

STRATEGIC PRESIDENTIAL UNILATERALISM IN THE FACE OF INSTITUTIONAL AND PUBLIC
SANCTIONS

By

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Dissertation

Submitted to the Faculty of the
Graduate School of Vanderbilt University
in partial fulfillment of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in

Political Science

August 11, 2023

Nashville, Tennessee

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To Mom and Dad
For teaching me all the important things in life

ACKNOWLEDGMENTS

In the words of Sheryl Crow, "every day is a winding road," and I would not have survived all the winds without the help of my friends, family, and advisors.

My dissertation committee has provided me with invaluable feedback. I would metaphorically (and literally!) not be here without their guidance and support over these last five years. Specifically, Sharece Thrower has been the best chair that a person could ask for. She is not only a brilliant political scientist, but also a calm, kind, and practical advisor. Sharece, thank you for reading the good, the bad, and the ugly. (And thank you to Aubrey for being adorable regardless of the quality of my work!)

Alan Wiseman was a constant source of support. As a second year, he trusted me to instruct half of his class every week, providing me with an opportunity to gain confidence in the classroom. He has not only provided me with detailed feedback on my research, but also regular television and movie recommendations. Finally, he took all of my dramatics in stride.

Dave Lewis has provided me with thoughtful feedback throughout graduate school, including in our summer "Lewis Labs." He is not only a wonderful political scientist, but also a fantastic teacher. As his teaching assistant, he provided me with many opportunities to learn and grow in the classroom. Working with him has not only made me a better researcher, but also a better teacher. Finally, Doug Kriner offered me thorough feedback on the dissertation. His knowledge of the public approval literature was invaluable as I drafted my second chapter.

Beyond my committee, I have received support and advice from so many fantastic Vanderbilt faculty. John Sides is a wonderful advocate for all graduate students and a dynamic teacher and researcher. Leah Rosenstiel and John Dearborn provided thoughtful, practical feedback on multiple chapters of my dissertation. Allison Anoll and Brenton Kenkel both provided invaluable feedback while I was on the job market. Jenn Larson, Brad Smith, and Liz Zechmeister are wonderful teachers, who provided me with a foundation in statistics and research design. Finally, Bruce Oppenheimer provided support, guidance, jokes, TV recommendations, and many (impossible to know) trivia questions.

One of the best things about Vanderbilt is the wonderful community, especially of graduate students. Since I arrived in 2018, I have overlapped with ten cohorts of graduate students, including my own wonderful cohort. Across these cohorts, I have received so much advice, kindness, and friendship from fellow Vanderbilt graduate students. Upper cohorts provided me with my first mentor in Sheahan Virgin, a wonderful friend, scholar, and puzzler. In CSDI, Mary Catherine Sullivan was a lovely desk neighbor, who made sure I stayed up-to-date on everything Bravo. Mellissa Meisels always bore the burden of ordering wine at CSDI dinners. Her knowledge of wine is equal to her knowledge of 2010-2020 congressional candidates. Shelby Shumard has regaled us with tales of working on Wall Street and in state government, and made everyone's day with pictures of Owen. Patrick Buhr gave nothing, and yet somehow that alone was hilarious. And Shannon Meldon-Corney kept us all afloat. She is the heart and soul of our community and most importantly, always takes our side, even when we are being a wee bit unreasonable.

CSDI also provided me with multiple friends and mentors in the form of post-docs. Shawn Patterson was always happy to read my work and gave detailed, practical feedback. He was also always happy to discuss presidents' zodiac signs, play presidential board games, and grab beers at Tailgate or Tin Roof. David Miller is a friend to all and always happy to make an introduction. He is also a diehard Swiftie, who always makes sure that I am aware of new merchandise drops.

Outside CSDI, Nick Bednar was always easily convinced to watch a movie or series so that I had someone to talk about it with. He was a constant in the carrels during our first year, clacking on his keyboard and spinning in his chair. Jennifer Barnes has wonderful taste in music and cats. Her pictures of Teddy brought me endless joy. Colette Marcellin is my nosy, partner-in-crime and a lovely conference bedfellow. Most importantly, she is a kind and funny friend. Kaleigh Ruiz is down for anything, including concerts, book signings, and comedy shows. She is one of the funniest, smartest, coolest people around. Finally, Sofia Rivera Sojo and Sofia Berrospi (aka the Sofias) are just as fun on the dance floor as in a movie theater. I am so glad we got to share one year of graduate school together. Finally, there are some folks, who I have been in the trenches with for five years and I cannot imagine my graduate school experience without them.

Sara Kirshbaum. My soul sister. We have watched so many movies, exchanged countless recommendations, gossiped for hours, laughed until we cried, drank many fancy cocktails, and ate many fancy (and not so

fancy) meals. Sara has introduced me to so many important things, including the Belcourt Theater (aka the Best Place in America), the MCU, Star Wars, Succession, and Formula 1. In the five years we have known each other, we have become regulars at a Brooklyn bar, eaten countless tacos, been Marcel the Shelled and Irishman-ed, and planned a ten-book F1 romance series. You will always be my number one boy (and a *very* serious person).

Lauren Chojnacki. My first grad school friend and roommate. We have shared so many great Sneaker Nights on the Holy Ground that is Midtown. You have not only been a friend, but a wonderful concert partner, brunch buddy, and reality TV consumer. Taylor Swift album releases will not be the same without you. We have shared laughs, cries, and most importantly, many seasons of reality television. Our friendship is Good as Gold.

Chris Piper. Grad school would not have been the same without beating a dead horse over a long lunch with you. I would not have made it through many days without Chris there to lend me an ear. We shared many meals, classes, laughs, and Marvel movies. I could always count on Chris to be up-to-date and ready to chat about our favorite pop stars and prestige television shows. I will miss our late nights in the office complaining.

Being in graduate school during a global pandemic was pretty rough. There are so many movies and television shows that have offered me an escape during trying times. Once a year, when times were getting tough, I returned to the absurdly wonderful and soapy world of True Blood. In 2020, while trying to remain productive, yet not go insane, I turned to television. Luckily, we are living in the golden age of TV and spent many hours watching The Sopranos, Mad Men, and Friday Night Lights. I laughed, I cried, I formed unhealthy para-social relationships, and I loved every second of it (except for Long Term Parking). Finally, there is one TV show that will never fail to make me laugh, no matter how many times I watch it— Arrested Development. I watched Arrested Development for the first time as a high school junior, and I have re-watched regularly since.

In 2021, I took an entertaining journey through all of Martin Scorsese's movies. He made me laugh, he made me cry, and he helped me discover the massive DVD collection at the Nashville library (thank you, Kundun). During comps, I watched Call Me By Your Name countless times and pretended I was lounging in Italy. After comps, Emma. (2020) brought me much comfort as I awaited results. And during the prospectus process, the Guardians of the Galaxy movies helped me laugh through the pain! Finally, thank you to any director who has made a mediocre horror movie re-make. You provided the soundtrack to many days of coding.

At the beginning of the pandemic, when the future felt uncertain, I turned to the wonderful world of romance novels. These books offered me an escape from the insanity of the world and continue to provide me with a respite from the insanity of graduate school. There are a few authors, many with large back lists, who provided me with a safe haven, including Sarah MacLean, Joanna Shupe, Tessa Dare, Loretta Chase, Emily Henry, Sally Thorne, Christina Lauren, Tessa Bailey, and Kresley Cole.

Many artists provided a soundtrack for my days of writing and coding. Thank you to Taylor Swift for her entire discography, but especially folklore and evermore, which came when I most needed them. I'd like to thank The Beatles, who have given me comfort since I was a little kid. Finally, the artists who I love AND have had the pleasure of seeing in Nashville during my time here, Ariana Grande, Harry Styles, Kacey Musgraves, Lorde, and Haim.

Finally, thank you to my family for providing me with endless support and unconditional love! To my Cousin Sue, my biggest cheerleader. To Da, my first "student" in my pretend school. To Shannon, for always offering support in the form of books and Chick-fil-A. To Aunt Missy, for making every visit a party! To Grandma, for staying more up-to-date on American politics than I ever have.

To my sisters and best friends, Maddie, Olivia, and Sophie. Maddie and I have exchanged hours of voice memos over the last five years about life, the Kardashians, Taylor Swift, and Demi Lovato. Olivia has kept my hair looking great from one state away. And Sophie has kept me young by FaceTiming me at 2 AM every three months. To my favorite petty people from UNCA, Tim, Rachel, Maggie, and David, who never doubted me, even when I doubted myself.

To Nick, thank you for listening to practice presentations and reading drafts of theories. You made sure that I still had fun, saw movies, and laughed as I finished this dissertation. And you didn't bat an eye when I suggested moving a 1,000 miles to Boston. I love you, even though you made me watch The Fast and The Furious: Tokyo Drift.

Our family pup, Cookie, saw me finish fifth grade and my fifth year of graduate school. She passed away two weeks before I defended this dissertation, but she provided me with unconditional love every day of the 16 years she was a part of our family.

And finally, my parents, Tim and Grace McLain. I was lucky enough to be raised by two of the smartest, coolest, funniest people that I have ever met. They have fostered my love of learning and appreciation for music, movies, television, and music. My dad provided me with constant support in the form of movie recommendations, neighborhood gossip, and, occasionally, an in-depth summary of the entire plot of the book he just read. My mom always answered when I called to complain, indulged me whenever I was home by going to see any movie that I wanted ("Father, Son, and House of Gucci"), and googled everything that happened on *The Crown* to ensure that we knew what was, and was not, historically accurate. I am forever proud to be their daughter. This dissertation is for them.

TABLE OF CONTENTS

	Page
LIST OF TABLES	ix
LIST OF FIGURES	x
1 Introduction	1
1.1 Overview of the Dissertation	3
2 Presidential Policymaking in the Face of Congressional Sanctioning	6
2.1 Types of Bureaucratic Directives	8
2.1.1 The importance of traceability	8
2.1.2 Executive Orders	10
2.1.3 Executive Memoranda	11
2.1.4 Direct Communication	14
2.2 Which do presidents use?	15
2.2.1 The Benefits and Costs of Unilateralism	15
2.2.2 Congressional Sanctions	16
2.2.3 Traceability and Unilateral Strategies	17
2.3 Data and Measurement	19
2.3.1 Independent Variables	20
2.4 Characterizing Presidential Directives	21
2.5 Testing the Mechanism: Alternative Measures of Traceability	23
2.5.1 Importance of Publication in the <i>Federal Register</i>	23
2.5.2 Impact of the <i>Federal Register</i> on Executive Orders	25
2.6 Conclusion	26
2.6.1 Implications	27
2.6.2 Beyond Congress	28
3 You’re Gonna Need Smaller Sanctions: The Public, Congress, and Presidents’ Use of Unilateral Directives	29
3.1 Background on Presidential Directives	31
3.2 A Theory of Public Influence on Presidents’ Choice in Directive	33
3.2.1 Presidents’ Incentives	34
3.2.2 Congress’s Incentives	35
3.2.3 Presidents’ Behavior When Facing a Weak Opposition Party	36
3.2.4 Presidents’ Behavior When Facing a Strong Opposition Party	36
3.3 Data and Measurement	37
3.3.1 Independent Variables	38
3.4 Congressional Sanctioning as a Means of Mitigating Public Support	39
3.4.1 Examining Credit Claiming Among Executive Orders	42
3.5 Conclusion	45
4 The Call is Coming from Inside the House: Presidents’ Strategic Use of Directives at the Risk of Non-Compliance	47
4.1 Background on Bureaucratic Directives	49

4.1.1	The Uneven Costs of Non-Compliance	50
4.2	A Theory of Bureaucratic Non-Compliance	51
4.2.1	Political Control Influences their Willingness to Comply	52
4.2.2	Institutional Factors Mitigate their Ability to Comply	53
4.3	Data and Measurement	54
4.3.1	Independent Variables	55
4.4	Agency characteristics as a determinant of unilateral directive choice	57
4.4.1	Robustness Check: Instructing Agencies Under Divided versus Unified Government	61
4.5	Conclusion	62
References		64
5	Appendix	69
5.1	Chapter 2 Appendix	69
5.1.1	Summary Statistics for Chapter 2	69
5.1.2	Issue Area to House Committee	70
5.1.3	Alternative Unit of Analysis	70
5.1.4	Alternate IV Measures	71
5.1.5	Robustness Check with Clustered Standard Errors	72
5.2	Chapter 3 Appendix	73
5.2.1	Summary Statistics for Chapter 3	73
5.2.2	Salient Issues Subsets	74
5.2.3	Credit Claiming Across All Directives	76
5.3	Chapter 4 Appendix	77
5.3.1	Summary Statistics for Chapter 4	77
5.3.2	Alternative Measure of Capacity: Outlays	78
5.3.3	Alternative Measure of Capacity: Vacancies	80

LIST OF TABLES

Table	Page	
2.1	The Effect of the Size of the Opposition Party on Unilateralism, by Directive Type	22
2.2	The Influence of Divided Government on Unilateralism by Directive Type	22
2.3	Influence of Publication on the Use of Directives	24
2.4	The Influence of the <i>Federal Register</i> on Executive Order Use	26
3.1	The Influence of Public Support on Presidents' Unilateral Directive Use	39
3.2	Public Influence on Unilateral Directive Use in the Face of Congressional Opposition . . .	40
3.3	Using Executive Orders as a Means of Credit Claiming	43
4.1	The Influence of Politicization on Unilateral Directive Use	57
4.2	The Influence of Political Review on Unilateral Directive Use	58
4.3	Considerations of Politicization and Capacity on Unilateral Directive Use	59
4.4	Considerations of Political Review and Capacity on Unilateral Directive Use	60
4.5	Differences in Agencies' Directed based on Divided vs. Unified Government	61
5.1	Summary Statistics for All Variables	69
5.2	CAP Major Topic Code to Corresponding House Committee	70
5.3	Influence of Congressional Sanctioning on Yearly Directive Use	71
5.4	Influence of NOMINATE Distance on Presidents' Unilateral Directive Use	72
5.5	Robustness Check with Standard Errors Clustered at the Year	73
5.6	Robustness Check with Standard Errors Clustered at the Committee	73
5.7	Summary Statistics for All Variables	74
5.8	Summary Statistics, by Issue Area	74
5.9	Examining Presidents' Use of Directive on Highly Salient Issues	75
5.10	Examining Presidents' Use of Directive on Less Salient Issues	76
5.11	Credit Claiming Across All Types of Directives	77
5.12	Summary Statistics for All Variables	77
5.13	Summary Statistics, by Agency	78
5.14	Alternative Capacity: Politicization x Outlays (1982-2020)	79
5.15	Alternative Capacity: Political Review x Outlays (1981-2020)	79
5.16	Alternative Capacity: Politicization x Vacancy Length (1993-2020)	80
5.17	Alternative Capacity: Political Review x Vacancy Length (1993-2020)	81

LIST OF FIGURES

Figure		Page
2.1	Traceability Spectrum	9
2.2	Directives Mentioned by the President, by Type	9
2.3	Directives Overtime, by Type	12
2.4	Policy-Related Directives, by Type	13
2.5	Directives Mentioned in the Congressional Record, by Type	14
3.1	Directives Covered in Newspapers, by Type	34
3.2	Predicted Counts of Published Memoranda	42
3.3	Predicted Counts of Unpublished Memoranda	43
3.4	Predicted Number of Orders Presidents Choose Not to Mention	44
5.1	Average Yearly Directives Issued, by President	70

CHAPTER 1

Introduction

The quest to characterize what makes presidents powerful has long occupied the study of American political institutions. In his seminal 1960 book, Richard Neustadt defines presidential power as "the power to persuade (11)." This task is mighty, as Neustadt broadly defines persuasion as the task of "convincing such men that what the White House wants of them is what they ought to do for their sake and on their authority (30)." In a separation of powers system, presidents are in a constant tug-of-war with other actors, including Congress, the courts, the public, and the bureaucracy. Presidents' success, then, is a function of their ability to persuade these actors to do as they want.

Neustadt's characterization of presidential power shaped our understanding for 40 years. However, his focus on persuasion was largely a result of his opinion that presidents' weak formal powers left them with little else. In the decades since Neustadt wrote, scholars de-emphasized formal powers, rather focusing on informal powers of the president, specifically their ability to act unilaterally. Phillip Cooper's *By Order of the President* (2002) provided one of the first, and most thorough accounts, of presidents' unilateral powers. Cooper's book details the history, uses, and trends in presidents' use of executive orders, presidential memoranda, presidential proclamations, national security directives, executive agreements, and presidential signing statements. The book contains thorough discussions of the history and development of each tool, the uses of each tool, and rich qualitative evidence regarding trends in their use. However, the book does not move beyond the qualitative to examine quantitative trends.

In 2002, Kenneth Mayer's *With the Stroke of a Pen*, presented one of the first empirical studies of presidents' use of executive orders. Building on Cooper's understanding of unilateralism, Mayer argues that executive orders provide presidents with a meaningful way to influence policy that does not depend on persuasion. Thus, pushing presidency scholars to move beyond the presidents' formal powers, and providing them with a rich data source— executive orders.

William Howell built upon this idea of important informal powers in his book *Power without Persuasion* (2003). Howell considered presidents' unilateral powers, specifically the use of executive orders, arguing the ability to "act first and act alone" provided presidents with an advantage over other actors. However, he moved beyond Mayer (2002) by examining how and when presidents' unilateral powers are constrained by other actors, specifically Congress and the courts. Thus, Howell returns to Neustadt's framework, in a way, as inherent in his study is the importance of persuasion. Political sanctions are not solely a function of actors' ideology, but also, presidents' ability to persuade them not to sanction. Yet, Howell's characterization of

power expanded beyond Neustadt's definition to include those informal powers of the president.

Howell's framework set the agenda for studies of presidential power for the next ten years. Presidents' use of executive orders provided scholars with an expansive data set through which they could examine presidential power. Some scholars expanded upon Howell's theory concerning congressional constraints, considering how and when Congress might constrain presidents (Chiou and Rothenberg 2014; Kriner and Schickler 2016). Other scholars explored the role of the courts in checking presidential power (Thrower 2017a). Beyond Howell's framework, scholars have examined public constraints on executive orders (Christenson and Kriner 2020; Reeves and Rogowski 2022), the longevity of executive orders (Thrower 2017b), and empirical trends in the use of executive memoranda (Lowande 2014), presidential proclamations (Williams 2020), and signing statements (Ainsworth et al. 2014). However, these scholars take for granted a key facet that might undermine presidential unilateral power.

The shift towards the study of informal powers of the president led scholars to make broad assumptions about the implementation of unilateral directives. Specifically, scholars focus on the issuance of directives, without knowledge of whether the executive branch properly implements these directives. The origin and creation of executive orders is the subject of Andrew Rudalevige's (2021) book, *By Executive Order*, ushering in a new means of thinking about presidential power. In Rudalevige's framework, the power to persuade seems to move to the forefront again, as presidents struggle with a diverse, expansive bureaucracy, with expertise far beyond their own. This research places a new constraint on presidents—the executive branch, and considers how that constraint limits presidential power.

These great shifts in our characterization of presidential power provide the foundation for our modern understanding of power, specifically unilateral power. However, these studies systematically exclude a range of unilateral actions. While the extant literature focuses on constraints on presidential power, they never consider how differences between types of directives might provide presidents with the power to evade these constraints. This dissertation expands our understanding of presidential unilateral power beyond executive orders, to consider how the traceability of directives influences presidents' use of directives in the face of congressional, public, and bureaucratic constraints.

To summarize, while many believe that presidents freely wield unilateral directives to create policy without legislative approval, the extant literature largely finds that presidents are constrained when issuing executive orders. Few studies, however, investigate the reasons underlying this constraint or whether it manifests for other types of directives. Accordingly, this dissertation develops theories of how presidents strategically select between distinct unilateral directives, based on their transparency and the information Congress, the public, and executive branch agencies have to respond. In doing so, I create a novel classification of directives based on a spectrum of traceability, defined as how easily an external actor (e.g., the media, Congress,

the public, the bureaucracy) can link a policy outcome to a presidential action. Highly traceable directives (e.g., executive orders and published memoranda) can be directly connected to the president via publication in the *Federal Register*, publicization through signing ceremonies or stump speeches, and media coverage. In contrast, less traceable directives (e.g., unpublished memoranda and direct communications) do not have the same publication requirements or public coverage. With this classification, I test new theories using a dataset of all executive orders (1698), published executive memoranda (680), and unpublished memoranda (569) coded by policy area and content for every year between 1981 and 2020. Each empirical chapter evaluates a separate set of predictions related to the constraints imposed by Congress, the public, and the executive branch, respectively, on unilateralism.

1.1 Overview of the Dissertation

The second chapter (“Presidential Policymaking in the Face of Congressional Sanctioning”) examines congressional constraints on presidential unilateral power. Whether presidents use unilateral directives to evade an oppositional Congress or whether they are constrained by their legislative counterparts has long been a central question in the presidency literature. Contrary to conventional wisdom, countless studies find evidence of constraint. That is, presidents issue fewer executive orders during divided government. But less attention is given to understanding why and when congressional constraints on presidential unilateralism are effective. As this chapter contends, the traceability of unilateral directives is one important, yet understudied, explanation for when presidents are constrained by Congress. Specifically, I argue that when congressional retaliation for unilateral policymaking is more likely—during periods of inter-branch partisan or ideological conflict—presidents issue fewer highly traceable directives. Instead, they can rely more greatly on less traceable directives to more covertly achieve their policy goals, by avoiding or delaying congressional sanctioning. Yet when presidents are aligned with Congress, they use more traceable directives for both policy gains and credit-claiming.

Using various measures of directives and their traceability, I find empirical support for these predictions. While presidents issue fewer executive orders and published memoranda during divided government or as the percentage of seats held by their legislative opponents grows, they issue more unpublished memoranda to evade an adversarial Congress. These findings persist when considering multiple measures of traceability, including the type of directive and publication in the *Federal Register* across time. Overall, this chapter helps explain one of the most enduring puzzles in American politics: why do presidents exercise constraint when they have the most incentives to act unilaterally around Congress? Here, the key to constraint is the information Congress needs to sanction unilateral behavior. Though some recent scholarship has examined the

relationship between legislative capacity and executive constraint, it almost exclusively focuses on staffing. This study highlights the specific role of congressional information, and importantly, how presidents can strategically influence it through their choice of more or less traceable directives.

In the third chapter (“You’re Gonna Need Smaller Sanctions: The Public, Congress, and Presidents’ Use of Unilateral Directives”), I explore public constraints on presidential unilateralism. Though the unilateral politics literature mostly fixates on congressional constraints, recent scholarship doubts its efficacy and instead touts the public as the most effective barrier to presidential power. This literature, however, produces mixed findings as to whether the public actually restrains unilateralism or whether presidents might use more unilateral directives to rally support. I argue that these often-conflicting results are, at least in part, due to studies exclusively examining the public’s approval of the president without accounting for the risk of congressional sanctioning. Accordingly, this chapter develops a theory of how presidents’ use of bureaucratic directives changes with shifts in their public support and shifts in the likelihood of congressional sanctioning. When presidents anticipate low levels of congressional sanctioning, an increase in public approval should be associated with a decrease in the number of highly traceable directives and an increase in the number of less traceable directives. In this case, unpopular presidents have an incentive to use more highly traceable directives as a means to credit claim. However, as the risk of congressional sanctioning increases, unpopular presidents anticipate even more congressional sanctioning than popular presidents and consequently, will reduce their use of highly traceable directives.

Unlike the year-level data frequently used in previous analyses, the policy area-year dataset used throughout the dissertation allows for more precise and fine-grained measures of these key concepts. Using this data set, I find initial support for my theory, with strong support for both published and unpublished memoranda. To break down the unexpected results for executive orders, I use an alternative measure of traceability, the number of orders a president mentions, to unpack the credit claiming mechanism. I do find preliminary support for executive orders, when using this alternative measure of traceability. Once again, this chapter offers an explanation for conflicting perspectives on whether the public constrains unilateralism, by demonstrating that presidents can strategically use directives to either change policy under the radar or publicly take credit for it, depending on the amount of congressional sanctioning they anticipate.

Finally, chapter four (“The Call is Coming from Inside the House: Presidents’ Strategic Use of Directives at the Risk of Non-Compliance”) investigates bureaucratic constraints on presidential strategies for unilateral action. Scholarship on executive unilateralism largely assumes that presidents act alone, without accounting for the role of bureaucratic actors. Though recent studies examine agencies’ role in the formation of executive orders, the broader literature has yet to fully explore agency implementation of unilateral directives and how it shapes presidential decision-making. In this final chapter, I develop a theory of how presidents consider the

likelihood of bureaucratic compliance, based on factors such as political control and agency capacity when acting unilaterally. More specifically, presidents want to ensure that their directives are properly implemented, as non-compliance is costly for presidents' in terms of resources and political capital. Thus, as the risk of bureaucratic non-compliance decreases, presidents are more likely to instruct agencies using bureaucratic directives. This relationship is especially strong for highly traceable directives. To test these predictions, I use an agency-year level dataset of unilateral directives to identify the agency primarily responsible for implementation and match that information to other agency-level characteristics, like presidential control and agency capacity. This chapter demonstrates that internal resistance within the executive branch can inhibit presidential unilateralism just as much as external actors (e.g., Congress, the public, and the courts), even though the latter set receives the most attention.

Overall, this dissertation contributes to a rich literature concerning presidential unilateral power. While most existing research focuses on presidents' executive order use, finding that presidential unilateral power is checked by other actors, the inclusion of less traceable directives leads to different conclusions. Specifically, my dissertation finds that presidents still act unilaterally when external actors are likely to sanction. However, rather than use highly traceable directives that invite sanctions, presidents use less traceable, less transparent directives, such as unpublished memoranda, which undermine the system of checks and balances.

CHAPTER 2

Presidential Policymaking in the Face of Congressional Sanctioning

To commemorate the 25th anniversary of the Clean Water Act in 1997, President Bill Clinton announced his Clean Water Action Plan, which called on Congress to re-authorize the Act and further strengthen protections against the adverse effects of farmland run-off on Gulf Coast ecosystems.¹ Yet his new plan was resisted in the House and the Senate, both of which were controlled by Republicans. Though the House did reauthorize the Clean Water Act, it provided much less stringent protections than the original Act. Clinton vowed to veto the bill, but it failed to pass in the Senate.

Legislation, however, is not the only way that presidents can influence public policy (e.g., Mayer 2002; Howell 2003). Clinton could act unilaterally using tools to direct agencies on how to implement policy, such as executive orders and memoranda. Yet no executive order was issued, nor was any other unilateral directive published in the *Federal Register*, to implement the Clean Water Action Plan. Instead, Clinton signed an unpublished memorandum directly criticizing Congress for its inaction, saying: "The Action Plan was coupled with a challenge to the Congress to reauthorize and strengthen the Clean Water Act, but Congress has yet to act on this challenge." At the same time, the memorandum directed agencies to address the farmland run-off and water quality standards that failed to pass in the Act's re-authorization.² While this memorandum implemented a key portion of the president's environmental policy agenda, he chose not to publicize the memoranda. Without the President claiming credit for the policy, the directive was difficult for other actors to trace. As a result, the memorandum was never mentioned in a major newspaper, including the *New York Times*, *Washington Post*, or *The Wall Street Journal*, nor was it found in the Congressional Record at the time.

Presidents beyond Clinton have long relied on unilateralism to achieve their policy goals, leading many politicians and political observers to believe that presidents use directives to bypass an obstructionist Congress. Contrary to this conventional wisdom, however, scholars find that presidents actually issue *fewer* unilateral directives during divided government (Howell 2003; Chiou and Rothenberg 2014). The vast majority of this literature focuses exclusively on executive orders, but recent scholarship finds that the same pattern holds for memoranda published in the *Federal Register* (Lowande 2014). Scholars often attribute this finding to Congress's ability to effectively constrain presidential unilateralism, though the mechanisms underlying such constraint are left mostly unexplored. Nor does the extant literature consider how legislative constraints may vary based on the type of unilateral tool that is being employed. As demonstrated by the example above,

¹<https://clintonwhitehouse4.archives.gov/WH/New/html/19980219-22980.html>

²<https://www.presidency.ucsb.edu/documents/memorandum-clean-water-protection>

however, important variation exists in whether presidents implement policy change with more or less traceable tools, like unpublished memoranda, which might limit the information that Congress needs to credibly sanction the president.

In this paper, I argue that presidents use less traceable bureaucratic directives to evade an opposition Congress. I develop a theory of how presidents strategically use different types of unilateral directives based on the trade-offs surrounding their varying degrees of traceability, i.e., how easily political actors can link a policy outcome to a bureaucratic directive issued by the president. Highly traceable directives, such as those published in the *Federal Register* or publicized by the White House, allow presidents to credit claim and facilitate bureaucratic implementation. But at the same time, they increase the information that Congress has to retaliate against them. In contrast, less traceable directives like unpublished memoranda remain under the political radar, which limits opportunities for credit claiming and increases the risk of bureaucratic non-compliance, but they also decrease the likelihood of legislative sanctioning. Given this, presidents should rely on less visible directives when Congress has the most incentive to constrain unilateralism, such as when there is significant inter-branch policy disagreement. When presidential preferences align with legislators, however, presidents can engage in more public forms of unilateralism to reap the electoral and bureaucratic benefits of such actions.

To test this prediction, I collected a dataset of all executive orders, published and unpublished memoranda issued in a policy area between 1981 and 2020. Consistent with previous studies, I find presidents issue fewer executive orders and published memoranda as their partisan opposition increases in Congress. Yet contrary to the existing literature, I find that presidents rely more greatly on less visible unpublished memoranda when facing legislative opposition than when faced with an aligned Congress. Altogether, the analysis suggests that presidents strategically manipulate the traceability of unilateralism to evade Congress, as predicted.

By focusing on executive orders, previous studies have provided an incomplete picture of whether, when, and how Congress can constrain executive unilateralism. Though a few recent studies (e.g., Lowande 2014, Kaufman and Rogowski 2021) examine executive memoranda, they exclusively focus on published memoranda, and they therefore miss nearly 500 unpublished policy memoranda issued since President Reagan (1981-1989). Recent scholarship that pools various directives unilateral directives into a single analysis likewise overlooks the differences between them that might lead to diverging presidential strategies based on their trade-offs (e.g., Kaufman and Rogowski 2021). In studying why and when presidents strategically choose one unilateral tool over the other, I shed light on one of the most central and enduring questions surrounding unilateral policymaking— can presidents engage in unilateralism to bypass Congress, or are they constrained by their legislative opponents? Here, this study offers an explanation for *when* legislative checks on unilateralism are most effective based on the directives traceability and the information needed for constraint.

2.1 Types of Bureaucratic Directives

Presidents have vast powers to influence public policy. Perhaps most famously, they can influence the content of legislation through vetoes (e.g., Cameron 2000), agenda setting and proposal powers (e.g., Rudalevige 2002; Cohen 2012), and public appeals (e.g., Kernell 2007; Canes-Wrone 2006). Rising polarization and the increasing prevalence of divided government, however, has made it exceedingly difficult for presidents to achieve their legislative agendas (Binder 2003; Lee 2016). Instead, greater scholarly and public attention has been given to the ways presidents can unilaterally influence policy through their control over the executive branch and policy implementation (e.g., Mayer 2002; Howell 2003; Chiou and Rothenberg 2014). Notably, unilateral directives allow presidents to direct bureaucratic policy implementation without direct congressional approval. The remainder of this section describes the differences between the various types of directives at the president's disposal.

2.1.1 The importance of traceability

Although political observers are most familiar with executive orders, presidents have access to a wide range of other tools that allow them to unilaterally direct policy implementation. I broadly refer to these terms as bureaucratic directives, which provide agencies instructions on how to implement and interpret the law.³ While 'directive' might imply written instruction, I use the term to describe a wide variety of formal and informal tools.⁴

Bureaucratic directives have important differences that influence presidents' strategies when deciding which to use. One key characteristic of directives is traceability, given its implications for how well external actors can respond to them. First introduced by Arnold (1990) to characterize the public's awareness of legislators' actions and their resulting outcomes, I use the term traceability in this context to describe how easily an external actor (e.g., the media, Congress, the public, the bureaucracy) can link a policy outcome to a presidential action.⁵ Presidents are distanced from less traceable bureaucratic directives and, thus, more easily able to redirect the blame for any unpopular outcomes that result from them. Meanwhile, presidents are closely connected to more traceable bureaucratic directives and thus, it is easier for presidents to credit claim for policy outcomes associated with the directive.⁶ Figure 2.1 shows the spectrum of bureaucratic directives,

³I will use the term 'bureaucratic directive' and 'unilateral directive' interchangeably.

⁴I am specifically dealing with directives issued by the presidents, not those issued by agencies, such as agency memoranda.

⁵Traceability should not be confused with visibility. A policy outcome can be highly visible, but difficult to trace back to a presidential action.

⁶While there are other important differences between types of directives that I will discuss in the following sections (e.g., legality, media coverage), for simplicity, I consider bureaucratic directives on a one-dimensional spectrum based on their level of traceability.

arranged from the most to the least traceable.⁷

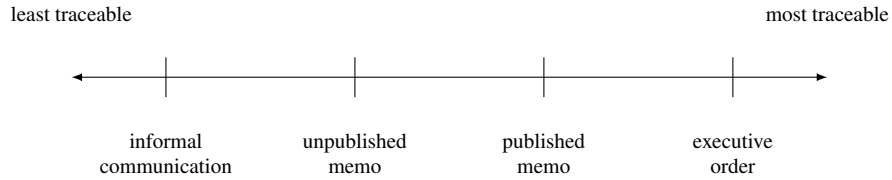


Figure 2.1: Traceability Spectrum

One important characteristic of traceability is whether political actors actually know if the president issued a directive and its content. Importantly, the Federal Register Act requires presidents to publish executive orders in the *Federal Register*. In contrast, presidents are not required to publish presidential memoranda in the *Federal Register*, however, in some cases, presidents choose to publish select memoranda. As such, I have divided memoranda into two categories, published memoranda and unpublished memoranda. In addition to publishing directives in the *Federal Register*, presidents themselves can publicize their bureaucratic directives via signing ceremonies, public statements, and press releases. As Figure 2.2 demonstrates, on average, presidents are more likely to publicize executive orders than published or unpublished memoranda. Since 1980, presidents have mentioned 18% of executive orders, 10% of published memoranda, and 9% of unpublished memoranda in speeches, signing ceremonies, and written statements. With some exceptions, there is clear variation in the publicity given to the different types of presidential directives.

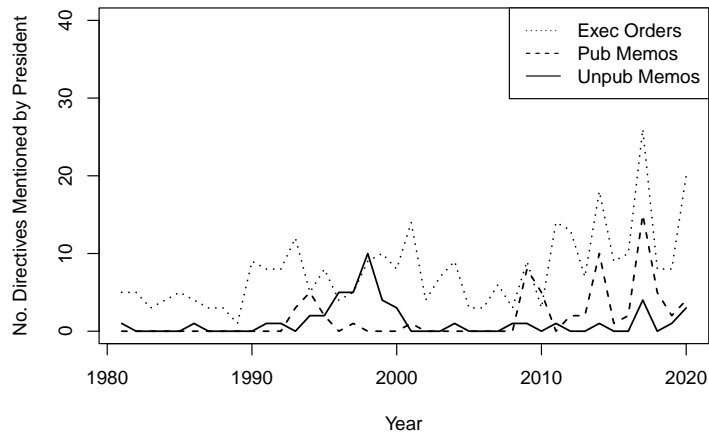


Figure 2.2: Directives Mentioned by the President, by Type

⁷Scholars have also examined other presidential policy tools, such as signing statements (i.e., Ainsworth et al. 2014) and proclamations (i.e., Williams 2020), however these tools are not unilateral bureaucratic directives. While signing statements provide direction to bureaucrats concerning the implementation of legislation, this tool is not classified as being unilateral, as the president can only issue a signing statement in response to legislation passed by Congress (Cooper 2002). While proclamations are unilateral directives, they are not issued to the bureaucracy, but to the public (Cooper 2002). Further, there are a number of other understudied unilateral directives, such as Presidential Determinations and National Security Directives. However, I do not include these types of directives as they are used exclusively to influence foreign policy.

Since executive orders must be published, and they are also most likely to be publicized by presidents, they are the most traceable directives. Published memoranda are just below executive orders in terms of traceability because they are also published in the *Federal Register*, but are relatively less likely to be publicized by the president. Unpublished memoranda are below published memoranda, as they are neither published in the *Federal Register* and are less likely to be publicized by the president. While actors cannot immediately identify unpublished memoranda via the *Federal Register*, they can often find unpublished memoranda in the *Public Papers of the President* at some point after their issuance. The ability to eventually discover unpublished directives makes them more traceable than direct communication (e.g., phone calls, emails, face-to-face meetings). Direct communication between the president and agencies is the least traceable type of directive as there is no public record connecting the president with the directive, and they are rarely publicized by the president.

While some directives are inherently more traceable than others, the president can increase the traceability of any directive. By issuing a press release or holding a signing ceremony to announce the directive, presidents can directly claim credit for the directive, and increase its traceability.⁸ The following subsections describe the historical development of directives, their characteristics, and how they differ from each other.

2.1.2 Executive Orders

Executive orders are the most traceable of all directives and, as a result, the most well-studied unilateral tool (e.g., Howell 2003; Mayer 2002; Rudalevige 2021). As such, the term "executive order" is often used by the media, members of Congress, and the public to describe any unilateral directive, especially executive memoranda. Almost every president has issued at least one directive that has been classified as an executive order. Yet modern orders look quite different from early ones, some of which were only identified by the inclusion of language such as 'Approved' or 'Let it be done.' It was not until 1873 that President Grant established a uniform structure for executive orders, which included the requirement that they be signed by the president, rather than just an agency head. President Kennedy's Executive Order 11030 provides the basis for the structure, approval, and publication process for modern executive orders.⁹ Today, orders begin with the authority under which presidents act, the creation or alteration of a policy, and a statement indicating the order should not be implemented in a way as to conflict with existing law.

Even with the establishment of a consistent structure in 1873, executive orders were not systematically

⁸In some cases, external actors can increase the traceability of a directive without presidential consent. For example, Congress might discover the use of a less traceable directive via oversight hearings as bureaucrats discuss presidential initiatives. However, the discovery of these directives is extremely difficult without presidents publicizing them. Often, this is simply a function of dumb luck rather than strategic congressional oversight.

⁹President Kennedy's order is based off an earlier executive order issued by President Hoover, which developed a process for crafting orders. Further, Presidents Johnson, Carter, Reagan, and most recently, George W. Bush have all issued executive orders implementing minor alterations to Kennedy's executive order; the basic structure has stayed the same since 1962 (Cooper 2002)

cataloged until 1905, when the State Department requested that all agencies submit them. In 1907, the Department established a system for numbering executive orders, beginning with the earliest orders they were sent through those being actively issued. However, the State Department did not share its catalog with outside actors, including Congress or the Supreme Court. The information asymmetry created between the executive branch and the other political institutions is exemplified by *United States v. Smith* (1909). In this case, government prosecutors charged five Texas oil producers with violating the production limits imposed by a Roosevelt executive order. After advancing to the Supreme Court, government attorneys realized the provision at the core of the case was not actually part of President Roosevelt's executive order.

This case and other frequent instances showcasing Congress's information disparity frustrated it to the point that it passed the Federal Register Act in 1936. This Act required that all executive orders, proclamations, and regulations be published in the *Federal Register*. Such regular publication of these policy actions would allow Congress to trace politics to executive branch actors, thus providing it with the information necessary for constraint. In the final institutional check on executive orders, the courts deemed them to have the force of law, so long as they do not violate the Constitution or existing statutes.

Presidents have used executive orders to accomplish a variety of goals. Many executive orders deal with administrative matters within the bureaucracy, including the order of succession within agencies and the rate of pay for federal employees. There are also many executive orders in which the president asks agencies, or creates task forces, to invest in information about a policy.¹⁰ Executive orders can directly order policy change, through the instructions they give to agencies implementing the law. For example, President Biden issued an executive order directing the Department of Justice to stop renewing contracts with privately owned prisons. Additionally, presidents do still favor executive orders during periods of crisis, such as economic recessions, periods of international conflict, and most recently, the COVID-19 pandemic.

While executive orders are the most readily studied unilateral action, presidents use executive orders far less frequently now than they did in the first half of the twentieth century. As Figure 2.3 indicates, the number of executive orders steadily decreased during the twentieth century, and has remained relatively constant since the 1990s. As executive order use has decreased, attention has shifted to executive memoranda.¹¹

2.1.3 Executive Memoranda

Executive memoranda serve the same function as executive orders, but they are not required to be published in the *Federal Register*. Their defining characteristic compared to other directives is the label "memorandum" placed by the White House on the document. This label was not consistently used until the early twentieth

¹⁰Beyond task forces, the president can also use executive orders to create new, permanent agencies. For example, President Carter used an executive order to establish the Federal Emergency Management Agency (FEMA), to respond to disasters. However, most task forces are instructed to disband after their assigned task is completed.

¹¹See Appendix 5.1.1., for graphs with the number of directives issued on average by president.

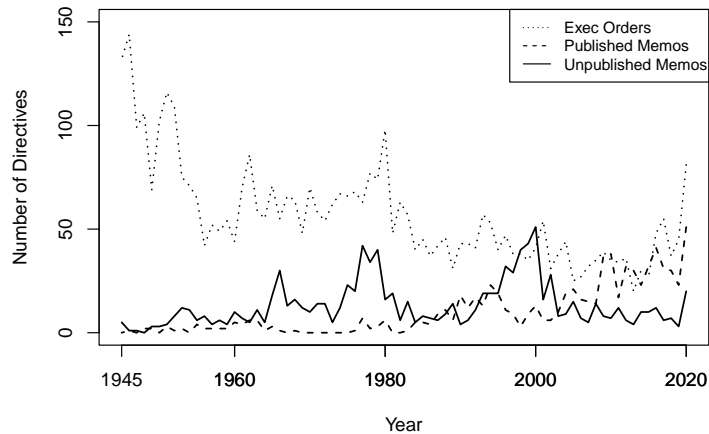


Figure 2.3: Directives Overtime, by Type

century, in contrast to executive orders that have a much longer history. Early to mid-century memoranda were used for limited purposes, such as to provide information about the status of a foreign nation, indicate dissatisfaction with legislation, or to make hortatory declarations.¹² President Reagan began using memoranda for more expansive policy purposes, like to issue binding pronouncements, initiate or direct regulation, delegate authority to agencies, and manage federal personnel. As demonstrated in Figure 2, President Clinton built upon his Republican predecessors and used executive memoranda even more extensively (Cooper 2002).

Similar to executive orders, memoranda are used for a variety of purposes, including delegating authority to agencies, altering the order of succession in agencies, and other administrative purposes; and in a variety of issue areas, including the foreign and domestic policy realms. As Figure 2.4 demonstrates, executive orders are generally used more often for policy implementation than either published or unpublished memoranda. However, there are multiple years when President Clinton issued more policy-related unpublished memoranda than executive orders. President Obama used published memoranda to implement policy at about the same rate as he used executive orders.

In contrast to executive orders, there is a greater ambiguity surrounding the legality of memoranda. While the Supreme Court has not ruled on the legal validity of executive memoranda, the U.S. Eighth Circuit Court of Appeals suggested they are legally interchangeable with executive orders in *Lower Brule Sioux Tribe v. Deer* (1995). Further, congressional actors and the Office of Legal Counsel (OLC) consider executive

¹²Presidential determinations present Congress and the public with information about the status of a foreign country, or an activity in the foreign policy realm. Memoranda of disapproval are “public veto statements.” Unlike a traditional veto, these memoranda allow presidents to rewrite portions of the legislation by issuing directives to alter the purpose of the statute, while using the veto to dispose of portions of the bill he does not support. Today, presidents use signing statements for these purposes. Hortatory declarations have the same purpose as presidential proclamations, but they are directed at executive actors rather than the public (Cooper 2002). The function of these tools is not to direct executive agencies on policymaking. Thus, they are excluded from my study.

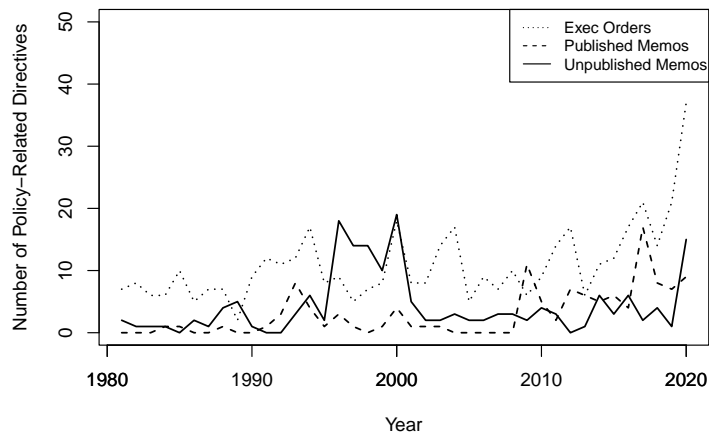


Figure 2.4: Policy-Related Directives, by Type

memoranda to have the same legal authority as executive orders.¹³

Bureaucratic actors likewise appear to view memoranda as a valid tool to direct policy implementation, and there is at least anecdotal evidence of bureaucratic compliance. On March 9, 2009, for example, President Obama published an executive memorandum outlining priorities agencies should focus on to reduce waste under government contracts. In October 2009, the Deputy Director of the Office of Management and Budget (OMB) described in a hearing for the Subcommittee on Contracting Oversight the “three-pronged” approach that OMB was using to implement this memorandum. Reports from the National Aeronautics and Space Administration (NASA) provide evidence of the agency implementing the guidance from the March memorandum and, subsequently, observing a decrease in their overall contracting budget.

There is similar anecdotal evidence for bureaucratic compliance with unpublished memoranda. For example, on September 24, 2015, President Obama issued the “Memorandum on the Establishment of the White House Legal Aid Interagency Roundtable.”¹⁴ The memorandum directed eighteen agencies to come together under the leadership of the Attorney General and the Director of the Domestic Policy Council to share best practices for assuring that individuals have access to legal aid and that they can adequately utilize government resources. This roundtable has existed since 2015 within the Department of Justice, with 22 government agencies participating in semiregular meetings to discuss legal justice for disadvantaged groups.¹⁵ While there is anecdotal evidence of compliance, without the authority associated with publication, presidents might anticipate an increased risk of bureaucratic non-compliance as bureaucrats might mistakenly assume these directives hold less legal validity (Cooper 2002).

¹³<https://crsreports.congress.gov/product/pdf/R/R46738>

¹⁴<https://www.govinfo.gov/content/pkg/DCPD-201500643/html/DCPD-201500643.htm>

¹⁵<https://www.justice.gov/olp/legal-aid-interagency-roundtable>

The limited extant literature on executive memoranda only considers those published in the *Federal Register* (e.g., Lowande 2014), finding their use mirrors that of executive orders. Yet, unpublished memoranda comprise 44% of all executive memoranda and are not nearly as traceable as published memoranda. While unpublished memoranda can eventually be accessed via the American Presidency Project’s *Public Papers of the President*, not all unpublished memoranda are immediately available here. The inability to access them immediately via the *Federal Register* delays political actors’ access to information, placing them at the same informational disadvantage they were in before the *Federal Register* was created. As Figure 2.5 illustrates, Congress notes the presidents’ use of executive orders far more often than either type of memoranda. Around 20% of executive orders issued in a year are mentioned in the Congressional Record, while the number of published or unpublished memoranda mentioned never exceeds 10%. Specifically, Congress noted 39% of executive orders, 6% of published memoranda, and 3.8% of unpublished memoranda in the Congressional Record, between 1981 and 2020. This difference in traceability between published and unpublished memoranda has implications for the development and testing of theories explaining this variation.

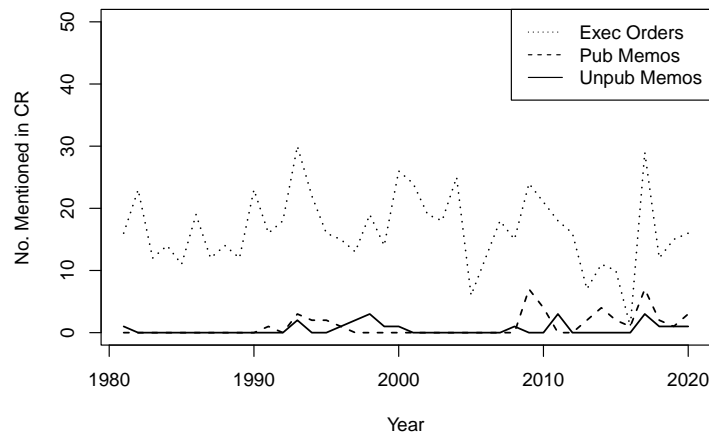


Figure 2.5: Directives Mentioned in the Congressional Record, by Type

2.1.4 Direct Communication

Finally, the least traceable bureaucratic directives are informal, direct communications between the White House and the bureaucracy. These communications can come in a variety of forms, including emails, phone calls, or in-person conversations. As neither the public nor institutional political actors have access to emails and phone transcripts from members of White House staff, these informal conversations are impossible to directly observe.¹⁶ Although agency actions are observable, it is unclear whether they are the direct con-

¹⁶We might be able to indirectly observe direct communication via agency memoranda or presidential statements. However, it is difficult to definitively tie these to the president. Thus, they are not included in my analysis.

sequences of an informal presidential communication. Consequently, scholars do not generally study these mostly untraceable bureaucratic directives. For these reasons, the empirical analysis later in the paper will focus on directives connected to presidents via their signatures (i.e., executive orders, published memoranda, unpublished memoranda).

2.2 Which do presidents use?

As the previous section demonstrated, presidents have a variety of bureaucratic directives at their disposal. Yet, the extant literature has focused almost exclusively on executive orders, and more specifically, whether Congress constrains the use of presidential executive orders. Political actors frequently consider executive orders and other unilateral actions as a means for the president to bypass Congress when legislating is more difficult; namely, during divided government (Binder 2003). However, the extant literature does not support this journalistic assertion, as presidents issue fewer executive orders during divided government (Howell 2003; Chiou and Rothenberg 2014). Scholars argue that this pattern results from the constraints presidents face from political actors. Congress has multiple methods to sanction presidents, including legislation, appropriations, and oversight hearings, in response to their use of unilateral actions (Howell 2003; Chiou and Rothenberg 2014). The Supreme Court can overturn unilateral actions that violate the Constitution or existing statutes (Howell 2003). More recently, political scientists have explored public perceptions of unilateral actions and how the public might act as a constraint on presidential unilateralism (Reeves et al. 2017; Reeves and Rogowski 2022). However, presidents have policies they want implemented during divided government (Howell 2003; Cohen 2012), but struggle to enact (Binder 2003). While presidents might have an incentive to issue fewer highly traceable directives, such as executive orders, as the risk of congressional sanctioning increases, executive orders are not the only bureaucratic directive that the president can use to engage in policymaking (Cooper 2002). I argue that presidents will strategically choose directives based on their traceability to avoid congressional sanctioning, while implementing policy change.

2.2.1 The Benefits and Costs of Unilateralism

Presidents have two goals that bureaucratic directives can help them achieve. First, they want to move policy closer to their ideal outcome. Directives provide presidents with a legally valid way to do so through agency instruction of policy implementation, without the direct approval of Congress (Howell 2003). Second, presidents seek re-election for themselves and members of their party. They can use bureaucratic directives to credit claim, thus demonstrating action on important policy areas to the public. As the most highly visible figure of their party, presidents' actions can determine the electoral fates of members of their party; and thus, I argue that they have similar electoral incentives during their first and second terms.

Though directives help presidents achieve their goals, they come with both internal and external costs. Bureaucratic directives require extensive input and oversight from bureaucratic agencies. Relevant agencies provide issue area expertise that informs the policy choice. Executive orders, specifically, must be reviewed by multiple agencies to ensure that they comply with existing statutes. While this review process is not standardized for memoranda, there is evidence that some memoranda, specifically those that are associated with large monetary expenditures, go through a similar process (Rudalevige 2021). The executive branch must expend valuable resources crafting bureaucratic directives.

While there are internal costs associated with directives, there are also several external costs to using them. Congress provides one of the most powerful constraints on bureaucratic directives and relates to how other external actors might limit presidential power. For instance, the courts can overturn directives for exceeding their statutory authority, which is determined by the discretion that Congress gives to presidents through legislation. Alternatively, members of Congress might directly sanction presidents for using unilateral directives that conflict with their policy goals that are unpopular with their constituents. In the next section, I explore the various ways that Congress can sanction the president, and how such sanctions might affect the costs of unilateralism.

2.2.2 Congressional Sanctions

When responding to presidents' unilateral action, Congress can impose both statutory and non-statutory sanctions. The former includes Congress's ability to pass legislation that directly overturns directives or limits presidential power in other ways. It can likewise defund executive programs through appropriations, or otherwise impede the president's legislative agenda through overrides and agenda-setting. While some scholars have challenged the efficacy of these mechanisms (Moe and Howell 1999), others interpret the decrease in executive order use during divided government as evidence of effective congressional sanctioning (Howell 2003; Mayer 2002).

Most statutory sanctions require super-majority support in Congress, which presents a collective action problem that is difficult to overcome (Moe and Howell 1999). For example, to overturn a bureaucratic directive via legislation, Congress would need to have a veto-proof majority in both chambers of Congress. Yet even without super-majority support, Congress can still impede presidents' legislative goals through their agenda setting power as congressional leadership controls the agenda. Thus, Congress can avoid the collective action problem associated with legislating to indirectly respond to unilateralism.

Non-statutory sanctions can likewise be used to directly or indirectly respond to executive unilateralism. These kinds of sanctions are tied to the appointments and oversight processes; which are attractive since they do not require majority or super-majority consent. Senate leadership, for example, has the power to schedule

confirmation votes for presidential political appointees, including federal judges and some bureaucrats. If the Senate refuses to confirm a position, the position will remain vacant. Vacancies reduce executive branch efficiency, slowing presidential policy implementation (Bolton et al. 2016; O’Connell 2009; Kinane 2021; Piper and Lewis 2023).

Congressional committees can likewise impede presidents’ policy and electoral goals through oversight activities. By calling bureaucrats to testify, legislators can distract and delay policy implementation by diverting time and resources to prepare for, and attend, the hearing. These hearings not only influence the executive branch’s efficiency, but long term-investigations can negatively influence presidents’ public approval, and therefore their chances of re-election (Kriner and Schickler 2016; Lewis-Beck and Rice 1982). Consequently, the prospect of oversight might deter presidents from unilateral activities to avoid these costs.

While Congress can impose costs on the president through these various sanctions, it must have the capacity to do so. Congressional capacity refers to the ability of Congress to do its job, including drafting legislation, conducting oversight hearings, and confirming nominations (Bolton and Thrower 2022). Higher capacity congresses have access to greater resources, including high-quality staff and legislative support organizations such as the Congressional Resource Service and the General Accounting Office (e.g., Clarke 2020; LaPira et al. 2020; Drutman and Teles 2015; Mills and Selin 2017). Importantly, these resources provide Congress with a key component of its capacity: information. The more information legislators have, the better equipped they are to engage in various policymaking activities to constrain the executive branch and presidential unilateralism.

Though the extant literature mostly focuses on how staff can provide legislators with information, the traceability of the bureaucratic directive that the president selects influences the number of resources Congress must expend to acquire information about it. Specifically, since direct communications and unpublished memoranda are not published in the *Federal Register*, information about the use of these directives is much more difficult for Congress to obtain. Congress will have to expend more resources to gain information about the use of less traceable directives than highly traceable directives. Thus, it is more difficult for Congress to sanction the use of less traceable directives than highly traceable directives. Congress’s strategic use of resources will influence presidents’ decision when choosing a directive.

2.2.3 Traceability and Unilateral Strategies

Although less traceable directives can limit Congress’s ability to retaliate, they can also be costly to the president’s goals for several reasons. First, they limit credit claiming opportunities by not allowing the public to attribute favorable policy change to the president. Credit claiming helps presidents and their party achieve their electoral goals (Mayhew 2004; Teten 2011). Less traceable directives do not assist presidential goals in

this way.

Further, less traceable directives might decrease bureaucratic compliance in two ways. First, these directives do not have the same standardized distribution process as more visible ones. The lack of a standardized process makes these directives harder for external actors to identify, and it can also leave executive branch actors without complete or accurate information regarding the president's intention. In this case, the agency might fail to enact the president's directive, or enact it improperly due to a lack of information (Edwards III 1997).

The second means of non-compliance is a result of active bureaucratic resistance. Agencies have their own ideological dispositions (Richardson et al. 2018), and their own means by which to hinder presidential policy implementation (Potter 2019). If an agency does not agree with a presidential directive, then the president might anticipate an increased risk of bureaucratic non-compliance. This risk is especially high for low traceability directives because external actors, such as Congress, the public, and interest groups, cannot act as an accountability mechanism to detect instances of bureaucratic non-compliance. Thus, less traceable directives, specifically, have an increased likelihood of not being implemented as the president intended.

In summary, bureaucratic directives can be used to advance the president's electoral and policy goals. Yet, the scope of their benefits, as well as the associated costs, can differ based on the traceability of the directive being employed. Highly traceable directives might be more effective in advancing the president's electoral goals through public credit claiming opportunities, and their policy goals through more effective bureaucratic compliance. At the same time, their visibility puts them at a higher risk of congressional sanctioning. Less traceable directives are beneficial in advancing presidents' policy goals by better avoiding congressional sanctioning. Yet, these directives limit presidents' electoral goals through fewer credit-claiming opportunities and increase the risk of bureaucratic non-compliance threatening the president's policy goals. Thus, presidents must consider these trade-offs when strategically deciding which types of directives to use. In particular, a key consideration is the likelihood that Congress would want to sanction the president based on the policy change that follow from the unilateral directive. When congressional sanctioning is likely, presidents will use less traceable directives to avoid the additional costs. But when Congress is less likely to sanction, presidents can use highly traceable directives to reap the additional credit claiming and bureaucratic compliance benefits.

Though Congress certainly has many incentives to sanction presidents, one key incentive is its policy preferences compared to the presidents. In particular, Congress is more likely to sanction presidents for unilaterally moving policy away from its ideal outcome, which is more likely to occur when their preferences are not aligned. Yet when the president and Congress share ideological preferences, Congress is less likely to sanction the president for unilateral actions because the policy change that follows from the directive is likely

to be in its favor. Hence, presidents will issue more traceable directives when their preferences align with Congress because of the decreased risk of sanctioning, but they will rely more on less traceable directives to achieve their goals when facing legislative opponents to reduce the information available to Congress, and thus, the likelihood of retaliation.

To summarize, there are two main factors that influence Congress's likelihood to sanction presidential bureaucratic directive use: 1) the preference alignment between Congress and the president and 2) the resources Congress must expend to sanction the president. Presidents cannot control Congress's policy preferences, but they can influence how easily Congress can access the information needed for sanctioning via the type of directive they choose to use. Specifically, when presidents use less traceable bureaucratic directives, they limit the information available to Congress about the directive. Here, Congress must expend greater resources to sanction presidents, thus decreasing the likelihood it will be able to effectively impose sanctions. However, there are policy and electoral trade-offs that come with using less traceable directives, such that presidents will want to use them strategically. Specifically, their incentive to increase the cost of sanctioning will increase as their preferences diverge from Congress. Thus, as the distance between the president and Congress's ideal outcome increases, she will use more of the less traceable directives (e.g., unpublished memoranda, direct communications) and fewer of the more traceable directives (e.g., executive orders, published memoranda).

2.3 Data and Measurement

To determine if presidents choose their method of executive action given these considerations, I collect data on all executive orders and memoranda issued between 1981 and 2020. I begin with the Reagan administration, since he was the first president to systematically use memoranda interchangeably with executive orders (Cooper 2002). Executive orders are easily accessible via the *Federal Register* due to the publication requirement established by the Federal Register Act. Yet, this requirement does not apply to executive memoranda, and presidents can select which ones to publish or omit. As such, I distinguish between published memoranda and unpublished memoranda when constructing the dependent variables. The former, like executive orders, are collected from the *Federal Register*.

To collect unpublished memoranda, I identify those memoranda found in the *Public Papers of the President* and cross-check those memoranda against those published in the *Federal Register*.¹⁷ Those memoranda found in the *Public Papers of the President*, but not found in the *Federal Register*, comprise my unpublished executive memoranda data set.

Existing studies of executive orders subset the data based on whether the orders are considered "signif-

¹⁷As discussed in the Background section, the president will frequently direct memoranda, even those not published in the *Federal Register*, to the *Public Papers of the President*. The president might begin including these memoranda during his administration, or after he has left office. There is not a set timeline for their inclusion into the presidential record.

icant,” as determined by whether the order is mentioned in the *New York Times*. However, I argue that one of the attractive characteristics of executive memoranda, specifically unpublished ones, is that they garner less media attention than other directives, such as executive orders, while still directing important policy changes.¹⁸ Thus, the traditional measures of significance do not effectively identify those non-ceremonial directives with policy implications.

Accordingly, I read the text of all directives (1698 executive orders and 1227 executive memoranda) and code them by issue area, based on the Comparative Agenda Project’s major topic codes. I omit all directives that are used for ceremonial functions, such as announcing the charity for the combined federal campaign or announcing the closure of executive departments and agencies for national holidays.

I count the number of executive orders, published memoranda, and unpublished memoranda in every issue area and year, using those counts as three separate dependent variables. Thus, the unit of analysis is issue area-year, which effectively increases the number of observations and allows us to control for policy-specific factors such as issue salience, presidential priority, and interest group activity as well as differences in committee oversight procedures. Accordingly, I include fixed effects for each issue area to control for possible variations between issues.

2.3.1 Independent Variables

The main independent variable is the preference divergence between the president and Congress, and I use two different measures for this theoretically critical concept. First, I use the traditional divided government measure used throughout the unilateral action literature (i.e., Howell 2003; Mayer 2002). Divided government is measured as 1 if the president is from the opposite party of at least one chamber of Congress and 0 otherwise (*Divided*). Second, I match each issue area with the House committee that considers bills related to that issue.¹⁹ Then, I use the percentage of seats held by members of the opposition party in the committee as an alternative measure to allow for greater variation in preference divergence (*% Opposition Party*).²⁰

I also control for other likely determinants of the president’s decision to engage in unilateralism. As discussed above, the resources that are available to Congress might influence its ability to sanction the president, and thus affect executive unilateralism (Bolton and Thrower 2022). Thus, I include logged committee staff as a measure of congressional capacity (*ln(Committee Staff)*).

Because new presidents are more inclined to use unilateral directives to overturn the policies of previous administrations, particularly those of the opposing parties. Following previous studies (e.g., Howell 2003), I

¹⁸Refer to Figure 4 for evidence of the regular use of memoranda for policy-related purposes.

¹⁹I only use House committees, as the narrow margins between parties in the Senate does not allow for much variation between committees. See Appendix 8.2 for more information about which committees I matched with each major topic code.

²⁰There could be concerns about the amount of variation between committees. While most committees have similar partisan distributions, there are small differences between committees.

include an indicator variable for the first year of a new administration after a party change (*Party Change*). Similarly, I control for the final year of an administration preceding a party change, as outgoing presidents might try to unilaterally push for policy change as they exit (e.g., Mayer 2002) (*End Term*).

Next, presidents have long used unilateral directives to respond to economic and internal crises, I measure the annual inflation rate (*Inflation*). As I control for instances of war (*War*). While Congress has not declared war since World War II, this control variable accounts for periods of prolonged foreign conflict, such as Operation Desert Storm (1990-91) and the Global War on Terror (2001-03). Finally, I include presidential fixed effects to account for unobserved variations between presidents, such as leadership style (Howell 2003; Mayer 2002). This means that the effects I identify are due to variation with a presidency.

2.4 Characterizing Presidential Directives

To examine the relationship between congressional sanctioning and presidential unilateralism, I estimate a series of negative binomial regression models predicting the number of enactments.²¹ Table 2.1 presents the results based on the specification that measures preference divergence as the percentage of presidential opposition in House committees, while in Table 2.2 uses divided government. For both tables, each column corresponds to a different type of directive: executive orders (column 1), published memoranda (column 2), and unpublished memoranda (column 3).

Recall that I predict that presidents should be more (less) constrained by legislative opponents when issuing high (low) traceability directives. Thus, we expect a negative coefficient on opposition party size and divided government for executive orders and published memoranda, but a positive coefficient for unpublished memoranda. The empirical results in Tables 2.1 and 2.2 are consistent with this prediction.²²

More specifically, an increase in opposition party representation on committees is associated with a significant decrease in executive order use, where an increase in the size of the opposition party on a committee from 40% to 60% corresponds with a 15% decrease in executive orders. This result is consistent with previous studies, which find that presidents issue fewer executive orders as the opposition party gains power in Congress (Mayer 2002; Mayer 2002). Further, presidents issue fewer published memoranda as the opposition party gains power within Congress, where an increase in the size of the opposition party on a committee from 40% to 60% is associated with a 16.4% decrease in published memoranda. This negative relationship is consistent with Lowande's (2014) findings. Yet, he does not examine unpublished memoranda, and thus is not accounting for the approximately 550 unpublished memoranda issued since the Reagan administration. As expected, there is a significant, positive relationship between unpublished memoranda and the size of the

²¹ While there are multiple model specifications that can be used to examine count data, negative binomial regressions are better suited for over-dispersed data, which might be a cause for concern in this case.

²² While these tables include robust standard errors, I also include robustness checks with standard errors clustered at the year and committee in the appendix.

	Executive Orders	Published Memos	Unpublished Memos
% Opposition Party	-1.37** (0.49)	-1.7** (0.83)	3.44** (0.94)
ln(Committee Staff)	0.05 (0.1)	0.48** (0.18)	0.03 (0.16)
End Term	0.36** (0.07)	0.4** (0.13)	0.24* (0.12)
Party Change	0.13 (0.09)	-0.22 (0.15)	0.02 (0.19)
Inflation	0.01 (0.02)	-0.14** (0.04)	0.12* (0.07)
War	0.38** (0.1)	-0.22 (0.19)	0.44* (0.25)
Constant	1.05* (0.57)	-2.88** (1.03)	-5.29** (1.06)
Presidential Fixed Effects	✓	✓	✓
Issue Area Fixed Effects	✓	✓	✓
N	800	800	800

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.
Excludes ceremonial directives.
*p < .1
**p < .05

Table 2.1: The Effect of the Size of the Opposition Party on Unilateralism, by Directive Type

opposition party. Particularly, the shift from 40% to 60% of a committee being composed of the opposition party is associated with an increase in unpublished memoranda use by a factor of 6.24. As congressional and presidential preferences diverge, presidents issue significantly fewer executive orders and published memoranda, but instead rely more on unpublished memoranda.²³

	Executive Orders	Published Memos	Unpublished Memos
Divided	-0.05 (0.07)	-0.43** (0.12)	0.56** (0.13)
ln(Committee Staff)	0.08 (0.1)	0.47** (0.18)	0.01 (0.16)
End Term	0.32** (0.07)	0.46** (0.13)	0.24** (0.12)
Party Change	0.21** (0.09)	-0.28** (0.13)	-0.03 (0.18)
Inflation	0.01 (0.02)	-0.14** (0.04)	0.1 (0.06)
War	0.39** (0.1)	-0.08 (0.18)	0.19 (0.24)
Constant	0.1 (0.43)	-3.51** (0.78)	-3.51** (0.79)
Presidential Fixed Effects	✓	✓	✓
Issue Area Fixed Effects	✓	✓	✓
N	800	800	800

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.
Ceremonial directives are excluded.
*p < .1
**p < .05

Table 2.2: The Influence of Divided Government on Unilateralism by Directive Type

Using divided government as a metric of preference divergence in Table 2.2 reveals a negative, but imprecise, relationship between divided government and the number of executive orders.²⁴ Consistent with

²³These results hold when I use the percentage of opposition members in the chamber as a whole as well.

²⁴The extant literature finds a negative, statistically significant relationship, but these studies use data going back to the Truman administration (e.g., Howell 2003; Mayer 2002). My more limited time frame might explain the difference.

my expectation, divided government is associated with a significant reduction in published memoranda use. Specifically, a shift from unified to divided government is associated with a 33% decrease in published memoranda. This result is consistent with Lowande's (2014) finding that presidents issue fewer published memoranda during divided government; but as I previously discussed, unpublished memoranda do not follow this trend. Instead, a shift from unified to divided government is associated with a 73% increase in unpublished memoranda use.

Most of the control variables are consistent with my expectations. The impact of congressional committee staff on unilateral directives is only statistically significant for published memoranda; as the amount of congressional committee staff increases, presidents issue more published memoranda. Presidents also issue significantly more directives in the last year of their term, consistent with the findings in previous studies of executive orders and published memoranda (e.g., Howell 2003; Lowande 2014). Presidents use more executive orders and unpublished memoranda after a presidential party change occurs, but they issue fewer published memoranda. This negative relationship is inconsistent with previous studies but, again, these studies also include a different time frame (e.g., Howell 2003; Mayer 2002). The negative, insignificant coefficient on party change for published memoranda is consistent with the existing literature (Lowande 2014); and the coefficients for inflation and war also align with my expectations based on previous research (Howell 2003; Lowande 2014).

2.5 Testing the Mechanism: Alternative Measures of Traceability

Overall, the empirical findings in Section 5 are consistent with the theoretical prediction that presidents are most constrained by legislative opponents when issuing highly traceable directives. Specifically, I found support for this prediction using one way to measure traceability— that is, separating out directives (executive orders, published memoranda, and unpublished memoranda) based on the label applied by the president and their publication in the *Federal Register*. Yet, there are other ways to group these directives, based on their publication. This section provides additional tests of the theory by examining two alternative measures of traceability: (1) pooled analysis of directives published and not published in the *Federal Register*; (2) analysis of executive orders before and after their publication was mandated by the Federal Register Act.

2.5.1 Importance of Publication in the *Federal Register*

Tables 2.1 and 2.2 separate directives by type (i.e., executive order and executive memoranda) and publication (i.e., published and unpublished memoranda). While executive orders traditionally receive more media coverage, congressional attention, and promotion by the president, they have one important characteristic in common with published memoranda: they are published in the *Federal Register*. Publication plays a key role

in determining how effective Congress is in constraining presidential unilateralism by affecting the traceability of the order. Presidents should anticipate more congressional sanctioning when using more traceable, published directives, compared to less traceable, unpublished directives regardless of label. To demonstrate the importance of the information provided by publication, I combine all the directives from the original dataset and divide them based on whether they were published in the *Federal Register* or not. If publication does allow Congress to constrain presidential unilateralism more effectively, then we should observe presidents publishing fewer directives as their preferences diverge from those of Congress.

Table 2.3 presents results from regression models where the dependent variables are the number of directives published in the *Federal Register* (i.e., executive orders and published memoranda) (columns 1 and 3) and the number of directives not published in the *Federal Register* (i.e., unpublished memoranda) (columns 2 and 4). To measure preference divergence, I use the incidence of divided government in columns 1 and 2, and the percentage of congressional House committee seats from the opposing party of the president in columns 3 and 4.

	Divided Government		Percent Opposition	
	In FR	Not in FR	In FR	Not in FR
Preference Divergence	-0.14** (0.07)	0.56** (0.13)	-1.42** (0.47)	3.59** (0.92)
ln(Committee Staff)	0.2** (0.09)	0.02 (0.16)	0.17* (0.09)	0.04 (0.17)
End Term	0.35** (0.07)	0.22* (0.12)	0.37** (0.07)	0.22* (0.12)
Party Change	0.14* (0.08)	0.02 (0.17)	0.08 (0.09)	0.08 (0.19)
Inflation	-0.01 (0.02)	0.1 (0.06)	-0.01 (0.02)	0.12* (0.07)
War	0.27** (0.09)	0.16 (0.24)	0.23** (0.09)	0.42* (0.25)
Constant	-0.27 (0.41)	-3.55** (0.79)	0.61 (0.54)	-5.44** (1.06)
Presidential Fixed Effects	✓	✓	✓	✓
Issue Area Fixed Effects	✓	✓	✓	✓
N	800	800	800	800

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses. Ceremonial directives are excluded.

*p < .1

**p < .05

Table 2.3: Influence of Publication on the Use of Directives

Table 2.3 suggests that as presidents' support in Congress decreases, they publish significantly fewer directives in the *Federal Register* and choose not to publish significantly more directives. Specifically, a shift from unified to divided government is associated with a 12% decrease in published directives, but a 73% increase in unpublished directives. Similarly, the addition of one opposition party member to a committee is associated with a 77% decline in published directives and a 2896% spike in unpublished directives. When Congress can easily trace directives to presidents, it is better able to constrain their actions. When presidents face congressional opposition, they rely more greatly on less traceable directives as a way to influence policy

under the radar.

2.5.2 Impact of the *Federal Register* on Executive Orders

The final mechanism test uses historical executive order data and leverage the passage of the Federal Register Act to further explore the importance of publication. Congress passed the Federal Register Act in 1936 to create a public repository for executive branch documents, where presidents were required to publish all executive orders and presidential proclamations. Before the Act, Congress faced an information deficit regarding executive branch actions. As a result, Congress passed the Federal Register Act to ensure it had access to more information about executive actions, allowing it to better constrain the president. In this analysis, I divide executive orders into those that were published before and after the Federal Register Act to explore the importance of the *Federal Register* and Congress's access to information on the president's decision to act unilaterally via executive order.²⁵ Before the passage of the Act, I expect the preference divergence between the president and Congress to have no effect on the president's use of executive orders. After the passage of the Act, Congress would have access to more information about presidential unilateral actions, and thus, I expect presidents would issue fewer executive orders as their preferences diverge from Congress's. The extent to which there is a difference in congressional constraint before and after the passage of the Act demonstrates how important publication in the *Federal Register* is for Congress to be able to effectively constrain presidential unilateralism.

Table 5.2 uses executive order data from the State Department from 1905 to 2020 to examine the importance of the *Federal Register*. I do not expect presidents to be constrained before the creation of the *Federal Register* (columns 1 and 3), but do expect to observe a negative relationship after the creation of the *Federal Register* (columns 2 and 4). As in the previous models, I measure preference divergence through the traditional divided government metric (columns 1 and 2) and the percentage of either chamber of Congress controlled by the opposite party as the president (columns 3 and 4). I include the same control variables from the main model, except for logged committee staff. Instead, I use logged legislative expenditures to control for congressional capacity for this longer period.

Consistent with my expectation, Table 5.2 suggests that presidents were not effectively constrained by Congress before the creation of the *Federal Register*. The coefficients on divided government and percent congressional opposition before the *Federal Register* are both statistically insignificant, with the latter even being positive. But after the passage of the Federal Register Act, presidents decreased their usage of executive orders in the face of legislative opponents. Though the coefficient is negative for both measures of preference

²⁵I do not examine executive memoranda in these models as executive memoranda use was inconsistent in the early-to-mid-twentieth century.

	Divided Government		Percent Opposition	
	Pre-FR 1905-35	Post-FR 1936-2020	Pre-FR 1905-35	Post-FR 1936-2020
Preference Divergence	-0.04 (0.15)	-0.1 (0.07)	0.45 (0.88)	-1.96** (0.68)
Logged Leg Exp	0.63 (0.61)	-0.23* (0.13)	-0.04 (0.48)	-0.4** (0.14)
End Term	0.24** (0.12)	0.3** (0.06)	0.24 (0.13)	0.29** (0.07)
Party Change	-0.09 (0.26)	0.03 (0.08)	-0.01* (0.14)	-0.04 (0.1)
Inflation	0.01 (0.02)	-0.03** (0.005)	-0.02 (0.02)	-0.02** (0.009)
War	0.38 (0.26)	0.1 (0.08)	0.45 (0.28)	0.17 (0.11)
Constant	1.44 (3.31)	4.64** (0.73)	2.97 (3.51)	8.4** (0.89)
Presidential Fixed Effects	✓	✓	✓	✓
Issue Area Fixed Effects	✓	✓	✓	✓
N	620	1700	620	1700

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses. Ceremonial directives are excluded.

*p < .1

**p < .05

Table 2.4: The Influence of the *Federal Register* on Executive Order Use

divergence, it is only significant for the percent opposition measure. This finding is consistent with presidents' use of executive orders becoming much more constrained by Congress once their traceability increased due to the publication requirement in 1936.

2.6 Conclusion

Political scientists, political pundits, and members of Congress find themselves in constant discussion over whether unilateral actions provide the president with undue power. Facing increasing resistance from Congress, unilateralism seems to provide presidents with the perfect opportunity to create policy without interference. Despite this conventional wisdom, scholars repeatedly find that presidents *actually* use these tools less often during divided government, perhaps to avoid congressional sanctioning (Howell 2003; Chiou and Rothenberg 2014). Congress, however, must have the institutional capacity to impose sanctions, like legislation, appropriations, and oversight hearings, on the executive branch (Bolton and Thrower 2022). While Congress can enhance its resources through staffing and funding, presidents can also increase the resource burden Congress faces through their choice in bureaucratic directive. I explain when presidents have the incentive to increase costs for Congress by decreasing its access to information. While existing studies of unilateral actions focus on executive orders, I consider the various unilateral policymaking tools presidents have at their disposal and explore how the characteristics of each tool influence the amount of information Congress has about their use. Specifically, presidents can use less traceable directives that make it more difficult for Congress to gather information about presidents' unilateral policy actions, and thus, sanction them. When presidents anticipate

increased congressional sanctioning (e.g., during periods of divided government), they will issue more of the least traceable directives (e.g., unpublished memoranda) and fewer of the most traceable directives (e.g., executive orders, executive memoranda).

By expanding the study of directives beyond executive orders, I find that presidents are not always constrained by their legislative opponents when acting unilaterally. Instead, they can strategically select less traceable directives to influence policymaking in the face of anticipated congressional constraints. Specifically, presidents use more unpublished memoranda— which are not published in the *Federal Register* or immediately known by political actors— during divided government. Unlike previous studies, I find that Congress can only constrain executive unilateralism if it has adequate information about these actions. Thus, allowing presidents to circumvent Congress through the increased use of less traceable directives during divided government.

2.6.1 Implications

There are numerous implications of the use of less traceable directives, especially the increased use during divided government. As these less traceable directives are harder for Congress to observe, it reduces the likelihood that Congress, or other branches, will be able to act as an effective check on presidential power. There is already debate within the literature regarding Congress's ability to overcome the collective action problems inherent to the branch and effectively sanction presidential unilateralism (e.g., Moe and Howell 1999; Chiou and Rothenberg 2014). These concerns are only compounded by presidents' strategic use of less transparent means of policy change. The lack of transparency inherent to these less traceable directives erodes not only the separation of powers system, but also government accountability more broadly. When members of Congress are unaware of presidential unilateralism, they are unable to challenge presidents' use of such tools, allowing presidents to act without regard for the opinions and beliefs of other actors, including those who represent the people of the United States. This violates the spirit of the United States' Constitution by leading to less representative government.

Beyond concerns about the erosion of government transparency and accountability, we do not understand what the policy implications of these directives are. The traceability of directives might influence their durability, as less traceable directives might be more difficult for subsequent administrations to identify. In this case, less traceable directives might be more durable than highly traceable directives, such as executive orders, which are significantly less durable than other forms of policy such as legislation (Thrower 2017b). Thus, less traceable directives might have a larger political impact in terms of changing the long-term norms within agencies. Regardless of how these directives change policy implication, there are clear differences based on the traceability of directives that might influence bureaucratic compliance, policy durability, and the

integrity of representation.

2.6.2 Beyond Congress

Congress is not the only actor that can impede presidents from unilaterally influencing policy. Indeed, the bureaucracy is responsible for implementing unilateral directives. With this responsibility comes the power to decide how directives are implemented. Some recent research explores the role of the bureaucracy in crafting unilateral actions, specifically executive orders (Rudalevige 2021), and the bureaucracy's strategic use of their rulemaking authority to disrupt presidential goals (Potter 2019). However, bureaucratic compliance with unilateral actions is understudied (Kennedy 2015). Future research could examine not only how the risk of bureaucratic non-compliance influences presidential decision-making, but also how often the bureaucracy complies with directives, and whether compliance differs based on the type of directive.

Beyond institutional constraints, the public might also impact executive unilateralism, particularly given presidents' electoral incentives and opportunities for credit claiming. Specifically, the traceability of directives influences the amount of information the public has and thus, its ability to sanction the president. Further, public support for presidential unilateral actions can provide presidents with leverage with Congress. Thus, the public can play an important role in presidential decision-making. Furthermore, presidential decision-making does not occur in a vacuum. Institutions and the public influence presidential decisions, especially regarding bureaucratic directive use, and must be considered in tandem.

CHAPTER 3

You're Gonna Need Smaller Sanctions: The Public, Congress, and Presidents' Use of Unilateral Directives

In April 1999, two students opened fire in their high school in Littleton, Colorado. At the time, the shooting at Columbine High School marked the deadliest school shooting in history, leaving 13 dead and 20 wounded. After numerous failed efforts to pass gun control legislation during the Clinton administration, the shooting at Columbine reignited Democratic interest. Yet, supporting gun control legislation still proved too risky for many members of Congress with rural constituencies that opposed these policies. Thus, after multiple failed attempts to pass gun control measures following Columbine, the reality of gun control regulation seemed hopeless, with the Democratic Party leadership distancing themselves from the issue.

By the end of Barack Obama's first term, only 44% of the public supported stricter gun regulations, a decrease of 6% from the end of George W. Bush's administration. During President Obama's first term, this support remained constant, even as the number of mass shootings increased, with 15 occurring between 2009 and 2012, including the most injurious shooting on record in July 2012.¹ Without strong public support for stricter gun regulations, members of Congress, including Democratic members, were unwilling to support gun control measures. As such, President Obama did not propose any policies to curb access to guns.

Then, on December 14, 2012, a gunman armed with a semi-automatic weapon entered Sandy Hook Elementary School in Newtown, Connecticut. After killing multiple school administrators, the gunman entered classrooms, where he killed a total of 20 first grade students and six staff members before taking his own life. The shooting at Sandy Hook Elementary School renewed the debate over how to regulate gun ownership. However, members of Congress were unable to agree on a response, which many believed would result in more inaction. But, after Sandy Hook, public support for stricter gun regulations rose almost 15% with 58% of Americans supporting stricter regulations.²

With a divided Congress unable to agree, but much of the public favoring stricter gun regulations, President Obama promised "meaningful action to prevent more tragedies like this."³ On January 16, 2013, President Obama made good on his promise. While surrounded by elementary school students from across the country, the President signed over twenty executive actions addressing gun ownership in America. Included among those unilateral actions were three published executive memoranda. These memoranda called on federal agencies to increase the transparency of data relevant for federal background checks, required them to

¹<https://www.statista.com/statistics/811487/number-of-mass-shootings-in-the-us/>

²<https://news.gallup.com/poll/1645/guns.aspx>

³<https://obamawhitehouse.archives.gov/the-press-office/2012/12/14/statement-president-school-shooting-newtown-ct>

trace weapons used in criminal activities, and instructed the Center for Disease Control (CDC) to research the causes and prevention of gun violence.⁴ However, these directives are excluded from most studies of presidential unilateral actions.

Historically, political scientists have focused on institutional constraints on presidential power (e.g., Moe and Howell 1999; Howell 2003; Chiou and Rothenberg 2014; McLain 2023), specifically congressional constraints (e.g., Mayer 2002; Howell 2003; McLain 2023). These scholars find that the increased risk of congressional sanctioning associated with divided government reduces the number of highly traceable directives presidents issue (Howell 2003; McLain 2023). However, some scholars question the effectiveness of congressional sanctions (Moe and Howell 1999) and tout the public as the most effective constraint on presidential power (Posner and Vermeule 2010; Christenson and Kriner 2020). This debate has led to emerging literature examining under what circumstances the public is likely to sanction presidents for using unilateral actions (e.g., Christenson and Kriner 2020; Reeves and Rogowski 2022), and how presidents' beliefs about the likelihood of public sanctioning influence their decisions to act unilaterally (e.g., Christenson and Kriner 2019). However, there is mixed evidence regarding the influence of public approval on presidential decision-making, which raises the question: *how* does public support influence presidents' choice in unilateral directives?

In the next section, I provide background on unilateral directives and the existing literature regarding congressional and public sanctions on the presidency. Although there is mixed evidence regarding how presidential public approval will influence presidential unilateralism (e.g., Deering and Maltzman 1999; Krause and Cohen 1997; Christenson and Kriner 2019), these studies do not consider how public approval *interacts* with congressional sanctioning to influence presidents' decisions. I argue that the likelihood of congressional sanctioning determines how public support influences presidents' choice in unilateral directives. When Congress and presidents' preferences align, they expect a decreased chance of congressional sanctioning. This decrease in congressional sanctioning allows presidents, especially those with less public support, an opportunity to use more highly traceable directives. These directives are appealing to unpopular presidents as they allow them an opportunity to credit claim that can increase their support among the public (Mayhew 2004; Teten 2011). Thus, conditional on low levels of congressional sanctioning, I expect presidents to issue fewer highly traceable directives and more of the less traceable directives as their public support increases.

However, as the likelihood of sanctioning increases due to preference divergence between Congress and presidents, unpopular presidents begin favoring less traceable directives. Highly traceable directives are less appealing, as they are more likely to result in congressional sanctioning that can further tarnish presidents' reputation among the public (McLain 2023; Christenson and Kriner 2020). Popular presidents, however, can

⁴Ungar, Rick. 2013. "Here Are The 23 Executive Orders On Gun Safety Signed Today By The President." *Forbes*
URL:<https://www.forbes.com/sites/rickungar/2013/01/16/here-are-the-23-executive-orders-on-gun-safety-signed-today-by-the-president/?sh=1c3982062312>

leverage their public support to decrease the chance of congressional sanctioning, allowing them to use more highly traceable directives as their preferences diverge from Congress (Rivers and Rose 1985; Ostrom and Simon 1985; Canes-Wrone and De Marchi 2002; Bond et al. 2003). Thus, conditional on high levels of congressional sanctioning, I hypothesize that presidents will issue more highly traceable directives and fewer of the less traceable directives as their public support increases.

To test this theory, I draw on an original data set of executive orders and published, and unpublished executive memoranda issued between 1981 and 2020 to examine how the size of the opposition party moderates the effect of public approval on presidents' choice in unilateral directives. I find some evidence that conditional on high congressional constraints, public support will increase presidents' use of highly traceable directives, specifically published memoranda, while decreasing their use of less traceable directives. In contrast, when congressional constraint is low, public support will decrease presidents' use of highly traceable directives, specifically published memoranda, while increasing their use of less traceable directives.

This paper provides a possible remedy to the existing theoretical disagreement concerning when presidents should have the strongest incentive to use bureaucratic directives. By considering the direct interaction between levels of public support for presidents and the likelihood of congressional sanctioning, I offer a theory that provides predictions for when both popular and unpopular presidents will use more highly traceable directives. This speaks to a larger theoretical argument concerning when the public acts as a constraint versus when it strengthens presidential power. Further, by considering the traceability of bureaucratic directives, I demonstrate how unpopular presidents facing congressional sanctioning can still act unilaterally using less traceable directives.

3.1 Background on Presidential Directives

Presidents' strategic use of unilateral actions has long consumed political scientists. Specifically, scholars have emphasized Congress's ability to constrain presidents' use of unilateral actions, with an emphasis on executive orders (e.g., Howell 2003; Mayer 2002; Chiou and Rothenberg 2014). While some scholars argue that statutory checks on the presidency are ineffective (Moe and Howell 1999), others find that Congress can effectively sanction presidents through its oversight, appointment, and agenda setting powers (Chiou and Rothenberg 2014; Kriner and Schickler 2016). Whether congressional sanctions are effective or not, there is robust evidence demonstrating that presidents behave in a manner consistent with effective congressional constraint. Specifically, presidents issue fewer executive orders and published memoranda as the likelihood of sanctioning increases, such as during periods of divided government (Howell 2003; Chiou and Rothenberg 2014; Lowande 2014).

While scholars have found consistent evidence supporting Congress's ability to sanction presidents,

Congress is not the only actor who influences presidents' behavior. There is also evidence that the public influences presidents' decision to act unilaterally (Christenson and Kriner 2020; Reeves and Rogowski 2022). However, there are competing theories concerning the relationship between public approval and presidents' use of unilateral actions, specifically executive orders. One theory argues that presidents will use more executive orders when their public approval is low (Deering and Maltzman 1999; Mayer 2002). When presidents have low public approval, they have less legislative success (Ostrom and Simon 1985; Rivers and Rose 1985; Brace and Hinckley 1993; Canes-Wrone and De Marchi 2002), which prompts them to use more unilateral directives (Deering and Maltzman 1999). Further, executive orders provide presidents with a credit claiming mechanism that might help increase their standing among the public (Mayhew 2004; Teten 2011).

In contrast, another theory argues that presidents will use more executive orders when their approval is high (Krause and Cohen 1997; Mayer and Price 2002; Christenson and Kriner 2019). When presidents have high public approval, they anticipate less congressional sanctioning as Congress is more likely to engage with their legislative agenda (Ostrom and Simon 1985; Rivers and Rose 1985; Brace and Hinckley 1993; Canes-Wrone and De Marchi 2002), less likely to challenge their vetoes (Rohde and Simon 1985), and less likely to conduct investigations into executive branch actions (Kriner and Schickler 2016). Thus, popular presidents anticipate fewer congressional sanctions in response to their use of directives. As such, they feel more comfortable issuing executive orders, as they do not anticipate congressional sanctions in response. While Christenson and Kriner (2019) provide one empirical remedy to this disagreement, there is still no theoretical conclusion as to how public approval influences presidential unilateralism.

This existing theoretical gap in the literature might result from studying institutional and public constraints on presidents in isolation. Specifically, existing studies do not theoretically engage with the role Congress plays in the relationship between public approval and presidents' unilateral directive use. Rather than examine how congressional sanctioning might moderate this relationship, scholars examine the direct effect of public approval on presidents' use of directives. Those studies that do empirically consider Congress, only include controls, rather than interacting public approval with the likelihood of congressional sanctioning. By failing to consider the effect of Congress on the relationship between the public and presidents, this scholarship is missing a key facet of the underlying mechanism driving presidential decision-making.

Furthermore, by only considering executive orders, scholars ignore the variation between different types of directives that influence presidents' decision regarding when and how to act unilaterally. As my previous chapter demonstrates, presidents have access to a wide variety of bureaucratic directives that they can use to unilaterally influence policy, including executive orders, published memoranda, unpublished memoranda, and

direct communication.⁵ While there are no significant differences between the public's opinion on different types of directives (Reeves et al. 2017), there are differences in how traceable directives are. As you will recall from the previous chapter, I define traceability as how easily external actors (e.g., the public, the media, Congress, the bureaucracy) can connect a policy to a presidential directive.⁶ Executive orders and published memoranda are more traceable as their publication in the *Federal Register* makes them easier to connect to presidents than other, less traceable, directives, such as unpublished memoranda or direct communications.⁷

As Figure 3.1 demonstrates, executive orders, and to a lesser extent published memoranda, are mentioned more frequently in newspapers, specifically *The New York Times*, *The Washington Post*, and *The Wall Street Journal*. In the late 1990s, there were spikes in the news coverage of unpublished memoranda. This trend is consistent with President Clinton mentioning his use of unpublished memoranda more often than other presidents. Similarly, the increased news coverage of published memoranda during the Obama administration is associated with an increase in President Obama mentioning these directives. News coverage brings presidential speeches mentioning directives into the homes of Americans. When directives are covered in the news, the public is more likely to have information about the directive. Between 1981 and 2020, at least one newspaper mentioned 33% of executive orders, 11% of published memoranda, and 9% of unpublished memoranda. Therefore, the public is more likely to receive information about highly traceable directives, especially executive orders, than other, less traceable directives.

To summarize, existing scholarship examining the role of public support on bureaucratic directive use examines the direct effect of the public, rather than the effect conditional on Congress's behavior. The literature examining this direct effect finds mixed evidence, with some scholars finding unpopular presidents use more executive orders (e.g., Deering and Maltzman 1999; Mayer 2002) and others finding the opposite trend (e.g., Krause and Cohen 1997; Mayer and Price 2002). While Christenson and Kriner (2020) proposed an empirical solution that might remedy these conflicting results, we still lack a theoretical explanation. Thus, we are left with the question: *how* does public approval influence presidents' choice in unilateral directives?

3.2 A Theory of Public Influence on Presidents' Choice in Directive

The extant literature leaves us with a theoretical gap in our understanding of how the public influences presidents' decision to act unilaterally. In the next sections, I argue that this theoretical conflict is a result of scholars not considering the role of Congress and failing to account for presidents' use of bureaucratic di-

⁵I use the term bureaucratic directive or unilateral directive to describe instructions provided by the president to agencies regarding how to implement and interpret the law.

⁶In fact, these different types of directives are often conflated by media sources and politicians, including presidents themselves (Cooper 2014).

⁷There are several other presidential policy tools, such as signing statements and proclamations, that I do not include in my analyses as they are not unilateral bureaucratic directives. Further, I do not include unilateral directives with limited policy scopes, such as National Security Directives or Presidential Determinations.

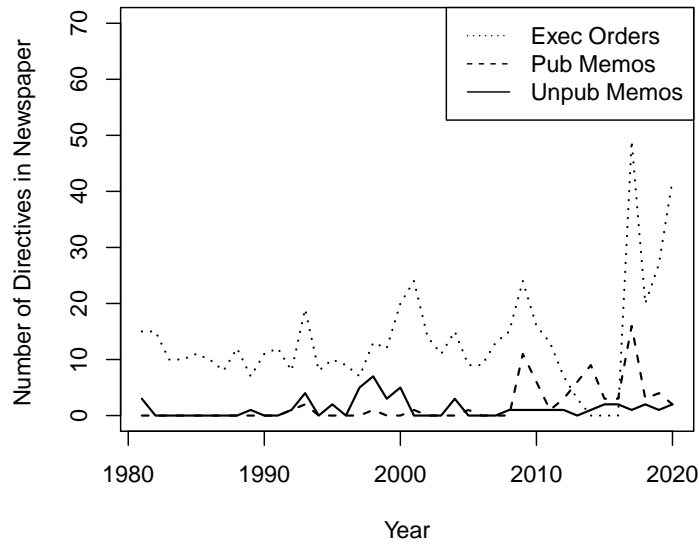


Figure 3.1: Directives Covered in Newspapers, by Type

rectives beyond executive orders. Specifically, how presidents’ choice in unilateral directives, as their public support grows, is shaped by how much congressional sanctioning they anticipate. The next sections outline the president’s and Congress’s incentives. Then, I outline presidential decision-making under low and high levels of congressional sanctioning.

3.2.1 Presidents’ Incentives

Presidents have two main goals while in office— policy and electoral. Bureaucratic directives can serve both of these goals. First, they serve presidents’ policy goals by providing them with a “first-mover advantage” that allows them to move policy closer to their ideal outcome than bargaining directly with Congress would allow (Howell 2003). While Congress can shape, and even undermine, presidents’ unilateral policies through sanctions (e.g., Chiou and Rothenberg 2014; Kriner and Schickler 2016; Howell 2003), such as legislation, executive oversight, and agenda setting, it needs knowledge of the directive to do so. Less traceable directives are more difficult for actors, such as Congress, to connect to the president. Thus, they are less likely to result in congressional sanctions that undermine presidents’ policy priorities.⁸ While less traceable directives help presidents avoid congressional sanctioning, they do not provide them with the same credit claiming opportunity as highly traceable directives.

Beyond helping them achieve their policy goals, bureaucratic directives also provide presidents with credit claiming opportunities that can aid them in their electoral goals (Mayhew 2004; Teten 2011). While electoral

⁸For a full discussion of congressional sanctions, see Chapter 2.

motivations are especially important for first term presidents looking to gain re-election, the decisions of second term presidents still influence the electoral fates of their co-partisans (Jacobson 2013; Jacobson 2015). Presidents have a vested interest in their party maintaining control of Congress as legislating is easier under unified government (Binder 2003) and retaining the presidency, as a co-partisan successor, is more likely to preserve their unilateral directives (Abramowitz and Webster 2016). Less popular presidents, especially, have an incentive to use highly traceable directives, as they can use them to credit claim and bolster support among the public (Mayhew 2004; Teten 2011). To summarize, presidents face competing incentives, with less traceable directives helping presidents to avoid congressional sanctions, while more traceable directives allow them to credit claim.

3.2.2 Congress's Incentives

Presidents are not the only actor looking to move policy or gain re-election. Congress shares these goals (Mayhew 2004). Often, Congress's policy and electoral goals bolster each other, but might conflict with presidents' goals. For example, when Congress is controlled by the opposition party, its policy preferences will diverge from presidents' preferences. Thus, when presidents of the opposition party issue bureaucratic directives, they are likely to conflict with Congress's policy goals. By sanctioning presidents for these directives, Congress aids its policy goals (Howell 2003), and can also claim credit for undermining an opposition president's agenda, supporting its electoral goal (Mayhew 2004; Christenson and Kriner 2020). However, when Congress and presidents' preferences align, Congress does not have an incentive to sanction presidents, as it serves neither of their goals (Howell 2003).

While Congress's policy and electoral goals often align, they do not always align. Specifically, strong public support for opposition party presidents can place Congress's goals at odds. Congress has an incentive to sanction the bureaucratic directives of opposition-party presidents, as it serves their policy goals (Howell 2003). However, if opposition-party presidents have strong public support, it becomes increasingly costly for Congress to sanction them, as it might result in electoral backlash that undermines their electoral goals (Rivers and Rose 1985). Thus, as presidents become more popular, sanctioning no longer serves Congress's electoral goal, and they are less likely to engage in it (Rivers and Rose 1985; Ostrom and Simon 1985; Canes-Wrone and De Marchi 2002; Kriner and Schickler 2016). To summarize, Congress's incentives to sanction out-party presidents' unilateral actions vary based on their popularity. This conditional relationship, consequently, influences presidents' choice in unilateral directives. The remaining sections outline how variations in congressional sanctions influence the behavior of popular and unpopular presidents.

3.2.3 Presidents' Behavior When Facing a Weak Opposition Party

As previously discussed, when Congress and presidents share similar ideologies, Congress has little incentive to sanction presidents for using unilateral directives (Howell 2003). This reduced chance of sanctioning is especially useful for presidents with low public approval. When presidents lack public support, they want to work to increase it, as stronger public support increases their chances of re-election (Campbell et al. 2017). One way that presidents can increase their public standing is through the use of bureaucratic directives. Bureaucratic directives provide presidents with an opportunity to publicly address policy concerns, which they can then claim credit for later (Mayhew 2004; Teten 2011). Thus, when facing a weak opposition party, presidents with low public approval have an incentive to use more highly traceable directives, that lend themselves to credit claiming, more than presidents with high public approval, who have more legislative success (Rivers and Rose 1985; Ostrom and Simon 1985; Canes-Wrone and De Marchi 2002) and less of a need for credit claiming.

Hypothesis 1A: When congressional sanctioning is low, presidents will issue fewer of the highly traceable directives and more of the less traceable directives as their approval increases.

3.2.4 Presidents' Behavior When Facing a Strong Opposition Party

As the size of the opposition party in Congress increases, the likelihood of congressional sanctioning increases. The use of highly traceable directives becomes increasingly costly as the size of the opposition party increases (Howell 2003), especially for less popular presidents (Canes-Wrone and De Marchi 2002; Bond et al. 2003). Unpopular presidents are more likely to face sanctions than popular presidents, as sanctioning popular presidents is more costly for Congress (Rivers and Rose 1985; Ostrom and Simon 1985). As discussed previously, Congress does not have an electoral incentive to sanction popular presidents, as it can result in electoral backlash (Rivers and Rose 1985). As such, we see a reduction in congressional sanctioning as presidents' popularity increases, even as the size of the opposition party increases (e.g., Rivers and Rose 1985; Ostrom and Simon 1985; Kriner and Schickler 2016). While popular presidents have more legislative success (Rivers and Rose 1985; Ostrom and Simon 1985; Canes-Wrone and De Marchi 2002), they still have an incentive to use bureaucratic directives, as these directives allow them to move policy closer to their ideal outcome than bargaining with Congress permits (Howell 2003). To summarize, popular presidents anticipate less congressional sanctioning than unpopular presidents, especially as the strength of the opposition party grows. Thus, compared to unpopular presidents, popular presidents should use more highly traceable bureaucratic directives and fewer of the less traceable directives, as the opposition party grows in strength. Meanwhile, unpopular presidents will still want to unilaterally influence policy, while avoiding sanctioning, so they will begin using more of the less traceable directives (McLain 2023).

Hypothesis 1B: When congressional sanctioning is high, presidents will issue more of the highly traceable directives and fewer of the less traceable directives as their approval increases.

3.3 Data and Measurement

I collect data on all executive orders and memoranda issued between 1981 and 2020. I begin with the Reagan administration, since he was the first president to systematically use memoranda interchangeably with executive orders (Cooper 2002). Executive orders are easily accessible via the *Federal Register* due to the publication requirement established by the Federal Register Act. Yet, this requirement does not apply to executive memoranda, and presidents can select which ones to publish or omit. As such, I distinguish between published memoranda and unpublished memoranda when constructing the dependent variables. The former, like executive orders, are collected from the *Federal Register*.

To collect unpublished memoranda, I identify those memoranda found in the *Public Papers of the President* and cross-check those memoranda against those published in the *Federal Register*.⁹ Those memoranda found in the *Public Papers of the President*, but not found in the *Federal Register*, comprise my unpublished executive memoranda data set.

Existing studies of executive orders subset the data based on whether the orders are considered "significant," as determined by whether the order is mentioned in the *New York Times*. However, I argue that one of the attractive characteristics of executive memoranda, specifically unpublished ones, is that they garner less media attention than other directives, such as executive orders, while still directing important policy changes. Thus, the traditional measures of significance do not effectively identify those non-ceremonial directives with policy implications.

Accordingly, I read the text of all directives (1698 executive orders and 1227 executive memoranda) and code them by issue area, based on the Comparative Agenda Project's major topic codes. I omit all directives that are used for ceremonial functions, such as announcing the charity for the combined federal campaign or announcing the closure of executive departments and agencies for national holidays.

I count the number of executive orders, published memoranda, and unpublished memoranda in every issue area and year, using those counts as three separate dependent variables. Thus, the unit of analysis is issue area-year. This unit of analysis means that in some years the minimum number of executive orders, published, and unpublished memoranda is 0. On average, presidents issue 3.58 executive orders, 1.81 published memoranda, and 1.17 unpublished memoranda in every issue area in a year. However, some issue areas receive more attention than others with a maximum of 35 executive orders, 41 published memoranda, and 26 unpublished

⁹As discussed in the Background section, the president will frequently direct memoranda, even those not published in the *Federal Register*, to the *Public Papers of the President*. The president might begin including these memoranda during his administration, or after he has left office. There is not a set timeline for their inclusion into the presidential record.

memoranda issued in a year.¹⁰

I disaggregate the data to the issue area as it effectively increases the number of observations and allows us to control for policy-specific factors such as issue salience and presidential priority, as well as differences in interest group activity and committee oversight procedures which all might influence presidents' decisions to use unilateral directives and public attentiveness. Accordingly, I include fixed effects for each issue area to control for these possible variations between issues.

3.3.1 Independent Variables

The main independent variable is public support for the president. I use presidential public approval as surveyed by Gallup to measure public support for the president. The minimum value of public approval during this time is 30.1% and the maximum is 73.3%. However, on average, presidents in the data set have a yearly average public approval of 51.07%. This measure is consistent with other studies examining public support for the presidency (e.g., Mayer 2002; Deering and Maltzman 1999; Christenson and Kriner 2019). I argue that public support will mitigate the relationship between the president and an opposition Congress. Accordingly, I include a measure of the preference divergence between the president and Congress that I interact with public approval. I use the percentage of seats held by members of the opposition party in a House committee to allow for greater variation in preference divergence (*% Opposition Party*). Each issue area is matched with the corresponding House committee that considers bills related to that issue.¹¹ The minimum percentage of House seats controlled by the opposition party is 0 and the maximum is 1. However, on average, 54% of a committee consists of members of the opposite party of the president.

I also control for other likely determinants of the president's decision to engage in unilateralism.¹² New presidents are more inclined to use unilateral directives to overturn the policies of previous administrations, particularly those of the opposing parties. Following previous studies (e.g., Howell 2003), I include an indicator variable for the first year of a new administration after a party change (*Party Change*). Similarly, I control for the final year of an administration preceding a party change, as outgoing presidents might try to unilaterally push for policy change as they exit (e.g., Mayer 2002) (*End Term*).

Next, presidents have long used unilateral directives to respond to economic and international crises. Thus, I use the annual inflation rate to control for the economic climate in the country (*Inflation*). In addition, I include a binary variable indicating whether the United States' is involved in a prolonged international conflict (*War*). While Congress has not declared war since World War II, this control variable accounts for periods of prolonged foreign conflict, such as Operation Desert Storm (1990-91) and the Global War on

¹⁰For descriptive statistics for each issue area, see Appendix 5.2.

¹¹I only use House committees, as the narrow margins between parties in the Senate does not allow for much variation between committees. See Appendix A for more information about which committees I matched with each major topic code.

¹²For summary statistics of the remaining control variables, see Appendix 5.2.1.

Terror (2001-03). Finally, I include presidential fixed effects to account for unobserved variations between presidents, such as leadership style (Howell 2003; Mayer 2002). This means that the effects I identify are due to variation with a presidency.

3.4 Congressional Sanctioning as a Means of Mitigating Public Support

To examine how congressional sanctioning moderates the relationship between public support and presidential unilateralism, I estimate a series of negative binomial regression models predicting the number of enactments.¹³ However, before examining the model addressing the main hypothesis, I present a model without the interactive term. This model is like those presented in the existing scholarship examining the influence of public approval on presidents' bureaucratic directive use (e.g., Deering and Maltzman 1999; Krause and Cohen 1997). Recall, there is mixed evidence regarding whether presidents should issue more directives as their approval increases. Table 3.1 presents the results for this model, with each column corresponding to a different type of directive: executive orders (column 1), published memoranda (column 2), and unpublished memoranda (column 3).

	Executive Orders	Published Memos	Unpublished Memos
Approval	-0.005 (0.004)	-0.02** (0.007)	0.05** (0.01)
Opp Party Size	-1.36** (0.47)	-2.33** (0.79)	3.15** (0.93)
End Term	0.37** (0.07)	0.48 (0.13)	0.2 (0.13)
Party Change	0.14 (0.09)	-0.21 (0.14)	-0.01 (0.19)
Inflation	0.0003 (0.02)	-0.18** (0.05)	0.16** (0.06)
War	0.51** (0.14)	0.3 (0.27)	-0.77** (0.26)
Constant	1.54** (0.41)	0.74 (0.77)	-7.87** (0.94)
Presidential FE	✓	✓	✓
Issue Area FE	✓	✓	✓
N	800	800	800

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.

Ceremonial directives are excluded.

*p < .1

**p < .05

Table 3.1: The Influence of Public Support on Presidents' Unilateral Directive Use

The coefficients for public approval on executive orders and published memoranda are both negative. Although, the coefficient for executive orders is not significant, the negative sign aligns with studies finding presidents will issue more directives when their approval is low (e.g., Deering and Maltzman 1999; Mayer 2002). Interestingly, the coefficient for unpublished memoranda moves in the opposite direction, indicating presidents' issue significantly more unpublished memoranda as their approval increases. The coefficients

¹³While there are multiple model specifications that can be used to examine count data, negative binomial regressions are better suited for over-dispersed data, which might be a cause for concern in this case.

for the size of the opposition party are statistically significant and in the expected direction, re-affirming the results presented in Chapter 2. While this regression builds on previous scholarship by including published and unpublished memoranda, I argue that this model only provides part of the story. To fully understand how public support influences presidents, we must consider Congress.

Table 3.2 presents the results for the main hypothesis, with each column corresponds to a different type of directive: executive orders (column 1), published memoranda (column 2), and unpublished memoranda (column 3). Recall, holding the opposition party size low, I predict presidents will use fewer highly traceable directives and more of the less traceable directives as their approval increases. Presidents with less public support have an increased incentive to use more highly traceable directives that give them an opportunity to boost their support through credit claiming. However, as the opposition size increases, presidents with low approval anticipate more congressional sanctioning than presidents with high approval that can leverage public support to avoid sanctions. Thus, when the opposition size is held at high values, presidents will issue more highly traceable directives and fewer of the less traceable directives as their approval increases. In summary, I expect the interaction between presidential public approval and opposition party size to be positive for executive orders and published memoranda and negative for unpublished memoranda.

	Executive Orders	Published Memos	Unpublished Memos
Approval	0.03 (0.02)	-0.15** (0.03)	0.23** (0.05)
Opp Party Size	1.93 (1.77)	-13.1** (2.97)	18.88** (4.59)
Approval*Opp Party	-0.07* (0.03)	0.22** (0.22)	-0.32** (0.09)
End Term	0.34** (0.07)	0.59** (0.13)	0.09 (0.11)
Party Change	0.11 (0.1)	-0.12 (0.15)	-0.16 (0.18)
Inflation	0.01 (0.02)	-0.26** (0.05)	0.2** (0.05)
War	0.44** (0.15)	0.55** (0.28)	-1.14** (0.27)
Constant	-0.33 (1.09)	7.005** (1.84)	-16.52** (2.47)
Presidential FE	✓	✓	✓
Issue Area FE	✓	✓	✓
N	800	800	800

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.

Ceremonial directives are excluded.

*p < .1

**p < .05

Table 3.2: Public Influence on Unilateral Directive Use in the Face of Congressional Opposition

For executive orders, the coefficient for public approval remains insignificant. Further, the size of the opposition party in Congress is, surprisingly, also not statistically significant, nor does it move in the expected direction. However, presidents do issue significantly fewer executive orders as their public approval increases when the size of the opposition party grows. This relationship is inconsistent with my theoretical expectations, as presidents are not using public support as leverage to avoid congressional sanctioning for executive

order use. Rather, it appears popular presidents facing an unfriendly Congress use fewer executive orders. Although, the coefficient on the interaction is small and only significant at the 10% confidence interval.

When considering published memoranda use, presidents' issue significantly fewer published memoranda as their approval increases. This trend follows the trend observed in Table 1 with presidents issuing fewer published memoranda as their approval increases when the opposition party remains small. This relationship is consistent with a credit claiming story, in which unpopular presidents facing a friendly Congress will use more highly traceable directives. However, when we consider the interaction between approval and opposition party size, we observe the sign for approval flip. As the size of the opposition party grows, *popular* presidents will issue more published memoranda. This result is consistent with my expectation that popular presidents will use their public support as leverage within Congress, allowing them to issue more highly traceable directives, in this case published memoranda.

Finally, when examining unpublished memoranda use, presidents use significantly more unpublished memoranda as their approval increases, when the opposition party remains small. However, as the opposition party grows stronger, presidential public support is associated with a decrease in unpublished memoranda use. Thus, unpopular presidents are more likely than popular presidents to use less traceable directives when facing a strong opposition party. This is consistent with my theory, in which unpopular presidents facing a strong opposition party wish to avoid congressional sanctions, but still want to implement policy. Thus, they turn to less traceable directives, rather than more traceable directives that are less likely to incur sanctioning.

While Table 3.2 provides an overview of general trends in the data, the coefficients do not provide us with any substantive understanding of the effect of approval on unilateral directive use. Thus, I use predicted value plots to illustrate the substantive effect of public approval. I only include graphs for published and unpublished memoranda. For executive orders, the results are only moderately significant and inconsistent with my expectations, so they are not represented in the plots. Figures 2 and 3 are graphs displaying the number of directives expected as public approval increases, holding the opposition size constant at a low value (solid line) and a high value (dashed line). Figure 2 displays the published memoranda expected with shifts in public approval, and Figure 3 displays the unpublished memoranda expected.

Figure 3.2 displays the predicted number of published memoranda. When the size of the opposition party is small, presidents' issue approximately 3 fewer published memoranda, a shift from 3.25 to .25, as their approval increases from 30% to 70% approval. However, when the size of the opposition party is large, presidents' issue approximately .5 more published memoranda, a shift from .25 to .75, as their approval increases from 30% to 70%. This trend is consistent with my prediction that unpopular presidents, facing little congressional opposition, will issue more of the traceable directives, specifically published memoranda. However, as the opposition party increases, unpopular presidents' use of published memoranda will decrease,

by approximately 3 memoranda.

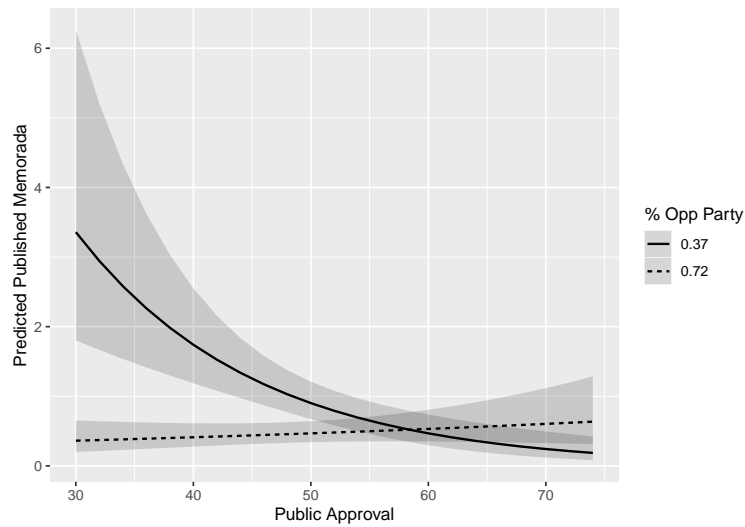


Figure 3.2: Predicted Counts of Published Memoranda

Finally, Figure 3.3 shows the predicted number of unpublished memoranda issued. When the opposition size is small, presidents issue upwards of 5 more unpublished memoranda as their public approval increases from 30% to 70%. However, when the size of the opposition party is large, presidents issue 0.5% fewer unpublished memoranda, a shift from .75 to .25 memoranda, as their public approval increases. This relationship is consistent with my theory that, when facing little congressional opposition, low approval presidents will issue fewer unpublished memoranda compared to presidents with higher approval. This trend is consistent with unpopular presidents using highly traceable directives to credit claim, but only when they face limited congressional opposition.

Overall, I find strong support for my theory among published and unpublished memoranda. However, I do not find support for my theory with executive orders. One reason that I might not find support with executive orders is due to the vast variation in the use of these directives. The next section will further examine executive orders, using an alternative measure of traceability.

3.4.1 Examining Credit Claiming Among Executive Orders

To unpack the executive order result and explore the possible credit claiming mechanism, I examine when presidents mention their use of executive orders. Executive orders lend themselves best to this study, as presidents are more likely to discuss their use of highly traceable directives, such as executive orders, rather than those that they want to keep hidden. Further, presidents mention executive memoranda, including published memoranda, far less frequently than executive orders. Presidents mention 18% of executive orders, but only

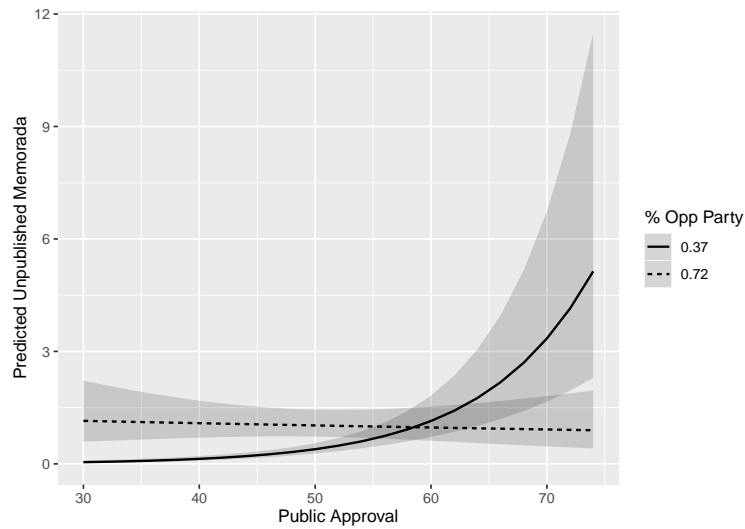


Figure 3.3: Predicted Counts of Unpublished Memoranda

10% of published memoranda and 9% of unpublished memoranda. Thus, I limit my data to only executive orders, and divide the data into those that presidents have mentioned in public statements and those that they have not.¹⁴ When presidents mention an executive order, I consider those instances of credit claiming. To divide the executive orders into these subsets, I searched the American Presidency Project’s records of presidential speeches for mentions of any executive orders.¹⁵

	Number Mentioned	Number Not Mentioned
Approval	-0.07 (0.04)	0.05** (0.02)
% Opp Party Size	-2.25 (3.94)	2.52 (1.88)
Approval x Opp Party	0.09 (0.08)	-0.098** (0.04)
End Term	0.31** (0.14)	0.35** (0.07)
Party Change	0.62** (0.17)	-0.05 (0.1)
Inflation	-0.05 (0.05)	0.02 (0.02)
War	1.16** (0.31)	0.25 (0.16)
Constant	-0.56 (2.34)	-0.8 (1.14)
Presidential Fixed Effects	✓	✓
Issue Area Fixed Effects	✓	✓
N	800	800

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses. Ceremonial directives are excluded.

*p < .1
**p < .05

Table 3.3: Using Executive Orders as a Means of Credit Claiming

¹⁴See Table 5.11 for the model with all directives included. The results are consistent with those presented here.

¹⁵Specifically, I identified executive orders mentioned in the following categories: “spoken addresses and remarks,” “oral addresses,” “news conferences,” and “statements.” This measure is a binary indicator, so orders mentioned multiple times were only given a value of 1, indicating it was mentioned.

Table 3.3 displays the results of the model, with column 1 displaying the results for those orders mentioned by presidents and to provide a comparison group, column 2 displays those orders not mentioned. When presidents mention a directive, they are increasingly the traceability of it. Thus, executive orders mentioned by the presidents are highly traceable, while those not mentioned are less traceable. If less popular presidents do have more of an incentive to credit claim than popular presidents, then we should see them mention significantly more executive orders than popular presidents. Broadly, we should see presidents mention fewer orders as their approval increases. However, as the size of the opposition party grows, it becomes increasingly costly for presidents, especially less popular ones, to mention orders. Thus, as the opposition party grows, the relationship should flip, with popular presidents mentioning more orders than less popular ones. To summarize, conditional on low levels of congressional sanctioning, I expect presidents to mention fewer orders as their approval grows. However, as the size of the opposition party grows, presidents will mention more orders as their approval increases. I expect the opposite trend when examining those orders presidents do not mention.

When considering the number mentioned, I do observe a negative coefficient for approval. This indicates that presidents mention fewer executive orders as their approval increases when the opposition party is weak. However, as the opposition party grows, presidents mention more executive orders as their approval increases. This relationship is consistent with my expectations; however, these relationships are not statistically significant. When we examine the second column displaying the results for those not mentioned by the president, we see an interesting and statically significant relationship, which is displayed in Figure 3.4.

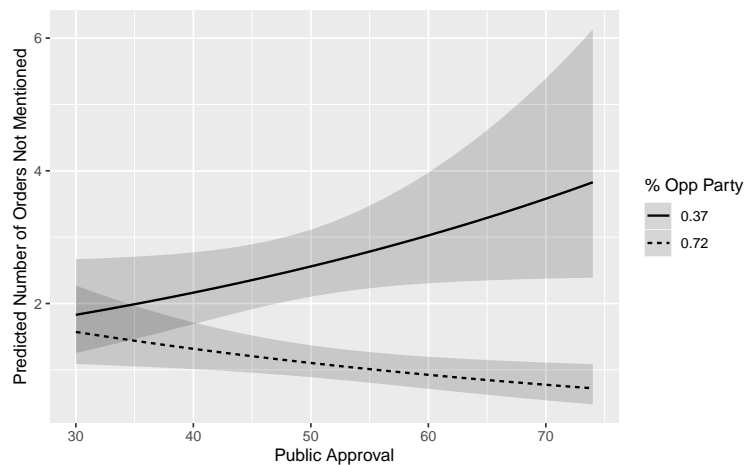


Figure 3.4: Predicted Number of Orders Presidents Choose Not to Mention

As Figure 3.4 illustrates, when the opposition party is weak, presidents issue more executive orders that they choose not to mention as their approval increases. Put another way, as their approval increases, they

issue more of the less traceable directives. However, when the opposition party is strong, presidents issue fewer executive orders that they choose not to mention as their approval increases. In other words, as their approval increases, they issue fewer of the less traceable directives. This relationship is consistent with a credit claiming story, where less popular presidents are less likely to stay quiet about their executive orders, but only when they do not anticipate congressional sanctioning.

3.5 Conclusion

When considering the influence of public support on presidents' unilateral action use, the extant literature finds mixed evidence. Some scholars argue presidents use more unilateral actions when they have less public support (Deering and Maltzman 1999; Mayer 1999), as a means of appealing to the public (Teten 2011). However, other scholars argue that when presidents lack public support, they anticipate increased sanctioning in response to their use of unilateral directives, and thus, use fewer unilateral directives (Krause and Cohen 1997; Christenson and Kriner 2019). I argue this inconsistency in the literature is due to scholars' failure to account for the likelihood of congressional sanctioning. Congressional sanctions alter presidents, especially unpopular presidents, incentives. When sanctions are low, they have an incentive to use highly traceable directives to credit claim. However, as the likelihood of sanctioning increases, so do the costs of using highly traceable directives, especially for unpopular presidents. By considering congressional sanctions, I provide a remedy to this theoretical inconsistency present in the literature.

Beyond the inclusion of Congress, this paper also moves beyond executive orders to consider a range of bureaucratic directives. The existing literature presents a limited view of presidents' unilateral power by limiting presidents to only one unilateral tool. In this study, presidents can still act unilaterally, even as the use of highly traceable directives becomes more costly, through the use of less traceable directives. Thus, unpopular presidents facing an opposition Congress can still act unilaterally, just not via the highly traceable directives often studied.

This paper has political implications, especially regarding executive branch transparency. As public support for presidents increases, they are more likely to use highly traceable directives and less likely to use less traceable directives as the strength of the opposition party grows. Thus, public support for presidents can induce a slight increase in the transparency of the unilateral directives they choose. While government transparency has positive externalities, the public incentivizing presidents to use more transparent directives only constrains presidential unilateral power, *if* Congress is willing to sanction popular presidents for overstepping their power. While public support can induce transparency, a lack of public support results in less transparency, specifically when Congress is controlled by the opposition party. Under these circumstances, presidents can act unilaterally without the support of the public or Congress, undermining our system of

democratic accountability.

While there is evidence that presidents are more willing to use highly traceable directives, even in the face of a strong opposition party in Congress, the evidence is not strongly consistent across types of directives. One reason for this may be that popular presidents feel less of a need to utilize bureaucratic directives as they experience more legislative success. In this case, we might expect to see presidents with low approval using more bureaucratic directives, even when their co-partisans control Congress. When presidents are popular among the public, they face less pressure to act unilaterally, as they can enact policy via Congress. To engage with this alternative theory, future research could expand the scope of study beyond unilateral actions to also include legislative policy enactments. Finally, this paper examines a limited time frame, during which many political changes have occurred, but also a period characterized by consistently high partisan polarization and constantly shifting congressional majorities. By moving this study to the states, I might be able to vary the amount of elite polarization and shifts in partisan control to examine how these two factors might alter the influence the public provides executives' in the legislative arena.¹⁶

¹⁶There is some limited evidence that increasing partisan polarization has reduced popular presidents' legislative influence, which this study would speak to.

CHAPTER 4

The Call is Coming from Inside the House: Presidents' Strategic Use of Directives at the Risk of Non-Compliance

During Donald Trump's 2016 campaign for president, he vowed to "drain the swamp" referring to his plan to dismantle the existing, expansive federal bureaucracy. He continued to promote this sentiment throughout his term, as he declared one of his goals as president to conduct a "war on the deep state." His concerns were rooted in his belief that the federal bureaucracy is composed of elite careerists, who use their individual expertise to enact policy without regard for public preferences.¹ While President Trump used the term "deep state" as a political dog whistle signaling his distrust in the federal bureaucracy, his rhetoric speaks to larger, underlying concerns about bureaucratic compliance with presidential instructions. Trump is not the first president, nor the last, to be plagued by concerns over possible agency loss.

In the 1980s, President Ronald Reagan expressed similar concerns regarding the Environmental Protection Agency's resistance to his anti-regulation agenda. Even Reagan's political appointees to the Agency struggled to gain control when it came to implementing the administration's agenda.² This control problem is not limited to Republican presidents, either. President Barack Obama faced defiance from Immigration and Custom Enforcement (ICE) regarding the administration's policy related to the detention and deportation of undocumented immigrants. ICE's chief administrator, John Morton, issued a memorandum re-iterating the administration's policy after "a classic example of leadership saying one thing and the rank and file doing another."³

While bureaucratic non-compliance weighs heavy on presidents, political scientists, historically, assume bureaucrats will comply, focusing instead on constraints imposed on presidents by actors outside the executive branch, including Congress (e.g., Howell 2003; Moe and Howell 1999; McLain 2023), the courts (Howell 2003; Thrower 2017b; Moe and Howell 1999), and the public (Christenson and Kriner 2020; Reeves and Rogowski 2022). However, bureaucrats are actors with their own political ideologies and expertise (e.g., Carpenter 2001; Huber and McCarty 2004; Kennedy 2015; Acs 2021; Gailmard and Patty 2013; Turner 2020). A burgeoning literature considers the ways bureaucrats might subvert, ignore, or amend presidential instructions (e.g., Kennedy 2015; Kennedy 2018; Potter 2019; Acs 2021). Specifically, these scholars con-

¹Osnos, Evan. 2018. "Trump vs. The 'Deep State': How the Administration loyalists are quietly reshaping American governance." *The New Yorker* URL:<https://www.newyorker.com/magazine/2018/05/21/trump-vs-the-deep-state>

²Tong, Scott, and Grace Tatter. 2022. "Poison in the water: When the Reagan administration's EPA met resistance from its own staff." *WBUR* URL: <https://www.wbur.org/hereandnow/2022/09/16/captured-episode-1-epa>

³Gavett, Gretchen. 2011. "Report: Deportation Efforts Still Broad, Uneven." *PBS: Frontline* URL: <https://www.pbs.org/wgbh/frontline/article/report-deportation-efforts-still-broad-uneven/>

sider how presidential control (e.g., Lewis 2008; Selin 2015), agency ideology (e.g., Richardson et al. 2018; Kennedy 2015; Resh 2015), and agency capacity (e.g., Huber and Shipan 2002; Bolton et al. 2016; Bednar 2022) influence the likelihood of bureaucratic compliance, especially in agency rulemaking. This paper contributes to this growing scholarship by asking: how does the perceived likelihood of bureaucratic compliance influence presidents' use of bureaucratic directives?

In this paper, I argue that the likelihood of bureaucratic compliance will influence presidents' decision to act unilaterally. There are multiple agency characteristics that influence presidents' perception of the likelihood of bureaucratic compliance. Broadly, presidents will consider both political characteristics, such as presidential control, and institutional characteristics, such as agency capacity, when deciding whether to instruct an agency using a bureaucratic directive. When presidents believe agencies will comply, such as when they have more control over the agency, they will use more bureaucratic directives. This trend will be especially strong among highly traceable directives. While presidents want the bureaucracy to properly implement all their directives, they especially want compliance for highly traceable directives that external actors, including the public, are more easily able to observe. When bureaucrats fail to comply with highly traceable directives, it reflects poorly on presidents, making them appear weak. Other branches are less willing to cooperate with weak presidents, which further hurts their political capital (Neustadt 1991). Further, highly traceable directives, specifically executive orders, require presidents to expend nontrivial executive branch resources (Rudalevige 2021). Thus, presidents will only want to expend the resources crafting highly traceable directives, if they believe agencies will comply with them. Conditional on high levels of political control, a similar trend is expected for high-capacity agencies. Specifically, presidents will instruct high-capacity agencies more often using bureaucratic directives, but only when they have sufficient control over the agency.

In the next section, I provide background on bureaucratic directives and the costs and benefits of using them for presidents. Then, I present a theory of presidents' bureaucratic directive use, in which political and institutional factors influence agencies' likelihood of compliance. This likelihood, in turn, influences presidents' willingness to delegate to agencies via unilateral directive. To test this theory, I use an original dataset containing executive orders and published, and unpublished memoranda issued between 1981 and 2020. I match each of these directives with the agency(s) they direct, to create a data set with the number of directives issued to each cabinet department in a year. Using a series of negative binomial regressions, I find that presidents are more likely to instruct agencies that they have more political control over, particularly using highly traceable directives. I also find mixed support for my hypothesis concerning agency capacity.

While discussions of presidential control over the bureaucracy have existed for decades (e.g., Moe 1985; Moe 1989; Lewis 2008), bureaucratic implementation of presidential instructions has often been taken for

granted. However, scholars are increasingly considering the role of compliance in presidential decision-making (e.g., Kennedy 2018; Acs 2021) and the willingness and ability of the bureaucracy to implement directives (e.g., Kennedy 2015; Potter 2019). This paper adds to this growing literature by considering both political and institutional factors simultaneously. While some scholars have begun considering the political factors that determine presidential unilateral directive use (Kennedy 2018; Acs 2021), they are studied in isolation from institutional factors. Yet, both factors influence presidential decision-making. Further, these studies focus exclusively on executive orders, without considering the different costs associated with other types of bureaucratic directives. By considering other directives, I can demonstrate where this relationship is the strongest.

4.1 Background on Bureaucratic Directives

Existing studies of bureaucratic directives have almost exclusively focused on presidents' use of executive orders. However, as previous chapters demonstrate, presidents have access to a wide variety of bureaucratic directives that they can use to unilaterally influence policy, including executive orders, published memoranda, unpublished memoranda, and direct communication. I use the term bureaucratic directive, or unilateral directive, to describe instructions provided by the president to agencies regarding how to implement and interpret the law. Presidents can use these directives to help achieve their policy and electoral goals (McLain 2023).

First-term presidents, looking to run for re-election, can use bureaucratic directives, especially executive orders, or published memoranda, to credit claim, helping their chances of re-election (Mayhew 2004; Teten 2011). However, electoral goals are not limited to first term presidents. Second-term presidents also have electoral motivations related to the success of their co-partisans in Congress (Jacobson 2013; Jacobson 2015). Presidents have a vested interest in maintaining control of Congress, as unified government is associated with increased legislative success (Binder 2003) and a decrease in congressional investigative oversight (Kriner and Schickler 2016). Further, second-term presidents would prefer a co-partisan successor that is more likely to preserve their unilateral directives (Abramowitz and Webster 2016). Thus, presidents should use bureaucratic directives, especially executive orders and published memoranda, to appeal to voters throughout their term(s).

Secondly, bureaucratic directives provide presidents with a "first-mover advantage" that allows them to move policy closer to their ideal outcome than bargaining with Congress might permit (Howell 2003). While bureaucratic directives allow presidents to act first, this power does not guarantee that directives are properly implemented, as presidents must rely on the vast bureaucracy to implement their directives. Without proper implementation, presidents are unable to *actually* achieve their policy goals. Further, bureaucratic non-compliance can undermine presidents' electoral goals. When agencies fail to comply with presidents'

directives, this makes them appear weak, which can hurt the public's perception of them and discourage other political actors from cooperating with them. For example, weak presidents may struggle to pass their legislative agenda or win re-election, undermining their policy and electoral goals (Neustadt 1991). However, not all bureaucratic directives have an equal chance of undermining presidents' goals.

While the differences between these tools "may be a matter of form rather than function or effect [,]" these directives do vary in terms of their traceability (McLain 2023).⁴ I define traceability as how easily external actors (e.g., the public, the media, Congress, the bureaucracy) can connect a policy to a presidential directive. For example, executive orders and published memoranda are more traceable as their publication in the *Federal Register* makes them easier to connect to presidents than other, less traceable, directives, such as unpublished memoranda or direct communications.⁵ These differences in traceability might influence presidents' choice in bureaucratic directives. Traceability not only influences the likelihood of sanctioning from external political actors, such as Congress and the public, but also might influence the consequences of bureaucratic non-compliance for presidents.

4.1.1 The Uneven Costs of Non-Compliance

While bureaucratic directives can serve presidents' goals, they are not without their costs. External actors, especially Congress (e.g., Howell 2003; Lowande 2014; McLain 2023), are likely to sanction presidents when they disagree with their unilateral directives. Actors are more likely to sanction presidents for using highly traceable directives that are easier to connect to presidents. Consequently, presidents are likely to favor less traceable directives when they anticipate increased congressional sanctioning, such as when Congress is controlled by the opposition party (McLain 2023). While less traceable directives help presidents avoid sanctioning, they do not present them with the same credit claiming opportunities as highly traceable directives. Thus, presidents must weigh the costs of sanctions against the benefits associated with credit claiming.

External actors are not the only actors that can sanction presidents for using bureaucratic directives. Executive branch actors might also sanction presidents, in the form of non-compliance. Bureaucratic non-compliance is costly for presidents for multiple reasons. First, presidents must expend non-trivial executive branch resources, including time, staff, and money, crafting bureaucratic directives, especially executive orders. While all directives require presidents to input a certain amount of time and resources, highly traceable directives, specifically executive orders, must undergo a formal clearance process overseen by the Office of Management and Budget (OMB). It was not until the Clinton administration that some memoranda were required to undergo this process. Then, in 2010, the Office of Management and Budget began requiring all

⁴<https://crsreports.congress.gov/product/pdf/R/R46738>

⁵There are several other presidential policy tools, such as signing statements and proclamations, that I do not include in my analyses as they are not unilateral bureaucratic directives. Further, I do not include unilateral directives with limited policy scopes, such as National Security Directives or Presidential Determinations.

memoranda to go through central clearance (Rudalevige 2021).⁶ With these consistently changing rules, the costs associated with issuing memoranda has changed over the course of late-twentieth and early-twenty-first century, while executive orders have remained the costliest directive in presidents' arsenals.

Secondly, bureaucratic non-compliance not only undermines presidents' policy goals, but also tarnishes presidents' reputation among the public and other political actors, making presidents appear weak. Other political actors are less willing to engage with weak presidents, hurting their ability to pass their legislative agenda and win re-election (Neustadt 1991). These costs of non-compliance are especially strong for highly traceable directives. As mentioned previously, highly traceable directives are the costliest type of directive to produce in terms of the time and resources involved in drafting them. Further, since external actors are more easily able to tie highly traceable directives back to presidents, these actors are also more likely to observe when agencies fail to comply with these directives. This means non-compliance with a highly traceable directive is more likely to tarnish presidents' reputations and undermine their political power. Thus, the more traceable a directive is, the more costly non-compliance with that directive is for presidents.

To summarize, presidents can use bureaucratic directives to serve their policy and electoral goals. However, directives will only serve these goals, *if* bureaucrats properly implement them. The extant literature tends to take this aspect of unilateralism for granted, assuming bureaucrats will comply with directives. Instead, scholars focus on the constraints imposed on presidents by actors outside the executive branch, including Congress (e.g., Howell 2003; Moe and Howell 1999; McLain 2023), the courts (Howell 2003; Thrower 2017b; Moe and Howell 1999), and the public (Christenson and Kriner 2020; Reeves and Rogowski 2022). While these actors can sanction presidents, constraining their actions, they are not the only actors that can sanction. Presidents rely on an expansive federal bureaucracy to implement these directives (Lowande and Rogowski 2021). Variation in levels of agency autonomy, expertise, and capacity create concerns for presidents about agencies willingness and ability to implement their directives (e.g., Carpenter 2001; Gailmard and Patty 2013; Bednar 2022), which influence their decision to act unilaterally. The question that remains is: when are agencies more likely to comply? Then, how does presidents' perception of compliance influence their unilateral directive use?

4.2 A Theory of Bureaucratic Non-Compliance

Congress delegates authority to bureaucratic agencies through legislation (e.g., Epstein and O'Halloran 1999; Bendor et al. 2001). However, they are not the only actor that can instruct bureaucrats. Presidents can also delegate to agencies through bureaucratic directives, and, as with all delegation, comes a risk of non-compliance. Unlike Congress, presidents are thought to have a direct means of control over the executive

⁶<https://obamawhitehouse.archives.gov/sites/default/files/microsites/100407-omb-opengov-plan.pdf>

branch, and subsequently, the implementation of bureaucratic directives. However, bureaucrats have their own political leanings and expertise that color their opinions of presidential directives (e.g., Carpenter 2001; Huber 2007; Kennedy 2015; Acs 2021; Gailmard and Patty 2013; Turner 2020). These preferences do not always align with presidents' preferences (Kennedy 2015; Resh 2015; Harris and Milkis 1996; Acs 2021). Further, even when bureaucrats and presidents' policy goals align, bureaucrats have policy expertise that puts presidents at an informational disadvantage (Gailmard and Patty 2013; Lowande 2019; Turner 2020; Rudalevige 2002). Finally, agencies are not created nor endowed equally, with variations in the workforce skill (Richardson 2019; Bednar 2022), staff size (Lee and Whitford 2013; Olsen 2009; Eisner and Meier 1990), and the presence of strong leadership (Hansen et al. 2004; Behn 1994; Wilson 2000; Carmeli and Tishler 2004), which affect agencies' productivity and output quality. Thus, bureaucrats do not always have the incentive, or ability, to comply with presidential bureaucratic directives, leading them to alter, subvert, or completely fail to engage with directives (Kennedy 2015; Potter 2019; Acs 2021).

Thus, presidents find themselves in a similar position to Congress, in many ways, when delegating authority to the executive branch. As such, the principles that underlie congressional delegation to agencies should also apply to presidential delegation. Specifically, the "ally principle" should still apply, in which presidents delegate more authority to agencies whose are more ideologically aligned with them (Epstein and O'Halloran 1999; Bendor et al. 2001; Gailmard 2002; Bendor and Meirowitz 2004).⁷ The question that naturally arises from this principle is: what characteristics make agencies "allies"? There are two broad characteristics that I argue influence agencies likelihood of compliance with presidential directives— political control and agency capacity.

4.2.1 Political Control Influences their Willingness to Comply

While agencies are not natural extensions of presidents, and often have an incentive to undermine presidential priorities, presidents are not without their means of control. Presidents have multiple methods through which they can exert control over the executive branch. Most notably, presidents can centralize and politicize (Moe 1985; Moe 1989). Centralization occurs when presidents bring key policy decisions into the White House and insert White House personnel into agency decision-making (e.g., Bolton et al. 2016). This process is traditionally thought of as the White House's power to review agency actions. As such, examples of centralization include requiring agencies to submit their budgets to the Office of Management and Budget (OMB) or requiring them to submit proposed rules to the Office of Information and Regulatory Affairs (OIRA) for approval. Centralization provides presidents with more direct oversight over internal agency policymaking

⁷While the basis of this principle should apply here, I argue that it is political control over an agency, rather than its ideology, that determines whether presidents will delegate to it. Even agencies that are ideologically aligned with presidents can resist presidents' directives, as similar ideological dispositions do not inherently mean actors share the same policy preferences. Political control is more integral to compliance than agency ideology.

and can act as a mechanism to ensure bureaucratic compliance with directives.

Presidents politicize agencies through their appointment power. Approximately, 4,000 of the 2 million bureaucrats comprising the executive branch are appointed by the president. These 4,000 presidential appointees hold a variety of leadership roles throughout the federal bureaucracy that shape the policies produced by these agencies (Moe 1985; Lewis 2008). By placing individuals who are loyal to the president into positions of power, presidents increase their control over the agency's policy implementation. Specifically, we observe presidents politicizing ideologically opposed agencies more than ideologically aligned agencies as a means to increase control within agencies with more divergent policy preferences (Lewis 2008). Presidents use tools of political control to mitigate the increased risk of bureaucratic non-compliance associated with ideologically opposed agencies.⁸

Presidents centralize and politicize to gain control over federal agencies. This control helps ensure that presidents' policies are correctly implemented. This perceived control over the policy outcomes of agencies leads presidents to delegate more authority to agencies that they have more control over (Huber and McCarty 2004). It should follow, then, that presidents will instruct agencies they have more control over, more frequently using bureaucratic directives.

In summary, when presidents lack political control over agencies, the risk of bureaucratic non-compliance increases. When agencies fail to comply with bureaucratic directives, presidents have wasted resources drafting the directive and might appear weak to external actors, reducing their likelihood of political success. Since the costs of non-compliance are highest for more traceable directives, this trend should be strongest among highly traceable directives compared to less traceable directives.

Hypothesis 1: As presidents gain more political control over agencies, they will be more likely to instruct the agencies via bureaucratic directives. This trend should be especially strong among highly traceable directives.

4.2.2 Institutional Factors Mitigate their Ability to Comply

While some existing scholarship has examined how political agency characteristics shape presidential decision-making (Kennedy 2018), there are also institutional characteristics related to agency capacity that might influence agencies' ability to implement presidential directives. Specifically, there are several existing studies considering the role of agency capacity in inducing compliance with presidential instructions. However, these studies have almost exclusively considered how capacity influences outcomes related to agency rulemaking (e.g., Bednar 2022, Bolton et al. 2016). Specifically, this scholarship finds that when agencies have less capacity, they are less productive (Carpenter 2001; Huber and Shipan 2002; Huber and McCarty 2004; Lee and

⁸As such, politicization is highly correlated with agency ideology and does not warrant separate theoretical predictions.

Whitford 2013; Bolton et al. 2016).

When agencies lack capacity, including effective leadership (Downs 1994; Rourke 1984; Simon 1997; Wilson 2000; Carpenter 2001), stable employment (Warwick and Meade 1980; Rainey and Steinbauer 1999; Whitford 2002; Behn 1994), or a sizeable staff (Lee and Whitford 2013; Carpenter 2002; Carpenter 2004; Olsen 2009; Eisner and Meier 1990), it takes them longer to complete tasks, their outputs are of a lesser quality, and they are less likely to complete all tasks required of them. Consequently, presidents anticipate a higher likelihood of non-compliance with low-capacity agencies, as they lack the resources to properly implement directives. Conversely, presidents associate high-capacity agencies with a higher likelihood of bureaucratic compliance. Anticipating a high chance of non-compliance, presidents delegate less authority to low-capacity agencies (Huber and McCarty 2004). However, capacity alone does not dictate presidents' decisions.

Presidents do not only want their directives implemented, but they also want them implemented *properly*. High-capacity agencies are more likely to implement presidents' directives, but they are not necessarily likely to implement them as the president intended. Specifically, high-capacity agencies that presidents have minimal control over are more likely to implement the directive, but less likely to implement it as the president intended. Consequently, presidents' decision to instruct high-capacity agencies is conditional on the level of control they have over the agency.

In summary, when agencies lack capacity, they lack the ability to implement presidential directives. Consequently, presidents anticipate a higher risk of bureaucratic non-compliance from low-capacity agencies. However, presidents also want their directives to be implemented *properly*. High-capacity agencies are more likely to implement presidents' directives, but if presidents lack political control over the agency, then they are not necessarily likely to implement it properly. As such, presidents should instruct high-capacity agencies more often, conditional on the amount of control they have over the agency. This relationship should be especially strong among highly traceable directives that are costlier for presidents.

Hypothesis 2: When presidents' control over agencies is high, presidents will issue more directives to agencies as their capacity increases. When presidents' control over agencies is low, presidents will issue fewer directives to agencies as their capacity increases. This relationship will be especially strong for highly traceable directives.

4.3 Data and Measurement

I collect data on all executive orders and memoranda issued between 1981 and 2020. I begin with the Reagan administration, since he was the first president to systematically use memoranda interchangeably with executive orders (Cooper 2002). Executive orders are easily accessible via the *Federal Register* due to the

publication requirement established by the Federal Register Act. Yet, this requirement does not apply to executive memoranda, and presidents can select which ones to publish or omit. As such, I distinguish between published memoranda and unpublished memoranda when constructing the dependent variables. The former, like executive orders, are collected from the *Federal Register*.

To collect unpublished memoranda, I identify those memoranda found in the *Public Papers of the President* and cross-check those memoranda against those published in the *Federal Register*.⁹ Those memoranda found in the *Public Papers of the President*, but not found in the *Federal Register*, comprise my unpublished executive memoranda data set.

Since this paper is interested in *which* agencies presidents are instructing with directives, I create a dataset comprised of the number of each type of directive issued to each cabinet department in a year.¹⁰ Thus, the first step in creating this data set is identifying which agencies presidents are instructing in their directives. The minimum number of executive orders, published, and unpublished memoranda issued to a cabinet department in a year is 0. The maximum number of executive orders is 22, while the average number of orders issued is 3.968. The maximum number of published memoranda is 24, while the average number of published memoranda issued is 1.258. The maximum number of unpublished memoranda is 12, while the average number of unpublished memoranda issued is 1.058.

When drafting all executive memoranda, presidents list the agencies instructed by the memoranda before the text of the memoranda. Thus, identifying which agencies are instructed in memoranda is simple. For each year, I count how many memoranda, broken down into published and unpublished, presidents direct to each agency.¹¹ Unfortunately, executive orders do not adhere to this process. Thus, to identify the audience of executive orders, I read all the executive orders issued during this time. An executive order was counted as instructing a department, if that department was explicitly mentioned in the order.¹²

4.3.1 Independent Variables

For hypothesis 1, the main independent variable of interest is presidential political control over the executive branch. There are numerous ways to conceptualize and operationalize political control. As such, I include two different measures— politicization (*Politicization*) and agency independence (*Political Review*). As discussed in the theory section, one of the main means by which presidents can exert control over the executive branch

⁹As discussed in the Background section, the president will frequently direct memoranda, even those not published in the *Federal Register*, to the *Public Papers of the President*. The president might begin including these memoranda during his administration, or after he has left office. There is not a set timeline for their inclusion into the presidential record.

¹⁰I aggregate to the cabinet department, as presidents rarely explicitly name sub-agencies in directives. While this study does not include the many independent agencies that also comprise the executive branch, future studies should expand this data set to examine these agencies that provide rich variation.

¹¹Some directives instruct the "Heads of All Agencies." These directives are excluded from the analysis.

¹²If all the cabinet departments were explicitly mentioned, then the order was not counted for any of the departments. This is consistent with my treatment of executive memoranda.

is through their appointment power. When a larger ratio of agency employees are presidential appointees, presidents have more control over the agency. To measure politicization, I follow Lewis (2008) using data from the Office of Personnel Management on political appointees in an agency and divide that by the number of managers and supervisors in the agency. Unfortunately, these records only extend back to 1982, so these models do not include data from 1981.

The second way that I operationalize political control is through Selin's (2015) agency independence measure, which captures variation in the centralization of agency decision-making. Selin crafts two measures of agency independence— decision maker independence and political review independence. For the purposes of my study, I will use the political review variable, as this measure better captures my concept of interest. Selin's political review measure captures the differences in the provisions outlining how agencies implement policy. For example, this variable captures differences in requirements for OMB review over agencies' budgets and rules, the role of agencies' inspector general in overseeing implementation, and the use of advisory commissions. Compared to the decision maker measure, which captures differences in presidential control over the agency head, including factors such as, for-cause protections and partisanship requirements for a board, the political review measure directly relates to presidents' perceptions of bureaucratic compliance. When presidents have more control over the process of political review, they are more confident in agency compliance. For ease of interpretation, I have inverted the sign for this measure, so higher values of political review indicate that the agency is *less* independent, and thus, presidents have more control over their policy implementation process.¹³

For hypothesis 2, the main independent variable of interest is agency capacity. Staff resources influence agencies' ability to enact presidential directives (e.g., Lee and Whitford 2013; Bolton et al. 2016). However, departments employ many individuals that have no role in the policy implementation process. As such, I operationalize staff resources as the logged number of full-time equivalent (FTE) employees in a department (*Logged Policy FTE*), whose job is related to policy creation and implementation.¹⁴ This subset of employees better captures the policymaking capacity of an agency, rather than the enforcement capacity more generally (Bednar 2022).¹⁵

I also control for other likely determinants of presidents' decisions to engage in unilateralism. The likelihood of congressional sanctioning determines the presidents' willingness to use highly traceable directives (Howell 2003; Chiou and Rothenberg 2014; McLain 2023). As such, I control for the presence of divided government. Divided government is measured as 1 if the president is from the opposite party of at least one

¹³It should be noted that this measure does not change overtime, and thus, there is no year-by-year variation in this independent variable.

¹⁴This data is collected from the Office of Personnel Management. Unfortunately, due to data limitations, the models using policy FTEs only spans from 1998 through 2020.

¹⁵See the appendix for alternative measures of agency capacity.

chamber of Congress and 0 otherwise (*Divided*). New presidents are more inclined to use unilateral directives to overturn the policies of previous administrations, particularly those of the opposing parties. Following previous studies (e.g., Howell 2003), I include an indicator variable for the first year of a new administration after a party change (*Party Change*). Similarly, I control for the final year of an administration preceding a party change, as outgoing presidents might try to unilaterally push for policy change as they exit (e.g., Mayer 2002) (*End Term*).

4.4 Agency characteristics as a determinant of unilateral directive choice

To examine the influence of agency characteristics on presidents' use of unilateral directives, I estimate a series of negative binomial regression models predicting the number of directives issued to each agency.¹⁶ Table 4.1 presents the results for the first hypothesis using the politicization measure, with each column corresponds to a different type of directive: executive orders (column 1), published memoranda (column 2), and unpublished memoranda (column 3). Recall, I predict that presidents will issue more directives to agencies as they become more politicized. This relationship should be especially strong between politicization and highly traceable directives. Thus, I expect a positive coefficient, especially on highly traceable directives.

	Executive Orders	Published Memos	Unpublished Memos
Politicization	4.95** (1.96)	9.15** (2.94)	-2.76 (4.74)
Divided Govt	-0.13** (0.05)	-0.37** (0.13)	0.76** (0.13)
Party Change	0.08 (0.08)	-0.45** (0.16)	0.25 (0.19)
End Term	0.39** (0.05)	0.15 (0.13)	0.62** (0.11)
Inflation	0.04 (0.03)	-0.19** (0.07)	-0.41** (0.08)
War	0.3** (0.09)	-0.54** (0.22)	-0.52** (0.19)
Constant	-0.28 (0.22)	-2.55** (0.52)	-3.16** (0.55)
Presidential FE	✓	✓	✓
Agency FE	✓	✓	✓
N	566	566	566

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.

The data spans from 1982-2020.

Ceremonial directives are excluded.

*p < .1

**p < .05

Table 4.1: The Influence of Politicization on Unilateral Directive Use

As expected, the coefficients for both executive orders and published memoranda are positive and statistically significant. Presidents direct more highly traceable directives to agencies as they become more politicized. Specifically, a shift from 1% politicized to 11% politicized is associated with a 14.02% increase in executive orders directed to an agency. For published memoranda, a shift from 1% to 11% politicized

¹⁶While there are multiple model specifications that can be used to examine count data, negative binomial regressions are better suited for over-dispersed data, which might be a cause for concern in this case.

is associated with an increase of 941.34% increase in the number of published memoranda directed to an agency. While presidents use more highly traceable directives as agencies become more politicized, they use fewer unpublished memoranda. Although this result is not statistically significant, this trend is consistent with my prediction that the relationship between politicization and less traceable directives would be much weaker. In this case, presidents issue fewer unpublished memoranda as politicization increases.

Table 4.1 provides initial support for my theory that increased political control will incentivize presidents to use more highly traceable directives. However, politicization is not the only way we might measure political control. Table 4.2 displays the results for the model using Selin’s (2015) political review measure. Each column corresponds to a type of directive: executive orders (column 1), published memoranda (column 2), and unpublished memoranda (column 3). Recall, I expect positive coefficients with especially strong relationships between political control and highly traceable directives, such as executive orders and published memoranda.

	Executive Orders	Published Memos	Unpublished Memos
Political Review	0.52** (0.07)	1.37** (0.23)	0.22* (0.13)
Divided Govt	-0.15** (0.07)	-0.33* (0.18)	0.88** (0.16)
Party Change	0.06 (0.09)	-0.52** (0.23)	0.66** (0.2)
End Term	0.35** (0.07)	0.03 (0.17)	0.41** (0.12)
Inflation	0.05* (0.02)	-0.24** (0.07)	0.002 (0.08)
War	0.26** (0.07)	-0.69** (0.29)	-0.76** (0.22)
Constant	1.02** (0.18)	0.12 (0.42)	-2.74** (0.36)
Presidential FE	✓	✓	✓
N	580	580	580

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.

Ceremonial directives are excluded.

*p < .1

**p < .05

Table 4.2: The Influence of Political Review on Unilateral Directive Use

As expected, the coefficients are positive, with stronger relationships for highly traceable directives. Specifically, a one unit increase in the political review measure is associated with a 68% increase in executive orders directed to the agency. A one unit increase in political review indicates the addition of multiple factors, placing policy decisions within the White House. A one-unit shift in political review is associated with a 293% increase in the number of published memoranda directed to an agency. This relationship is stronger than the relationship between political review and executive orders. While this trend does not align with my expectations, it is not surprising given the nature of executive order use. Executive orders are the default directive used for several tasks related to bureaucratic organization. The risk of bureaucratic non-compliance might be lower for these types of directives, which could influence the slightly weaker relationship for exec-

utive orders. Finally, the relationship between political review and unpublished memoranda is still negative and statistically significant, but is the weakest relationship of the three, as predicted. A one-unit shift in political review is associated with a 20% decrease in the number of unpublished memoranda directed to an agency.

My second hypothesis considers the role of agency capacity on presidents' choice in unilateral directive. Tables 4.3 and 4.4 consider agency capacity operationalized as the logged number of policy-related FTEs in an agency. Table 4.3 displays the results using the politicization measure of control, while Table 4.4 uses the political review measure. Higher levels of both measures are associated with more presidential control over an agency. Each column corresponds to a type of directive: executive orders (column 1), published memoranda (column 2), and unpublished memoranda (column 3). Recall, I expect presidents to instruct agencies more as their capacity increases, conditional on higher levels of political control. Thus, I expect the interaction between political control and capacity to be positive. I anticipate an especially strong relationship for highly traceable directives.

	Executive Orders	Published Memos	Unpublished Memos
Logged Policy FTE	0.02 (0.11)	0.42 (0.27)	-0.07 (0.26)
Politicization	21.2 (18.38)	10.97 (35.64)	-55.5 (42.39)
FTE x Politicization	-1.89 (2.09)	0.03 (4.03)	7.24 (4.82)
Divided Govt	-0.12** (0.05)	-0.38** (0.13)	0.76** (0.13)
Party Change	0.06 (0.08)	-0.46** (0.16)	0.28 (0.19)
End Term	0.39** (0.06)	0.14 (0.13)	0.61** (0.11)
Inflation	0.03 (0.03)	-0.18** (0.07)	-0.41** (0.08)
War	0.3** (0.09)	-0.53** (0.22)	-0.51** (0.19)
Constant	-0.5 (1.37)	-7.69 (3.46)	-2.31 (3.26)
Presidential FE	✓	✓	✓
Agency FE	✓	✓	✓
N	566	566	566

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.

The model only includes data spanning from 1998-2020.

Ceremonial directives are excluded.

*p < .1

**p < .05

Table 4.3: Considerations of Politicization and Capacity on Unilateral Directive Use

When examining the interaction between capacity and politicization, the interactive effect on policy FTEs is negative for executive orders. A negative coefficient indicates that presidents instruct higher capacity agencies that they have more control over less frequently via executive order. This relationship runs counter to my expectation; however, the relationship is not statistically significant. The coefficient for published memoranda is positive, as expected. However, the relationship is not statistically significant. The coefficient

for unpublished memoranda is also positive, but is not statistically significant. Overall, the relationship for published and unpublished memoranda moves in the expected direction, but the trend for executive orders does not fit my expectation.

	Executive Orders	Published Memos	Unpublished Memos
Logged Policy FTE	-0.19** (0.04)	-0.45** (0.11)	-0.13* (0.07)
Political Review	4.72** (0.75)	8.14** (2.62)	4.75** (1.45)
FTE x Political Review	-0.44** (0.08)	-0.71** (0.25)	-0.45** (0.15)
Divided Govt	-0.17** (0.04)	-0.39* (0.22)	0.56** (0.18)
Party Change	-0.009 (0.11)	-0.55** (0.27)	0.23 (0.24)
End Term	0.54** (0.08)	0.15 (0.22)	0.22 (0.18)
Inflation	0.04 (0.05)	-0.33** (0.12)	-0.07 (0.11)
War	0.27** (0.14)	-0.83** (0.38)	-0.003 (0.24)
Constant	3.35** (0.45)	5.47** (1.17)	2.48** (0.72)
Presidential FE	✓	✓	✓
N	580	580	580

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.

Ceremonial directives are excluded.

*p < .1

**p < .05

Table 4.4: Considerations of Political Review and Capacity on Unilateral Directive Use

Table 4.4 displays the results using the same policy FTE measure but uses the political review measure of presidential control. I expect positive coefficients on the interaction term in this model as well. Interestingly, when examining the coefficient before the interaction, all the coefficients are negative and statistically significant. Thus, at low levels of political control, presidents instruct higher capacity agencies less frequently. This result does align with my expectation. However, as the level of political control increases with capacity, presidents issue even fewer directives. This result runs counter to my expectation as presidents are issuing fewer directives, of all types, to high-capacity agencies that they have more control over.

To summarize, while I find support for my first hypothesis concerning political control. I do not find support for my second hypothesis concerning agency capacity, rather the results conflict with my expectations. There are a couple of reasons that might explain these results. First, this measure of agency capacity is flawed. Agency capacity is a complex, multifaceted concept that is not easily reduced to one measure. While this measure attempts to capture one important characteristic of agency capacity, it fails to represent others that might play a significant role in presidents' impressions of capacity.

Secondly, there are political factors related to capacity that create an endogeneity problem. Specifically, presidents have an incentive to invest in controlling low-capacity agencies, as they are easier to control. However, as presidents gain more control over agencies, the agencies' capacity decreases further. This only

gives presidents more of an incentive to control agencies and thus, begins a vicious cycle (Huber and McCarty 2004). This cycle complicates the empirical relationship between political control and agency capacity in ways that are unaccounted for in these models.

4.4.1 Robustness Check: Instructing Agencies Under Divided versus Unified Government

As previously discussed, federal agencies have multiple principals that they must respond to— Congress and presidents (e.g., Epstein and O’Halloran 1999; Bendor et al. 2001). Both actors want bureaucrats to comply with their instructions. However, the directions bureaucrats receive from these actors is not always consistent. Specifically, when Congress and presidents’ preferences diverge, they are more likely to provide bureaucrats with conflicting instructions. Thus, we should expect presidents to anticipate an increased risk of non-compliance during divided government compared to unified government, as bureaucrats are more likely to receive conflicting instructions. Based on the theory presented in this paper, when presidents anticipate an increased likelihood of non-compliance during divided government, they should be especially likely to favor agencies they have more control over. In contrast, presidents expect a higher chance of compliance during unified government, and thus, control should matter less during these periods.

To test this theoretical implication, I subset the data by whether it was divided versus unified government. Divided government is when the president and at least one chamber of Congress are controlled by different parties. In contrast, unified government is when both chambers of Congress and the presidency are controlled by the same party. For political control, I use the measure of politicization used in Table 4.1. Table 4.5 presents the results for both the divided and unified government subsets.

	Divided Government			Unified Government		
	Executive Orders	Published Memos	Unpublished Memos	Executive Orders	Published Memos	Unpublished Memos
Politicization	6.02** (2.83)	10.34** (4.67)	-7.79 (6.66)	1.4 (2.27)	6.68* (3.44)	7.85 (7.76)
Party Change	-0.01 (0.19)	-0.32 (0.55)	0.56 (0.36)	0.23** (0.09)	-0.73** (0.18)	0.16 (0.23)
End Term	0.32** (0.06)	0.17 (0.13)	0.71** (0.13)	0.94** (0.15)	-0.51 (0.33)	-0.47 (0.44)
Inflation	0.05 (0.04)	-0.11 (0.08)	-0.46** (0.09)	0.3** (0.1)	-0.28 (0.19)	-0.21 (0.24)
War	0.47** (0.13)	-0.66** (0.28)	-0.64** (0.22)	0.37 (0.26)	-0.79** (0.35)	-0.55 (0.49)
Constant	-0.5** (0.24)	-2.95** (0.5)	-2.11** (0.52)	-0.45 (0.36)	-1.76 (1.25)	-18.23** (0.66)
Presidential Fixed Effects	✓	✓	✓	✓	✓	✓
Agency Fixed Effects	✓	✓	✓	✓	✓	✓
N	418	418	418	148	148	148

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.

Excludes ceremonial directives.

**p < .05

*p < .01

Table 4.5: Differences in Agencies’ Directed based on Divided vs. Unified Government

As Table 4.5 illustrates, when the data is limited to years when control is divided, presidents instruct

agencies significantly more using executive orders and published memoranda, as they become more politicized. The coefficient on unpublished memoranda is negative and not statistically significant. Unpublished memoranda are the least costly of the directives examined, so this result is not surprising. When we examine the results for unified government, the magnitude of the effects decreases. The coefficient on executive orders is still positive, but is no longer statistically significant. While the coefficient on published memoranda is significant at the 10% confidence interval, it is not as strong as the results found under divided government. The coefficient on unpublished memoranda remains insignificant, but shifts from negative to positive. Again, this is not surprising, seeing as how I expect the results to be the weakest among unpublished memoranda. Overall, this model supports my theory that as the risk of bureaucratic noncompliance increases, presidents will issue more directives, especially highly traceable directives, to agencies that they have more political control over.

4.5 Conclusion

This paper presents a theory regarding how the likelihood of bureaucratic non-compliance shapes presidents' choice in bureaucratic directives. Specifically, I argue that when presidents have more control over agency outcomes, then they will be more willing to delegate authority to those agencies through bureaucratic directives. This trend is especially strong among the more costly, highly traceable directives. Beyond political agency characteristics, I also consider institutional characteristics, arguing presidents will issue more directives to high-capacity agency as their control increases. Using a data set of executive orders and published and unpublished memoranda, I find preliminary evidence for my theory with strong results supporting my political control theory, and some evidence supporting my agency capacity theory.

Most studies of presidential unilateralism focus on external constraints on presidential unilateral power (e.g., Moe and Howell 1999; Howell 2003; Thrower 2017b; Christenson and Kriner 2019), however, the executive branch can also constrain presidential behavior through failing to comply with directives (Kennedy 2015; Acs 2021). This study contributes to this burgeoning literature considering when agencies are likely to ignore, subvert, or alter presidential directives. I expand upon this scholarship by considering both political and institutional factors that might influence the likelihood of compliance, and subsequently, presidents' decisions. Further, existing studies focus on executive orders, which are merely one of a larger range of presidential directives. I consider presidents' use of a variety of directives to observe how the traceability of a directive influences presidents' willingness to delegate to agencies.

Presidents are more likely to issue directives, especially highly traceable directives, to agencies they have more control over. The natural question that arises from this finding is how presidents engage with agencies they have less control over? These agencies are likely still making policy, even if they are not instructed

via bureaucratic directive or controlled through politicization or centralization, so what does that policy look like? Who are these agencies? Beyond the agencies that are not instructed, those that are instructed are not guaranteed to comply with directives. Do agencies comply with these directives? Further, are there variations in compliance based on the type of directive?

While this paper provides preliminary evidence supporting my theory, the data only includes the number of directives issued to cabinet departments. While cabinet departments comprise the majority of the agencies instructed by unilateral directives, there are also directives instructed to independent agencies. Future studies should include independent agencies, as these agencies also receive instruction, and there is much more variation in the independent variables among independent agencies when compared to cabinet departments. Further, there are other ways to measure traceability, such as media coverage, inclusion in the congressional record, and mentions by the president, that might provide further insights into how traceability influences presidents' decision of unilateral directive.

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CHAPTER 5

Appendix

5.1 Chapter 2 Appendix

5.1.1 Summary Statistics for Chapter 2

Variable	Minimum	Median	Mean	Maximum
Executive Orders	0	2	3.58	35
Published Memoranda	0	0	1.81	41
Unpublished Memoranda	0	0	1.17	26
Divided Government	0	1	0.75	1
% Opposition Party	0	0.56	0.54	1
Logged Leg. Exp.	7.82	8.22	8.21	8.66
End Term	0	0	0.25	1
Party Change	0	0	0.125	1
Inflation	-0.36	2.84	2.93	10.38
War	0	0	0.125	1

Table 5.1: Summary Statistics for All Variables

Figure 5.1 displays the average number of directives issued in a year by each president. The number of executive orders issued stayed relatively constant with each president. President Trump issued the most on average, which might be partially attributed to the COVID-19. As Figure 2.3 demonstrates, the number of memoranda, both published and unpublished, has increased overtime. Published memoranda became increasingly popular, with Presidents Obama and Trump issuing an average of approximately 40 each year. Finally, President Clinton popularized unpublished memoranda, using them at a similar rate as Presidents Obama and Trump used published memoranda. However, they did not continue using unpublished memoranda at the same rate as Clinton.

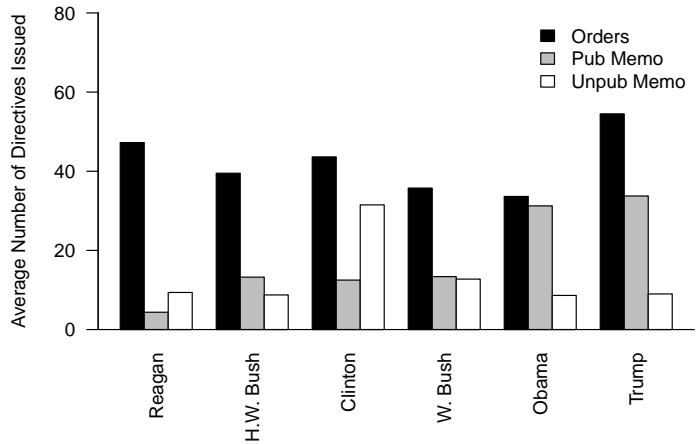


Figure 5.1: Average Yearly Directives Issued, by President

5.1.2 Issue Area to House Committee

CAP Major Topic	House Committee
Macroeconomics	Budget
Civil Rights	Oversight and Government Reform
Health	Oversight and Government Reform
Agriculture	Agriculture
Labor	Education and Labor
Education	Education and Labor
Environment	Energy and Commerce
Energy	Energy and Commerce
Immigration	Judiciary
Transportation	Transportation and Infrastructure
Law and Crime	Judiciary
Social Welfare	Ways and Means
Housing	Financial Services
Domestic Commerce	Energy and Commerce
Defense	Armed Services
Technology	Science, Space, and Technology
Foreign Trade	Financial Services
International Trade	Foreign Affairs
Government Operations	Oversight and Government Reform
Public Lands	Natural Resources

Table 5.2: CAP Major Topic Code to Corresponding House Committee

5.1.3 Alternative Unit of Analysis

The unit of analysis for most studies of unilateral actions is the year. As discussed in the body of the paper, there are numerous reasons to use issue area by year as the unit of analysis, including that it provides me with

more observations allowing for more precise estimates. However, I also replicate the models from previous studies with a year level unit of analysis and the divided government measure (e.g., Mayer 2002; Howell 2003).¹ Table 5.3 provides the results for these year models. Recall, I predict the coefficients on executive orders (column 1) and published memoranda (column 2) to be positive, and the coefficient on unpublished memoranda (column 3) to be negative.

	Executive Orders	Published Memos	Unpublished Memos
Divided	-0.03 (0.1)	-0.43** (0.18)	0.42** (0.22)
Logged Leg Exp	0.15 (0.5)	0.5 (0.75)	-0.34 (1.05)
End Term	0.22** (0.09)	0.42** (0.13)	0.17 (0.21)
Party Change	0.24** (0.12)	-0.26** (0.13)	0.28 (0.2)
Inflation	0.003 (0.03)	-0.11 (0.08)	0.06 (0.08)
War	0.29** (0.1)	-0.05 (0.3)	0.05 (0.47)
Constant	2.56 (4.0004)	-1.77 (6.03)	3.66 (8.41)
Presidential Fixed Effects	✓	✓	✓
N	40	40	40

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.
 Ceremonial directives are excluded.
 *p < .1
 **p < .05

Table 5.3: Influence of Congressional Sanctioning on Yearly Directive Use

The coefficient for executive orders remains negative and insignificant. Presidents issue significantly fewer published memoranda during divided government, which aligns with the results presented in the paper. The coefficient on unpublished memoranda remains positive and significant. Thus, the main results of the paper remain consistent when the data is aggregated to the year.

5.1.4 Alternate IV Measures

The measures of congressional-presidential preference alignment used in the paper are chamber level measures, while the dependent variable is at the committee level. To capitalize on the committee level variation in the dependent variable, I run a robustness check using the distance between the committee chair's DW-Nominate score and the president's DW-Nominate score (*Distance b/w Con & Pres*).² Higher levels of distance are associated with a higher likelihood of congressional sanctioning. Table 5.4 displays the results for the model using the Nominate distance measure. Recall, I expect the coefficients on executive orders (column 1) and published memoranda (column 2) to be positive, and the coefficient on unpublished memoranda (column 3) to be negative.

¹The measure of legislative capacity in the main models is a committee level measure. Since that measure is not appropriate for a year level model, I use yearly logged legislative expenditures (*Logged Leg Exp*) to account for legislative capacity.

²Due to data limitations, I was only able to construct this measure through the Obama administration.

	Executive Orders	Published Memos	Unpublished Memos
Distance b/w Com & Pres	-0.1 (0.11)	-0.51** (0.18)	0.28 (0.2)
Logged Leg Exp	0.38 (0.35)	0.9 (0.57)	-0.74 (0.72)
End Term	0.22** (0.06)	0.27** (0.1)	0.12 (0.13)
Party Change	0.18* (0.1)	-0.19 (0.16)	-0.12 (0.2)
Inflation	0.02 (0.02)	-0.11** (0.04)	0.12* (0.06)
War	0.36** (0.11)	-0.3 (0.19)	0.29 (0.27)
Constant	-2.58 (2.82)	-8.64* (4.62)	2.69 (5.82)
Presidential Fixed Effects	✓	✓	✓
Issue Area Fixed Effects	✓	✓	✓
N	720	720	720

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.

Excludes ceremonial directives.

Only includes data from Reagan through Obama.

*p < .1

**p < .05

Table 5.4: Influence of NOMINATE Distance on Presidents' Unilateral Directive Use

Using this measure of alignment, only the coefficient for published memoranda remains significant. However, the coefficients for executive orders and unpublished memoranda still move in the expected direction, but are statistically insignificant. This shift in the significance might partially be due to the omitted data. Overall, I do not feel that the results undermine those presented in the paper.

5.1.5 Robustness Check with Clustered Standard Errors

To account for possible correlations between the errors at the year and committee level, I conduct the main models with clustered standard errors. Table 5.5 displays the results for the model with standard errors clustered at the year level. When considering the divided government measure, executive orders are negative and insignificant, which aligns with the results in the main model. The results for published and unpublished memoranda are both significant and move in the expected direction. When considering the percent opposition measure, the results hold for executive orders and unpublished memoranda. Published memoranda lose significance, but still move in the expected direction.

Table 5.6 displays the results for the model with standard errors clustered at the committee level. When considering the divided government measure, executive orders are negative and insignificant, which aligns with the results in the main model. The results for published and unpublished memoranda are both significant and move in the expected direction. When considering the percent opposition measure, all the directives remain significant and move in the expected direction.

	Divided Government			Percent Opposition		
	Executive Orders	Published Memos	Unpublished Memos	Executive Orders	Published Memos	Unpublished Memos
Preference Divergence	-0.06 (0.08)	-0.41** (0.14)	0.53** (0.18)	-1.2** (0.57)	-1.76 (0.91)	3.3** (1.31)
ln(committee staff)	0.01 (0.08)	0.28** (0.16)	-0.06 (0.14)	-0.01 (0.08)	0.26 (0.16)	-0.05 (0.14)
End Term	0.3** (0.08)	0.46** (0.14)	0.26 (0.21)	0.33** (0.08)	0.42** (0.13)	0.26 (0.21)
Party Change	0.15 (0.09)	-0.31** (0.14)	0.04 (0.2)	0.09 (0.1)	-0.24 (0.16)	0.09 (0.25)
Inflation	0.01 (0.02)	-0.15** (0.07)	0.08 (0.09)	0.01 (0.02)	-0.15** (0.07)	0.1 (0.09)
War	0.37** (0.07)	-0.19 (0.27)	0.38 (0.4)	0.36** (0.09)	-0.34 (0.29)	0.62 (0.44)
Constant	0.41 (0.39)	-2.79** (0.74)	-2.99** (0.67)	1.21** (0.57)	-1.96 (1.01)	-4.68** (1.06)
Presidential Fixed Effects	✓	✓	✓	✓	✓	✓
Issue Area Fixed Effects	✓	✓	✓	✓	✓	✓
N	800	800	800	800	800	800

Note: Coefficients are from poisson regression models with robust standard errors clustered at the year in parentheses.

Excludes ceremonial directives.

**p < .05

Table 5.5: Robustness Check with Standard Errors Clustered at the Year

	Divided Government			Percent Opposition		
	Executive Orders	Published Memos	Unpublished Memos	Executive Orders	Published Memos	Unpublished Memos
Preference Divergence	-0.06 (0.07)	-0.41** (0.06)	0.53** (0.08)	-1.2** (0.55)	-1.76** (0.7)	3.3** (0.51)
ln(committee staff)	0.01 (0.12)	0.28 (0.19)	-0.06 (0.11)	-0.01 (0.12)	0.26 (0.21)	-0.05 (0.11)
End Term	0.3** (0.05)	0.46** (0.07)	0.26** (0.06)	0.33** (0.05)	0.42** (0.07)	0.26** (0.06)
Party Change	0.15 (0.14)	-0.31** (0.09)	0.04 (0.16)	0.09 (0.15)	-0.24** (0.07)	0.09 (0.15)
Inflation	0.01 (0.02)	-0.15** (0.02)	0.08** (0.04)	0.01 (0.02)	-0.15** (0.02)	0.1** (0.04)
War	0.37** (0.07)	-0.19 (0.13)	0.38** (0.16)	0.36** (0.06)	-0.34** (0.15)	0.62** (0.18)
Presidential Fixed Effects	✓	✓	✓	✓	✓	✓
Issue Area Fixed Effects	✓	✓	✓	✓	✓	✓
N	800	800	800	800	800	800

Note: Coefficients are from poisson regression models with robust standard errors clustered at the year in parentheses.

Excludes ceremonial directives.

**p < .05

Table 5.6: Robustness Check with Standard Errors Clustered at the Committee

5.2 Chapter 3 Appendix

5.2.1 Summary Statistics for Chapter 3

Variable	Minimum	Median	Mean	Maximum
Executive Orders	0	2	3.58	35
Published Memoranda	0	0	1.81	41
Unpublished Memoranda	0	0	1.17	26
Public Approval	30.1	48.5	51.07	73.3
% Opposition Party	0	0.56	0.54	1
End Term	0	0	0.25	1
Party Change	0	0	0.125	1
Inflation	-0.36	2.84	2.93	10.38
War	0	0	0.125	1

Table 5.7: Summary Statistics for All Variables

	Executive Orders			Published Memoranda			Unpublished Memoranda		
	Minimum	Mean	Maximum	Minimum	Mean	Maximum	Minimum	Mean	Maximum
Macroeconomics	0	1	6	0	0.775	4	0	0.675	6
Civil Rights	0	2.65	11	0	1.125	4	0	1.275	8
Health	0	2.3	16	0	1.325	22	0	1.25	11
Agriculture	0	0.575	3	0	0.225	2	0	0.45	2
Labor	0	3.15	9	0	0.65	7	0	0.625	5
Education	0	1.175	5	0	0.3	2	0	0.575	5
Environment	0	2.175	8	0	0.8	3	0	0.45	3
Energy	0	1.275	4	0	0.8	8	0	0.775	8
Immigration	0	0.65	6	0	0.425	3	0	0.8	4
Transportation	0	2.65	8	0	0.7	3	0	0.575	2
Law and Crime	0	2.025	9	0	0.975	7	0	1.475	13
Social Welfare	0	1.425	5	0	0.425	3	0	0.65	4
Housing	0	1.075	5	0	0.225	2	0	0.25	3
Domestic Commerce	0	1.825	7	0	1.1	26	0	1.45	10
Defense	2	7.825	16	0	5.125	27	0	1.7	8
Technology	0	2.225	11	0	0.725	3	0	0.75	6
Foreign Trade	0	5.075	14	0	1.875	5	0	0.875	4
International Trade	1	10.5	24	0	5.775	16	0	2.375	11
Government Operations	10	20.52	35	0	12.47	41	0	6.225	26
Public Lands	0	1.5	5	0	0.375	2	0	0.25	2

Table 5.8: Summary Statistics, by Issue Area

5.2.2 Salient Issues Subsets

There are multiple studies that find that not only does the public have more information about salient issues, but also it has stronger, more consistent issue opinions (Iyengar et al. 1982; Weaver 1991; Ciuk and Yost 2016). Thus, we might expect that presidents act differently when using directives to address highly salient issues. As such, I examine subsets of bureaucratic directives, which address "highly salient" and "less salient" issues.

To identify salient issues, I use two different measures. First, I use media coverage, specifically *The New*

York Times, to determine what issue areas the public receives the most information about. The Comparative Agendas Project *New York Times* Index matches a random selection of New York Times articles with a major topic code. This data provides a count of how many articles were published in each issue area each year. I log this count and take the average across issue areas. Any issue area that contains more articles than the mean was coded as salient, with all others labelled as non-salient.

The second measure that I use to identify the salience of issues utilizes Gallup’s Most Important Problem question. Every year, Gallup surveys respondents across the country, asking them what they deem to be the most important problem facing the nation. The Comparative Agendas Project aggregates the responses to the year and matches them to a corresponding major topic code. Again, I log this value and take the average across issue areas. Any issue area where the percentage of individuals who consider it “the most important” exceeds the mean is considered “salient” issues. All other issues are considered “non-salient.” Table 5.9 displays the results of the relationship between public approval and the number of directives issued in those topic areas considered salient. Columns 1, 3, and 5 use the *New York Times* measure, while columns 2, 4, and 6 uses the “Most Important Problem” measure.

	Executive Orders		Published Memos		Unpublished Memos	
	NYT 1981-2016	MIP 1981-2018	NYT 1981-2016	MIP 1981-2018	NYT 1981-2016	MIP 1981-2018
Approval	-0.02 (0.02)	0.04 (0.04)	-0.23** (0.05)	-0.21** (0.06)	0.2** (0.06)	0.27** (0.1)
% Opp Party	-1.42 (1.76)	2.44 (3.32)	-20.08** (4.26)	-17.51** (0.06)	17.16** (6.49)	20.45** (8.72)
Approval*Opp Party	0.005 (0.03)	-0.09 (0.07)	0.36** (0.08)	0.36** (0.1)	-0.28** (0.13)	-0.38** (0.18)
End Term	0.24** (0.07)	0.35** (0.11)	0.61** (0.14)	0.45** (0.2)	-0.02 (0.17)	0.2 (0.2)
Party Change	0.1 (0.11)	0.17 (0.17)	0.15 (0.2)	0.1 (0.32)	-0.29 (0.24)	-0.31 (0.33)
Inflation	0.01 (0.02)	0.04 (0.04)	-0.31** (0.07)	-0.23** (0.09)	0.24** (0.06)	0.22 (0.14)
War	0.57** (0.15)	0.51* (0.3)	0.65** (0.33)	0.37 (0.47)	-0.92 (0.34)	-1.84** (0.55)
Constant	4.64** (1.1)	2.07 (2.09)	14.8** (2.61)	12.53** (2.96)	-12.5** (3.26)	-15.14** (4.91)
Presidential Fixed Effects	✓	✓	✓	✓	✓	✓
Issue Area Fixed Effects	✓	✓	✓	✓	✓	✓
N	332	225	332	225	332	225

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.
 Ceremonial directives are excluded.
 *p < .1
 **p < .05

Table 5.9: Examining Presidents’ Use of Directive on Highly Salient Issues

The results presented in Table 5.9 align with the results of the main model. While the signs on executive orders are inconsistent between measures, none of the coefficients are significant nor particularly large. Thus, I do not make much of these minor shifts. The results for published memoranda and unpublished memoranda look similar to the results of the main model. It does not appear that presidents alter their behavior when issuing directives related to salient issue areas.

Table 5.10 displays the results when the data is limited to only those issues deemed "not salient." Unlike with the salient subset, the results for executive orders are consistent between measures. Further, the coefficients mirror those found in the model using the full data set, and in fact, have a higher magnitude. This conflicts with my expectations for the main model, but might be expected within the non-salient subset. Non-salient issues do not lend themselves to credit claiming, which might discourage presidents, especially those with low approval, from using more executive orders addressing these issues. In fact, we might think that the prevalence of executive orders addressing non-salient issues might influence the results of the main model, making executive orders run counter to my expectations. Finally, the coefficients for published and unpublished memoranda look similar to the main model and the salient subset.

	Executive Orders		Published Memos		Unpublished Memos	
	NYT 1981-2016	MIP 1981-2018	NYT 1981-2016	MIP 1981-2018	NYT 1981-2016	MIP 1981-2018
Approval	0.08** (0.04)	0.04* (0.02)	-0.15** (0.06)	-0.1** (0.05)	0.31** (0.1)	0.22** (0.05)
% Opp Party	4.83 (3.39)	2.98 (2.05)	-14.36** (5.09)	-9.4** (4.1)	26.01** (9.42)	19.75** (4.72)
Approval*Opp Party	-0.13** (0.07)	-0.08** (0.04)	0.21** (0.1)	0.14* (0.08)	-0.49** (0.19)	-0.33** (0.08)
End Term	0.25** (0.12)	0.3** (0.08)	0.24 (0.2)	0.56** (0.16)	-0.06 (0.19)	0.01 (0.13)
Party Change	0.08 (0.19)	-0.006 (0.12)	0.06 (0.31)	-0.25 (0.18)	-0.44 (0.35)	-0.17 (0.21)
Inflation	0.04 (0.04)	0.01 (0.03)	-0.15** (0.07)	-0.26** (0.06)	0.22** (0.08)	0.22** (0.04)
War	0.13 (0.29)	0.41** (0.17)	0.88* (0.47)	0.57 (0.35)	-1.73** (0.47)	-0.96** (0.32)
Constant	-2.63 (2.03)	-1.04 (1.23)	8.6** (3.1)	5.05** (2.53)	-19.59** (5.22)	-16.93** (2.6)
Presidential Fixed Effects	✓	✓	✓	✓	✓	✓
Issue Area Fixed Effects	✓	✓	✓	✓	✓	✓
N	357	575	357	575	357	575

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.

Ceremonial directives are excluded.

*p < .1

**p < .05

Table 5.10: Examining Presidents' Use of Directive on Less Salient Issues

5.2.3 Credit Claiming Across All Directives

In the paper, I explore a possible credit claiming mechanism, but only examining executive orders. The results for executive orders do not align with my expectations, so this test provides a way to examine variation in executive orders. However, we should expect this test to work for all bureaucratic directives.

Table 5.11 displays the results for this credit claiming test with all directives included. Thus, instead of limiting the number mentioned in new sources to executive orders, I include all executive orders, published, and unpublished memoranda, mentioned in the *New York Times*, *Washington Post*, or *Wall Street Journal* in a year.

The coefficients on both mentioned and not mentioned are similar to those found in the model using only

	Number Mentioned	Number Not Mentioned
Approval	-0.07* (0.04)	0.08** (0.02)
% Opp Party Size	-3.79 (3.41)	4.94** (1.73)
Approval x Opp Party	0.11 (0.07)	-0.12** (0.03)
End Term	0.25** (0.13)	0.34** (0.07)
Party Change	0.55** (0.15)	-0.13 (0.09)
Inflation	-0.1* (0.05)	0.04* (0.02)
War	0.97** (0.31)	-0.13 (0.14)
Constant	0.7 (2.01)	-3.04** (1.06)
Presidential Fixed Effects	✓	✓
Issue Area Fixed Effects	✓	✓
N	800	800

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.

Ceremonial directives are excluded.

*p < .1

**p < .05

Table 5.11: Credit Claiming Across All Types of Directives

executive orders. In fact, the coefficient for those mentioned is statistically significant at the 10% confidence interval. Further, the magnitude of the coefficient on the interaction term is large enough, such that the sign on approval flips when opposition party size acts as a moderator. Thus, when the opposition party size is small, do not mention more of their directives. However, as the opposition size grows, the relationship shifts, with presidents not mentioning fewer as their approval grows.

5.3 Chapter 4 Appendix

5.3.1 Summary Statistics for Chapter 4

Variable	Minimum	Median	Mean	Maximum
Executive Orders	0	3	3.968	22
Published Memoranda	0	0	1.258	24
Unpublished Memoranda	0	0	1.058	12
Politicization	0.0003	0.013	0.031	0.17
Political Review	-0.095	0.416	0.4993	1.406
Ideological Alignment	0	0	0.4621	1
Logged Agency Outlays	7.546	10.467	10.633	14.224
Logged Policy FTEs	7.853	10.256	9.965	12.362
Divided Government	0	1	0.75	1
End Term	0	0	0.25	1
Party Change	0	0	0.125	1
Inflation	-0.36	2.84	2.93	10.38
War	0	0	0.125	1

Table 5.12: Summary Statistics for All Variables

	Executive Orders			Published Memoranda			Unpublished Memoranda		
	Minimum	Mean	Maximum	Minimum	Mean	Maximum	Minimum	Mean	Maximum
Agriculture	0	2.925	10	0	0.475	2	0	0.925	7
Commerce	1	5.2	17	0	1	5	0	1.075	5
Defense	2	6.25	20	0	3.175	24	0	1.675	7
Education	0	2.45	6	0	0.3	2	0	0.725	5
Energy	0	2.45	8	0	0.75	5	0	0.775	5
Health & Human Services	0	4.425	22	0	0.625	3	0	1.35	11
Homeland Security	1	6.6	18	0	2.6	22	0	1.9	12
Housing & Urban Development	0	1.35	5	0	0.15	1	0	0.5	4
Interior	0	2.975	11	0	0.5	3	0	0.975	5
Justice	0	4.45	14	0	0.925	6	0	1.725	10
Labor	0	3.25	9	0	0.3	3	0	0.775	6
State	2	7.8	19	0	6.05	21	0	1.55	8
Transportation	0	2.75	7	0	0.5	3	0	.725	4
Treasury	1	6.475	16	0	1.575	6	0	1.175	6
Veterans Affairs	0	1.375	5	0	0.175	2	0	0.425	4

Table 5.13: Summary Statistics, by Agency

5.3.2 Alternative Measure of Capacity: Outlays

In the paper, I present one measure of agency capacity. However, there are other alternative measures that are often used, but I argue are not as suitable. First, some studies use agency outlays to capture the monetary resources agencies have access to. When agencies have more monetary resources, they are better able to carry out tasks. Recall, as presidents' control over agencies increases, I expect them to issue more directives to agencies as their capacity increases. Thus, I expect a positive coefficient on the interaction term.

Table 5.14 illustrates the results for political control, measured using politicization, interacted with logged agency outlays. The results for politicization closely mirror those in the paper. The coefficient for published memoranda loses significance, but executive orders remain significant. Interesting, when politicization is low, presidents issue significantly more executive orders and unpublished memoranda. Yet, as political control increases, presidents use fewer directives to instruct high-capacity agencies. Although these results are the opposite of my expectations, these coefficients are not significant.

Table 5.15 displays the results for agency outlays interacted with the political review measure. Recall, larger values of political review are associated with more presidential control. Thus, I expect presidents to use more directives to instruct agencies as political review increases. At high values of political review, presidents should issue more directives as outlays increase.

As expected, the coefficients on political review are positive for executive orders and published memoranda. However, they are not statistically significant. The coefficient on unpublished memoranda is statistically significant and negative. I expect the trend to be weakest with unpublished memoranda, so this result is

	Executive Orders	Published Memos	Unpublished Memos
Politicization	17.31** (8.51)	12.004 (18.52)	12.79 (24.46)
Logged Outlays	0.33** (0.1)	0.29 (0.25)	0.7** (0.22)
Politicization x Outlays	-1.23 (0.88)	-0.19 (1.94)	-1.44 (2.31)
Divided Govt	-0.13** (0.05)	-0.38** (0.13)	0.74** (0.13)
Party Change	0.1 (0.08)	-0.43** (0.16)	0.31 (0.19)
End Term	0.36** (0.06)	0.12 (0.13)	0.55** (0.11)
Inflation	0.04 (0.03)	-0.18** (0.07)	-0.41** (0.08)
War	0.33** (0.09)	-0.5** (0.22)	-0.42** (0.19)
Constant	-3.72** (1.07)	-5.53** (2.73)	-10.31** (2.36)
Presidential FE	✓	✓	✓
Agency FE	✓	✓	✓
N	566	566	566

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.
Ceremonial directives are excluded.
*p < .1
**p < .05

Table 5.14: Alternative Capacity: Politicization x Outlays (1982-2020)

	Executive Orders	Published Memos	Unpublished Memos
Political Review	0.4 (0.67)	1.49 (1.83)	-2.98** (1.32)
Logged Outlays	0.005 (0.03)	-0.13* (0.07)	0.09* (0.05)
Political Review x Outlays	0.01 (0.06)	-0.002 (0.17)	0.31** (0.13)
Divided Govt	-0.15** (0.07)	-0.31* (0.18)	0.88** (0.16)
Party Change	0.06 (0.09)	-0.5** (0.23)	0.65** (0.2)
End Term	0.35** (0.07)	0.04 (0.17)	0.42** (0.12)
Inflation	0.05* (0.02)	-0.24** (0.07)	-0.002 (0.08)
War	0.26** (0.12)	-0.72** (0.28)	-0.75** (0.22)
Constant	0.97** (0.39)	1.44 (0.96)	-3.73** (0.65)
Presidential FE	✓	✓	✓
N	580	580	580

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.
Ceremonial directives are excluded.
*p < .1
**p < .05

Table 5.15: Alternative Capacity: Political Review x Outlays (1981-2020)

not completely unexpected. When presidential control is low, presidents will issue significantly fewer published memoranda as agency capacity increases. This aligns with my expectation, but the coefficients on both executive orders and unpublished memoranda are positive, running counter to my theory. Finally, the coefficients on the interaction term are positive for executive orders, and positive and significant for unpublished memoranda. While I expected the results on unpublished memoranda to be weakest, this result still aligns with my expectation. One of the reasons that these results might not align with my expectations is due to

measurement error, as agency capacity consists of more than monetary resources. Further, agency outlays are not solely determined by the president, but are also influenced by Congress.

5.3.3 Alternative Measure of Capacity: Vacancies

The second alternative measure of agency capacity that I use is related to the presence of strong leadership. When agencies lack strong leadership, they are less productive. Thus, I expect that the longer an agency lacks a leader, the less capacity they will have. I measure this using data measuring the length of time that an agency leadership position remains vacant. This variable is measured for the year, so it can range from 0 to 365 days. Longer vacancies are associated with a decrease in agency capacity. Recall, I expect agencies to instruct high-capacity agencies more often, as long as presidents have strong control over the agency. Thus, I expect a negative coefficient on the interaction term in these models.

	Executive Orders	Published Memos	Unpublished Memos
Politicization	1.96 (1.91)	6.98* (3.79)	2.37 (4.98)
Vacancy Length	0.001** (0.0006)	0.005** (0.002)	0.006** (0.002)
Politicization x Vacancy	-0.07 (0.04)	-0.4** (0.18)	-0.45** (0.13)
Divided Govt	-0.17** (0.05)	-0.41** (0.13)	0.69** (0.13)
Party Change	0.08 (0.08)	-0.53** (0.16)	0.07 (0.19)
End Term	0.53** (0.06)	0.14 (0.13)	0.42** (0.13)
Inflation	0.04 (0.04)	-0.24** (0.08)	-0.21* (0.11)
War	0.25** (0.11)	-0.69** (0.3)	0.11 (0.24)
Constant	0.06 (0.19)	-1.16** (0.52)	-0.32 (0.41)
Presidential FE	✓	✓	✓
Agency FE	✓	✓	✓
N	412	412	412

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.
 Ceremonial directives are excluded.
 *p < .1
 **p < .05

Table 5.16: Alternative Capacity: Politicization x Vacancy Length (1993-2020)

Table 5.16 displays the results for the interaction between politicization and vacancy length. As politicization increases, presidents issue more directives. However, only the coefficient on published memoranda is significant. When politicization is low, the longer a position remains vacant, indicating less capacity, the more directives presidents issue to the agency. This finding runs counter to my expectations. Although, the magnitude of the coefficients is small. As presidents gain more control, a decrease in agency capacity, in the form of an extended vacancy, is associated with a decreased in the number of executive orders issued, and a significant decrease in the number of published, and unpublished memoranda. This relationship does align with my expectations.

Table 5.17 displays the results for vacancy length and political review. Recall, higher levels of political review are associated with more presidential control over agencies, while larger values for vacancy length are associated with a decrease in capacity. Thus, I expect a negative coefficient on the interaction term.

	Executive Orders	Published Memos	Unpublished Memos
Political Review	0.47** (0.07)	1.38** (0.27)	0.34** (0.15)
Vacancy Length	-0.001 (0.002)	-0.005 (0.003)	-0.003 (0.002)
Political Review x Vacancy	-0.004 (0.004)	-0.01 (0.008)	-0.01* (0.006)
Divided Govt	-0.18** (0.07)	-0.29 (0.19)	0.66** (0.14)
Party Change	0.07 (0.1)	-0.52** (0.25)	0.07 (0.2)
End Term	0.52** (0.07)	-0.02 (0.19)	0.35** (0.14)
Inflation	0.04 (0.05)	-0.31** (0.1)	-0.18 (0.11)
War	0.25* (0.14)	-0.93** (0.38)	0.01 (0.25)
Constant	1.39** (0.14)	1.58** (0.33)	0.92** (0.32)
Presidential FE	✓	✓	✓
N	412	412	412

Note: Coefficients are from negative binomial regression models with robust standard errors in parentheses.
Ceremonial directives are excluded.

*p < .1
**p < .05

Table 5.17: Alternative Capacity: Political Review x Vacancy Length (1993-2020)

As presidents gain more control over agencies, they issue more directives to the agencies. When political control is low, presidents will issue fewer directives as agency capacity decreases. Although, this relationship is not statistically significant, and the magnitude of the coefficients is small. As political control increases, presidents will issue fewer directives to agencies with less capacity. However, this relationship is only statistically significant for unpublished memoranda, and the magnitude is minimal.