive order or proclamation (y=1) or some other directive type (y=0). *$p < 0.05$ (two-tailed tests).

Table A.4: Political Context and Directive Choice: EOs and Memos (Logistic regression)

	Dependent variable:				
	Issued as executive order or proclamation				
	(1)	(2)	(3)	(4)	(5)
Divided government	−0.242*	−0.356*	−0.496*	−0.473*	−0.490*
	(0.085)	(0.106)	(0.140)	(0.135)	(0.121)
Unemployment rate	-0.047	−0.064*	−0.076*	−0.067*	−0.068*
	(0.028)	(0.025)	(0.028)	(0.030)	(0.030)
Approval rating					0.167
					(0.816)
Issue salience					-0.077
					(1.045)
Presidential priority					-0.619
					(0.927)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	4,668	4,668	4,668	4,379	4,379

Note: Entries are logistic regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a unilateral directive was issued as an executive order (y=1) or some other directive type (y=0). *$p<0.05$ (two-tailed tests).

A.4.3 Alternative Measure of Interbranch Conflict

Table A.5: Congressional Composition and Choice of Unilateral Directive

	Dependent variable:				
	Issued as executive order or proclamation				
	(1)	(2)	(3)	(4)	(5)
Opposition seat share	−0.886*	−0.467	−0.585*	−0.746*	−0.692*
	(0.340)	(0.257)	(0.295)	(0.263)	(0.285)
Unemployment rate	−0.014*	−0.013*	−0.015*	−0.015*	−0.013*
	(0.004)	(0.003)	(0.004)	(0.005)	(0.005)
Approval rating					−0.127
					(0.093)
Issue salience					0.354*
					(0.161)
Presidential priority					0.083
					(0.158)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	6,012	6,012	6,012	5,437	5,437

Note: Entries are linear regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a unilateral directive was issued as an executive order or proclamation (y=1) or some other directive type (y=0). $^*p$<0.05 (two-tailed tests).

A.4.4 Estimates from Non-significant Directives

Table A.6: Divided Party Control and Choice of Unilateral Instrument: Nonsignificant Directives

	Dependent variable:				
	Issued as executive order or proclamation				
	(1)	(2)	(3)	(4)	(5)
Divided government	0.031	0.008	0.010	0.011	−0.017
	(0.020)	(0.011)	(0.013)	(0.015)	(0.025)
Unemployment rate	0.029*	−0.002	−0.002	−0.004	0.001
	(0.009)	(0.006)	(0.006)	(0.007)	(0.007)
Approval rating					0.297*
					(0.109)
Issue salience					0.824*
					(0.234)
Presidential priority					−0.365*
					(0.098)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	27,909	27,909	27,909	25,793	25,793

Note: Entries are linear regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a unilateral directive was issued as an executive order or proclamation (y=1) or some other directive type (y=0). *$p<0.05$ (two-tailed tests).

A.4.5 Potential Variation in the Relationship between Political Context and Directive Substitution

Table A.7: Divided Party Control and Choice of Unilateral Directive: Variation by Presidential Approval

	Dependent variable:				
	Issued as executive order or proclamation				
	(1)	(2)	(3)	(4)	(5)
Divided government	−0.248	−0.257*	−0.324*	−0.382*	−0.387*
	(0.134)	(0.130)	(0.135)	(0.152)	(0.149)
Divided x Approval rating	0.392	0.422	0.508*	0.650*	0.662*
	(0.261)	(0.250)	(0.250)	(0.291)	(0.286)
Approval rating	−0.181	−0.410	−0.434	−0.565*	−0.582*
	(0.237)	(0.240)	(0.222)	(0.253)	(0.249)
Unemployment rate	−0.008	−0.005	−0.006	−0.004	−0.002
	(0.007)	(0.004)	(0.005)	(0.005)	(0.006)
Issue salience					0.447*
					(0.212)
Presidential priority					0.019
					(0.162)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	5,603	5,603	5,603	5,437	5,437

Note: Entries are linear regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a unilateral directive was issued as an executive order or proclamation (y=1) or some other directive type (y=0). *p<0.05 (two-tailed tests).

Table A.8: Divided Party Control and Choice of Unilateral Directive: Variation by Election Timing

	Dependent variable:				
	Issued as executive order or proclamation				
	(1)	(2)	(3)	(4)	(5)
Divided government	−0.046	−0.037*	−0.049*	−0.053*	−0.045*
	(0.024)	(0.016)	(0.018)	(0.020)	(0.022)
Election year	0.086	0.095*			
	(0.046)	(0.038)			
Divided x Election year	−0.064	−0.090*	−0.083*	−0.116*	−0.118*
	(0.058)	(0.044)	(0.041)	(0.041)	(0.039)
Unemployment rate	−0.012*	−0.008*	−0.008*	−0.008*	−0.006
	(0.005)	(0.003)	(0.004)	(0.004)	(0.004)
Approval rating					−0.109
					(0.093)
Issue salience					0.435*
					(0.213)
Presidential priority					0.013
					(0.162)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	6,012	6,012	6,012	5,437	5,437

Note: Entries are linear regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a unilateral directive was issued as an executive order or proclamation (y=1) or some other directive type (y=0). *p<0.05 (two-tailed tests).

Table A.9: Divided Party Control and Choice of Unilateral Directive: Variation by Election Timing

	Dependent variable:				
	Issued as executive order or proclamation				
	(1)	(2)	(3)	(4)	(5)
Divided government	−0.034	−0.034*	−0.047*	−0.051*	−0.044*
	(0.022)	(0.015)	(0.018)	(0.020)	(0.022)
Re-election year	0.154*	0.141*	0.122*	0.112*	0.118*
	(0.044)	(0.040)	(0.042)	(0.042)	(0.041)
Divided x Re-election year	−0.159*	−0.145*	−0.134*	−0.135*	−0.136*
	(0.067)	(0.050)	(0.045)	(0.047)	(0.046)
Unemployment rate	−0.012*	−0.008*	−0.008	−0.007	−0.006
	(0.005)	(0.004)	(0.004)	(0.005)	(0.005)
Approval rating					−0.116
					(0.097)
Issue salience					0.432*
					(0.214)
Presidential priority					0.011
					(0.162)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	6,012	6,012	6,012	5,437	5,437

Note: Entries are linear regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a unilateral directive was issued as an executive order or proclamation (y=1) or some other directive type (y=0). *$p < 0.05$ (two-tailed tests).

A.5 Robustness Checks for Table 3

Table A.10: Divided Government and Significant Unilateral Action, 1946–2020 (Including Public Land Orders as Executive Orders)

	Executive orders		Proclamations		Memoranda		All directives	
Divided government	0.003	0.055	0.174*	0.161	0.287*	0.438*	0.176*	0.228*
	(0.103)	(0.092)	(0.077)	(0.124)	(0.112)	(0.166)	(0.079)	(0.075)
President Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Controls	No	Yes	No	Yes	No	Yes	No	Yes
Observations	75	75	75	75	75	75	75	75

Dependent variable is the annual number of directives indicated at the top of the columns. Estimates are negative binomial regression coefficients with standard errors clustered on Congress shown in parentheses. * indicates $p < 0.05$ (two-tailed tests).

Table A.11: Divided Government and Significant Unilateral Action, 1946–2020

	Executive orders	Proclamations	Memoranda	All directives
Divided government	−0.047	0.161	0.438*	0.225*
	(0.112)	(0.124)	(0.166)	(0.075)
Inflation rate	0.029	0.009	−0.121*	−0.014
	(0.019)	(0.021)	(0.045)	(0.011)
Spending (% of GDP)	0.010	0.009	0.028	0.025
	(0.026)	(0.014)	(0.028)	(0.021)
War	0.252	0.065	−0.384	0.051
	(0.191)	(0.123)	(0.377)	(0.130)
Lame duck	−0.107	0.130	0.003	−0.091
	(0.258)	(0.183)	(0.201)	(0.119)
Administration change	0.287	0.010	0.219	0.193*
	(0.152)	(0.224)	(0.192)	(0.076)
Time trend	−0.017	0.011	0.007	0.017
	(0.024)	(0.033)	(0.039)	(0.019)
President Fixed Effects	Yes	Yes	Yes	Yes
Observations	75	75	75	75

Dependent variable is the annual number of directives indicated at the top of the columns.
Estimates are negative binomial regression coefficients with standard errors clustered
on Congress shown in parentheses. * indicates $p < 0.05$ (two-tailed tests).

Table A.12: Divided Government and Significant Unilateral Action, 1946–2020

	Executive orders		Proclamations		Memoranda		All directives	
President's seat share	1.140	0.622	−2.591*	−2.812*	−2.605*	−7.864*	−1.839*	−3.619*
	(1.249)	(1.166)	(0.912)	(1.499)	(1.467)	(2.405)	(0.652)	(1.125)
President Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Observations	75	75	75	75	75	75	75	75

Dependent variable is the annual number of directives indicated at the top of the columns. Estimates are negative binomial regression coefficients with standard errors clustered on Congress shown in parentheses. * indicates $p < 0.05$ (two-tailed tests).

Table A.13: Divided Government and Significant Unilateral Action, 1946–2020

	Executive orders		Proclamations		Memoranda		All directives	
D(president, House median)	−0.496	0.202	0.334	0.064	0.903*	1.322*	0.481*	0.738*
	(0.335)	(0.308)	(0.292)	(0.409)	(0.245)	(0.585)	(0.185)	(0.264)
President Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Observations	75	75	75	75	75	75	75	75

Dependent variable is the annual number of directives indicated at the top of the columns. Estimates are negative binomial regression coefficients with standard errors clustered on Congress shown in parentheses. * indicates $p < 0.05$ (two-tailed tests).

Table A.14: Divided Government and Significant Unilateral Action, 1946–2020

	Executive orders		Proclamations		Memoranda		All directives	
D(president, Senate median)	−0.525	0.174	0.879*	0.825	0.703*	0.844	0.432*	0.722*
	(0.498)	(0.465)	(0.381)	(0.511)	(0.338)	(0.716)	(0.212)	(0.321)
President Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Observations	75	75	75	75	75	75	75	75

Dependent variable is the annual number of directives indicated at the top of the columns. Estimates are negative binomial regression coefficients with standard errors clustered on Congress shown in parentheses. * indicates $p < 0.05$ (two-tailed tests).

Table A.15: Divided Government and Significant Unilateral Action, 1946–2020

	Executive orders		Proclamations		Memoranda		All directives	
Average, D(president, House median) &	−0.698	0.296	0.741	0.507	1.158*	1.779*	0.639*	1.112*
D(president, Senate median)	(0.441)	(0.461)	(0.428)	(0.596)	(0.344)	(0.778)	(0.250)	(0.350)
President Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Observations	75	75	75	75	75	75	75	75

Dependent variable is the annual number of directives indicated at the top of the columns. Estimates are negative binomial regression coefficients with standard errors clustered on Congress shown in parentheses.
* indicates $p < 0.05$ (two-tailed tests).

**Table A.16:** Divided Government and Significant Unilateral Action, 1946–2019

	Executive orders		Proclamations		Memoranda		All directives	
Divided government	−0.230*	−0.172	0.160	0.141	0.214	0.362*	0.099	0.147
	(0.122)	(0.107)	(0.082)	(0.143)	(0.124)	(0.171)	(0.080)	(0.081)
President Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Controls	No	Yes	No	Yes	No	Yes	No	Yes
Observations	74	74	74	75	74	74	74	74

Dependent variable is the annual number of directives indicated at the top of the columns.
Estimates are negative binomial regression coefficients with standard errors clustered on
Congress shown in parentheses. * indicates $p < 0.05$ (two-tailed tests).

Figure A.2: Coefficient Estimate for Divided Government with All Possible Combinations of Other Independent Variables
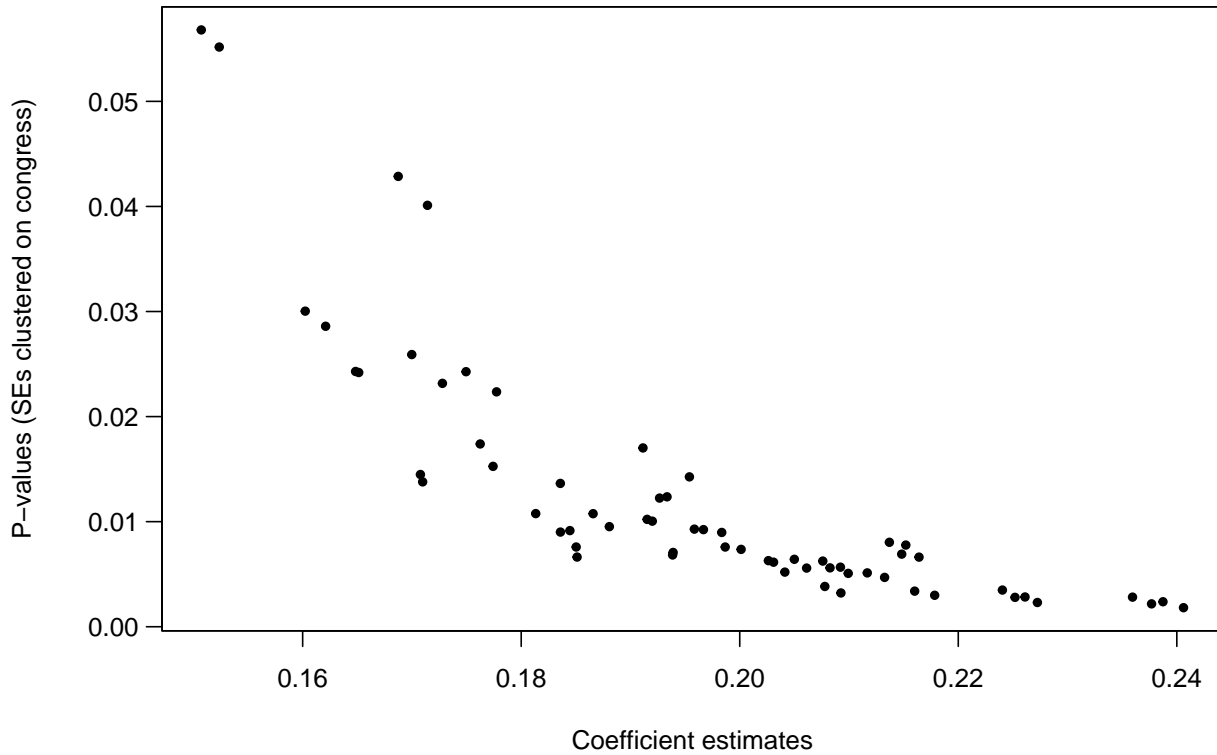

Plot shows the coefficients and associated *p*-values when estimating regressions with all possible combinations of the other six covariates (in addition to divided government) based on the specification in the last column of Table 3. Results from 64 separate regressions are shown in the figure. *P*-values are based on standard errors clustered on congress. All 64 coefficient estimates are positive and statistically distinguishable from zero; thus, the findings in Table 3 do not depend on any specific model specification.

A.6   Varying Thresholds for Distinguishing Significant Directives

Figure A.3 displays coefficients for *Divided government* from models that used increasingly limited deciles to identify significant directives.[26] For instance, the coefficient for "All" directives on the left side of the plot shows the results when including all 33,954 unilateral directives from 1946 to 2020. The next coefficient to its right shows the results for directives whose significance estimates ranked in the top 90%, followed by the 80%, 70%, and so on. Across all ten models, the coefficient for *Divided government* is positive and statistically significant.

Figure A.3: Divided Government and Unilateral Activity across Varying Thresholds of Directive Significance

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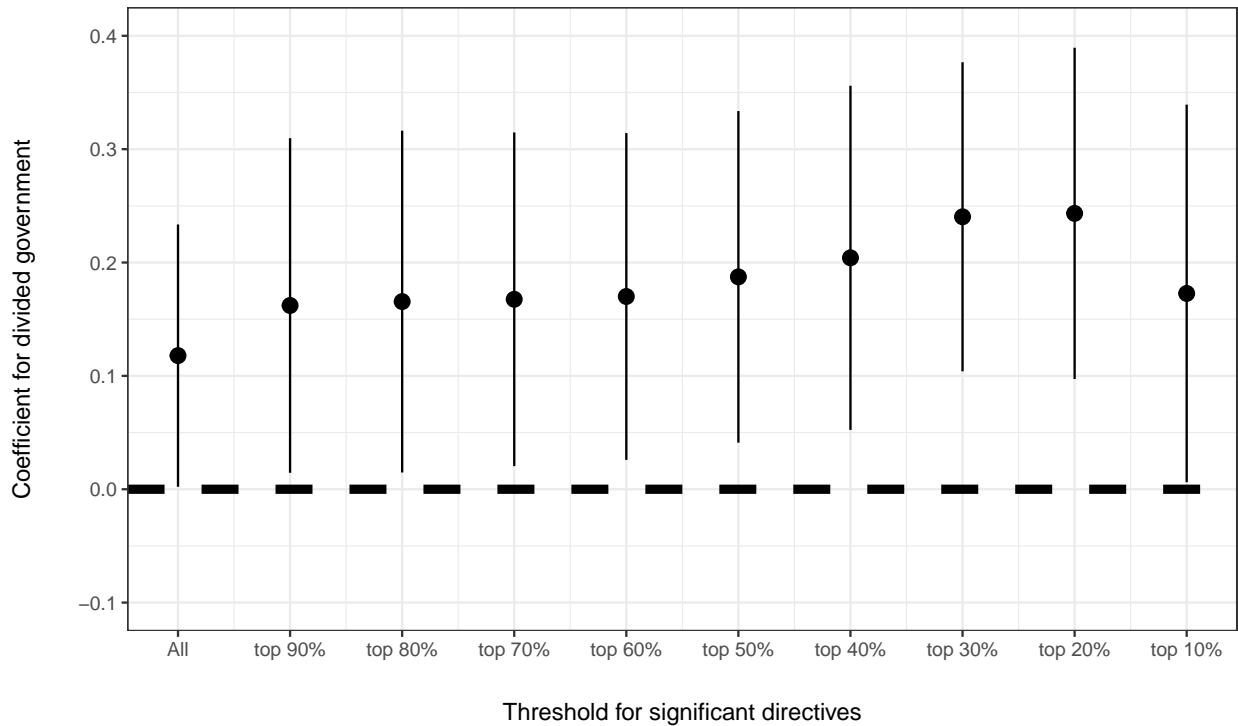
[26]We drew from the full sample of directives and estimated the model specification from the last column in Table 3 for the period 1946–2020.

R Supplementary Analyses for Reviewers

R.1 Estimates from Multinomial Logistic Regression

Table R.1: Political Context and Directive Choice (Multinomial logistic regression)

	Coefficients for divided government				
	(1)	(2)	(3)	(4)	(5)
Memorandum	0.273	0.417	0.596	0.482	0.487
	(0.078)	(0.108)	(0.122)	(0.130)	(0.134)
Proclamation	0.231	0.330	0.271	-0.136	-0.103
	(0.104)	(0.132)	(0.145)	(0.178)	(0.182)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	6,102	6,102	6,102	5,437	5,437

Note: Entries are multinomial logistic regression coefficients with standard errors (**not** clustered on congress) in parentheses. Entries show coefficients for *Divided government* for the choice of directive relative to an executive order. $^*p<0.05$ (two-tailed tests).

R.2 Accounting for Lagged Executive Orders

Table R.2: Divided Party Control and Choice of Unilateral Directive

	Dependent variable:				
	Issued as executive order or proclamation				
	(1)	(2)	(3)	(4)	(5)
Divided government	−0.044*	−0.041*	−0.062*	−0.073*	−0.065*
	(0.018)	(0.014)	(0.016)	(0.018)	(0.018)
Unemployment rate	−0.011*	−0.008*	−0.009*	−0.009*	−0.008
	(0.005)	(0.004)	(0.004)	(0.004)	(0.004)
ln(EOs,lagged)	0.022	0.034	0.030	0.036	0.045
	(0.040)	(0.034)	(0.033)	(0.040)	(0.043)
Approval rating					−0.127
					(0.117)
Issue salience					0.445*
					(0.214)
Presidential priority					0.013
					(0.166)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	5,975	5,975	5,975	5,437	5,437

Note: Entries are linear regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a unilateral directive was issued as an executive order or proclamation (y=1) or some other directive type (y=0). *$p<0.05$ (two-tailed tests).

R.3 Variation across Presidential Party

Table R.3: Divided Party Control and Choice of Unilateral Directive: Variation by Presidential Party

	Dependent variable:				
	Issued as executive order or proclamation				
	(1)	(2)	(3)	(4)	(5)
Divided government	−0.070*	−0.061*	−0.092*	−0.115*	−0.111*
	(0.032)	(0.020)	(0.026)	(0.026)	(0.025)
Divided x Republican	0.046	0.033	0.049	0.076*	0.078*
	(0.039)	(0.027)	(0.027)	(0.027)	(0.033)
Unemployment rate	−0.013*	−0.009*	−0.011*	−0.012*	−0.010*
	(0.005)	(0.004)	(0.004)	(0.004)	(0.004)
Approval rating					−0.091
					(0.098)
Issue salience					0.443*
					(0.210)
Presidential priority					0.024
					(0.169)
Time period	1946-2020	1946-2020	1946-2020	1956-2020	1956-2020
President fixed effects	✓	✓	✓	✓	✓
Issue area fixed effects		✓	✓	✓	✓
Quarter of term fixed effects			✓	✓	✓
Observations	6,012	6,012	6,012	5,437	5,437

Note: Entries are linear regression coefficients with standard errors clustered on congress in parentheses. The dependent variable is an indicator for whether a unilateral directive was issued as an executive order or proclamation (y=1) or some other directive type (y=0). *$p<0.05$ (two-tailed tests).