Energy Versus Safety

Unilateral Action, Voter Welfare, and Executive Accountability

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Abstract

Does increasing executive power necessarily decrease accountability? To answer this question, I develop a two-period signaling model comparing voter welfare in two separation-of-powers settings. In one, the executive works with a unitary legislature to change policy; in the other, the executive chooses between legislation or unilateral action. Both politicians may have preferences that diverge from the voter's, yet I find that increasing executive power may increase accountability and welfare, even in some cases where the legislature is more likely to be congruent. Unilateral power allows a congruent executive to overcome gridlock, implement the voter's preferred policy, and reveal information about the politicians' types—which can outweigh the risks of a divergent executive wielding power for partisan ends.

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1 Introduction

> "The ingredients which constitute energy in the executive, are, unity; duration; an adequate provision for its support; competent powers. The ingredients which constitute safety in the republican sense, are, a due dependence on the people; a due responsibility."
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> —Alexander Hamilton, *The Federalist, No. 70*

At a 2016 town hall in South Carolina, then-Candidate Trump attacked President Obama for his reliance on unilateral action, arguing, "The country wasn't based on executive orders. Right now, Obama goes around signing executive orders. He can't even get along with the Democrats, and he goes around signing all these executive orders. It's a basic disaster. You can't do it."[1] In office, however, President Trump saw things differently. Not only did he sign a record number of executive orders in his first 100 days, he did so publicly, as part of an electoral strategy.[2]

President Trump's see-sawing views on presidential power are not unique. Americans have always been skeptical of executive power, yet desirous of strong leadership (e.g. Schlesinger 1986). Even Alexander Hamilton wrote of the need to balance executive energy in response to crisis with the constraints of public opinion (Hamilton, Jay and Madison 2001). However, recent increases in polarization and gridlock combined with mounting national challenges have tilted the scales toward increasing presidential power (Howell and Moe 2016; Kagan 2001; Posner and Vermeule 2011). Reformers argue that the president is best situated to solve these problems and will do so with the national interest in mind because he is a "universalist" actor. Presidents are elected by a national constituency, which incentivizes them to pursue the public good rather than partisan interests. Yet, research on the "particularistic" president has called this premise into

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[1] Jonathan Lemire and Jill Colvin, "Trump Touts Executive Orders He Once Lambasted," AP News, April 25, 2017. https://apnews.com/e9f75e03bb7a41c1a44e9512d4990832 (accessed April 26, 2019).

[2] Gregory Korte, "Trump's Executive Actions Come Faster and in Different Forms Than Before," USA Today, January 30, 2017. http://www.usatoday.com/story/news/politics/2017/01/30/trumps-executive-actions-come-faster-and-different-forms-than-before/97255592/ (accessed July 11, 2019).

question (Kriner and Reeves 2015; Wood 2009). Here, I ask whether Americans would truly fare better with a stronger executive—absent assumptions of universalism.

To answer this question, I develop a two-period political agency model under different separation-of-powers regimes. In both settings, an executive and unitary legislature are tasked with choosing between a left and right policy. Under *Checks and Balances*, the executive can only make policy with legislative consent whereas under *Unilateralism* the executive may choose between legislative or unilateral action. Both politicians are motivated by policy preferences—either congruent with or divergent from a representative voter's preference—as well as rents from holding office. After the enactment of first-period policy, an election is held in which the voter may independently replace or retain the politicians. Although she does not know the politicians' types, she may use the policymaking outcome to infer them. When politicians agree on policy, the voter draws clear inferences. However, if politicians disagree, gridlock occurs. In this instance, the voter does not learn which politician caused gridlock, only that it occurred. Although she can infer that one politician must be congruent, incentive compatibility constraints require that she replace both. Unilateral powers, on the other hand, allow a congruent executive to enact the voter's preferred policy and reveal his positive type due to the unitary nature of the action. Although a divergent executive could similarly enact the voter's least favorite policy, doing so leads to his removal in the election stage. Thus, the voter can generally leverage the threat of electoral sanctions to thwart undesirable unilateral action.

After identifying a key semi-separating equilibria in each setting, I compare voter welfare across these two regimes. Intuitively, when one politician is likely to be congruent and the other is likely to be divergent, the voter fares best in the regime that apportions more power to the congruent agent. That is Checks and Balances for the legislature and Unilateralism for the executive. However, if both politicians are similarly likely to be congruent, voter welfare is higher under Unilateralism—even in some cases where the legis-

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lature is *ex-ante* more likely to be congruent. The expected welfare gains from a congruent executive overcoming gridlock, enacting the voter's preferred policy, and signaling type dependent information outweighs the potential losses from a divergent executive armed with unilateral power. Thus, career concerned executives are constrained by the same forces that brought them to office in the first place: electoral politics.

This article contributes to a large literature on executive unilateralism and the separation of powers (Chiou and Rothenberg 2017; Howell 2003; Stephenson and Nzelibe 2010; Persson, Roland and Tabellini 1997; Turner 2020), with a specific focus on blame-game dynamics and audience costs in bilateral bargaining models (Groseclose and McCarty 2001; Cameron 2000, 2012). I shed light on the executive's positive power to unilaterally enact policies that make the legislature appear out of step in contrast to the traditional framework in which the legislature designs policies that will draw an executive veto. This model also relates to work on career-concerns in separation of powers settings (Fox and Van Weelden 2010; Buisseret 2016) and provides a theoretical framework for an on-going debate about the president as a universal (Howell and Moe 2016; Kagan 2001) or particularistic (Kriner and Reeves 2015; Wood 2009) actor. While I find that expanding executive power entails risk, career concerns constrain a large share of bad actors (see also Posner and Vermeule 2011). In the case that political incentives are an insufficient deterrent, unilateral action at least allows for clear retrospective attribution.

2   Institutional and Electoral Constraints on Executive Power

Existing theoretical models of executive power generally focus on either institutions or elections. The former camp extends the pivotal politics framework (Krehbiel 1998), situating the president as a first-mover in a spatial bargaining game (Chiou and Rothenberg 2017; Howell 2003; Judd and Rothenberg 2020). Given an exogenous amount of discretion, the executive can unilaterally enact a policy subject to revision by the legislature or

courts. In this one-shot setting, the executive does not overreach in equilibrium, but is able to set more personally preferable policy than if he were a veto player. While these models characterize institutional constrains of executive power, they do not consider the role of voters who may use threats of electoral sanction to impose further constraints on executive policymaking (Christenson and Kriner 2017; Reeves and Rogowski 2016, 2018).

Electoral models of executive power grow out of signaling and pandering games (Canes-Wrone, Herron and Shotts 2001; Maskin and Tirole 2004). Here, the executive's choice to use (or not use) unilateral action can provide information to voters about his type given the unitary nature of the decision. For example, voters may use unilateral action to draw inferences about the executive's policy skill (Judd 2017) or preferred issue set (Kang 2020). Foreign leaders may similarly draw inferences about the president's commitment to international agreements given his choice over a Senate-ratified treaty or weaker executive agreement (Martin 2005). In simplifying the policy game to one between a voter and a president, these models illustrate the electoral costs and benefits of executive power. However, in modeling Congress as a non-strategic actor, these models do not account for potential limits mentioned previously nor the possibility that Congress could simply pass the president's preferred policy legislatively.

Here, I integrate these dual constraints on executive power with a focus on how both the legislature and a voter simultaneously shape the executive's policymaking strategy. Most similar to this model is Stephenson and Nzelibe (2010), which examines voter welfare under three different separation-of-powers settings. In each, the executive and/or legislature may be captured by a hawkish faction, and voters devise the optimal *ex-ante* contracting rule to constrain biased policymakers. The authors find that the regime in which the executive is given a choice between acting legislatively or unilaterally maximizes welfare as it provides the richest information environment. My results are consistent with Stephenson and Nzelibe (2010), however, the mechanism differs. The present model combines sanctioning and selection such that the voter prospectively installs good

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types and retrospectively punishes bad types *ex-post* (see Fearon 1999).

3   A Model of Separated Powers and Policymaking

This section describes a stylized model of policymaking between an executive and unitary legislature that will be analyzed in two alternative separation-of-powers regimes. Under Checks and Balances, both politicians must agree on a policy proposal to alter the status quo; under Unilateralism, the executive may still make policy with the legislature as in Checks and Balances, or he may unilaterally make new policy. Both politicians vary in their policy preferences—some have interests congruent with the voter's while others have interests that are divergent. Because both politicians earn rents from holding office, they can win reelection and increase their payoffs if the voter believes they are congruent. After observing the policy outcome, a representative voter chooses whether to reelect or replace the executive and/or the legislature with a randomly drawn challenger from the same population. In the second period, the politicians propose a new policy, payoffs are distributed, and the game ends.

3.1   The Policy Environment

Both regimes feature three players: the executive (E), a unitary legislature (L), and a representative voter (V). In each period $t \in \{1, 2\}$, each politician $i \in \{E, L\}$ selects a policy $x_i^t \in \{-1, 1\}$ from a binary state space. The labels, -1 and 1, represent left and right policy solutions respectively but should be thought of as different policy domains across periods. If both politicians select the same policy, the per-period policy outcome, x^t, is that policy. If politicians choose different policies, *gridlock* occurs and a default policy, $x^t = 0$, is imposed. Admissible policy outcomes are $x^t \in \{-1, 0, 1\}$. Without loss of generality, I assume the voter prefers the right policy alternative in each period, which ensures the politicians have an incentive to play the policymaking game. To simplify the

presentation of the model, she does not discount the future. The voter's per-period payoff is the period-t policy outcome:

$$u_V^t(x^t) = x^t$$

A reasonable but important modeling assumption is that the voter is *inattentive*. In this context, that means she does not observe the politicians' individual policy selections (x_i^t). She does learn the ultimate policy outcome (x^t) in each period, but only after the policy is enacted. This means that if policy changes (i.e. $x^t \in \{-1, 1\}$), the voter can infer that both agents selected the enacted policy. If gridlock occurs (i.e. $x^t = 0$), the voter knows the politicians chose different policies, however, she does not know which one chose $x_i^1 = -1$.[3] Although this assumption is strong, I appeal to the fact that a representative voter does not follow the policymaking process in Washington (see e.g. Bartels 1996; Cameron 2012; Carpini and Keeter 1997), but will likely learn about changes retrospectively (Fiorina 1981).

3.2   Uncertainty About Politician Types

Both the executive and the legislature have preferences over policy conditional on their type, $\theta_i \in \{C, D\}$. A politician with type $\theta_i = C$ is *congruent*: their preference over policy aligns with the voter's. A politician with type $\theta_i = D$ is *divergent*: their preference ranking over policy is opposite the voter's. At the beginning of the game, these types are drawn independently from different distributions and revealed to both politicians but not the voter.[4] However, the voter knows the distributions from which these types are drawn and holds beliefs that each politician is congruent with probability $\{\Pr(\theta_L = C) = \pi, \ \Pr(\theta_E = C) = \gamma\} > \frac{1}{2}$. Politicians receive per-period policy-specific

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[3]In the supplemental appendix, I relax this assumption and allow for *transparency*, whereby the voter observes the politicians' individual actions with positive probability. I discuss this extension and its implications further in Section 7.

[4]I assume independent type distributions for simplicity, and it does not preclude the possibility that these two distributions are equivalent. The results would not hold were types perfectly correlated. Allowing for modest correlation would complicate the results without generating significant insights.

Table 1: Notation

$x_i^t \in \{-1, 1\}$	politician i's policy selection in period t
$x^t \in \{-1, 0, 1\}$	policy outcome in period t
$\theta_i \in \{C, D\}$	politician i's type, congruent or divergent
$\gamma \in (\frac{1}{2}, 1)$	prior probability the executive is congruent
$\pi \in (\frac{1}{2}, 1)$	prior probability the legislature is congruent
$\beta_i \in (0, \bar{\beta})$	politician i's per-period office holding rent
$\alpha^t \in \{0, 1\}$	executive's choice of legislation or unilateral action

payoffs conditional on their types and the enacted policy. If a politician is congruent, her policy-specific payoff is x^t, while a divergent politician earns $-x^t$.

In addition to earning policy-specific benefits, politicians also receive per-period office-holding rents, β_i, a random variable drawn independently for each politician from a uniform distribution.[5] Note, β_i is *not* redrawn between periods if politician i is re-elected. As with politicians' preferences, voters do not know their politicians' realizations of β_i, only the distribution from which they are drawn. The full, per-period payoff for congruent politicians from selecting policy x^t is given by:

$$u_i^t = (x^t; \theta_i = C, \beta_i) = x^t + \beta_i$$

A divergent politician's per-period payoff is given by:

$$u_i^t = (x^t; \theta_i = D, \beta_i) = -x^t + \beta_i$$

For simplicity, politicians do not discount the future, and in the event that a politician leaves office, their second-period payoff is normalized to zero. Table 1 summarizes all relevant notation used throughout (some of which will be introduced later).

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[5]In the supplemental appendix, I show that the main results are robust to β_i drawn from any strictly increasing CDF.

3.3 Checks and Balances Sequence of Play, Solution Concept, and Equilibrium Selection

The sequence of play under Checks and Balances between the executive, legislature, and voter proceeds as follows:

1. Nature draws two politicians with types (θ_i, β_i) to serve as the executive and the legislature. Both types are revealed to both politicians.

2. The legislature proposes a policy, x_L^1, which is revealed to the executive.

3. The executive makes his policy selection, x_E^1. If it is the same policy chosen by the legislature, that policy is enacted and $x^1 = x_E^1 = x_L^1$. If it is the opposite policy, the default policy, $x^1 = 0$ is enacted. The voter observes x^1.

4. An election is held. The voter chooses to independently retain or replace each politician with a challenger drawn from the relevant population. If challengers were installed, Nature draws their types.

5. The players repeat steps 2 and 3.

6. Players receive payoffs and the game ends.

In Section 5, I describe the sequence of play under Unilateralism, which follows the same basic framework with one deviation.

In both regimes, I solve for Perfect Bayesian equilibria. However, this solution concept does not completely pin down beliefs at information sets off the equilibrium path. In what follows, I limit attention to two specific semi-separating equilibria in which the voter forms beliefs by taking the politician's policy incentives into account were she to observe actions off the path of play (see e.g. Fox and Jordan 2011). To construct these equilibria, I impose the following restrictions on the voter's off-path beliefs. First, if enacting $x^t = 1$ is off the path of play, were the voter to observe that outcome, she would assign probability

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1 to the belief that the executive is congruent. Similarly, if $x^t = -1$ is off the path of play, were the voter to observe that outcome, she would assign probability 0 to the belief that the executive is congruent. [6]

4   Checks and Balances

I begin my formal analysis of the Checks and Balances setting in the second period using backward induction. All proofs are in the supplemental appendix. As there is no future election, both politicians choose their type-preferred policy. Congruent politicians choose $x_i^2 = 1$ and divergent politicians choose $x_i^2 = -1$. The voter can maximize her second-period payoff by reelecting congruent politicians and replacing divergent ones in the preceding election stage.

At the time of the election, the voter may be uncertain about the politicians' types. She can, however, make inferences and update her beliefs after observing the first-period policy outcome. To construct the Checks and Balances equilibrium, I assume that the voter adopts a rule in which she reelects both politicians when policy $x^1 = 1$ is enacted and replaces both politicians otherwise. This voting rule is trivial for congruent politicians who maximize their policy and office-holding payoffs by selecting policy $x_i^1 = 1$. Divergent politicians must choose between policy benefits today or reelection tomorrow. If a divergent politician resolves this tradeoff in favor of their policy preference, I call them *policy motivated*, whereas a politician who resolves this tradeoff in favor of reelection is called *office motivated*.

The intuition behind each politician's first-period policy decision is as follows. If both politicians are congruent, they naturally agree on policy $x^1 = 1$. Doing so also ensures

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[6] This refinement is in the spirit of the Universal Divinity (Banks and Sobel 1987), which rules out unnatural beliefs by asking the receiver to consider which types of senders could benefit most from the off-path message. Universal Divinity is not directly applicable to the current game in which two informed senders with private information engage in a sequential bargaining game before sending a subset of the information to an uninformed third party. I discuss this refinement further in the supplemental appendix.

the voter's posterior beliefs about their respective types are weakly greater than the respective priors, and as such, they are both reelected. Recall, too, that politicians know each others' types, so coordination in this respect is possible. Now suppose one politician is congruent and the other is divergent. The congruent politician still maximizes their payoff by selecting $x_i^1 = 1$. The divergent politician faces a choice. They can either choose to pool with congruent types and pass $x_i^1 = 1$, win reelection, and force gridlock in the second period, or they can force gridlock in the first period to preserve the status quo at the cost of reelection. The divergent politician's choice depends on their realization of β_i. If $\beta_i < 1$, the cost of passing the divergent politician's least favorite policy is higher than the benefit of holding office in the second period. If $\beta_i \geq 1$, then reelection rents offset the first-period policy loss.[7]

To illustrate this point, suppose the executive is congruent and the legislature is divergent. Given the voter's decision rule, the executive's choice is simple—it is a best response to select $x_E^1 = 1$. The legislature solves the following:

$$u_L(1, -1; \beta_L) = 2\beta_L - 1 \geq \beta_L = u_L(-1; \beta_L)$$

$$\beta_L \geq 1$$

Recall β_i is uniformly distributed on $(0, \bar{\beta})$. I define $\bar{\beta} \equiv \frac{3+\pi}{2}$, so the probability that $\beta_i < 1$ is $\frac{2}{3+\pi}$.[8] Despite the sequential nature of the policymaking game, the threshold value of $\beta_i = 1$ is the same irrespective of which politician is divergent.

When both actors are divergent, $\beta_i = 1$ is still the relevant threshold. In this type combination, however, the legislature's agenda-setting power allows it to determine the outcome. To see why, assume the legislature is office motivated, which means they would prefer to pool with congruent types and set first period policy to $x^1 = 1$. If the executive

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[7]When a politician is indifferent between two actions, I assume they choose the voter's preferred policy.

[8]The choice of $\bar{\beta}$ plays no role in the equilibrium outcome under Checks and Balances, however, it ensures the exercise of unilateral action under Unilateralism is separating.

Figure 1: First-period equilibrium policy outcomes across all possible type combinations under Checks and Balances.

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		$\theta_E = C$	$\theta_E = D$
	$\theta_L = C$	$x^1 = 1$	$x^1 \in \{0,1\}$
L			
	$\theta_L = D$	$x^1 \in \{0,1\}$	$x^1 \in \{-1,1\}$

is also office motivated, then his choice is trivial: he would also prefer to set $x^1 = 1$. If the executive is policy motivated, conditional on the legislature's choice of $x^1 = 1$, he must choose between gridlock and loss today or reelection and his most preferred policy in the second period. The executive always resolves this tradeoff in favor of reelection and sets $x_E^1 = 1$. A similar logic holds when the legislature is policy motivated and the executive is office motivated. The first-period policy when both actors are divergent is entirely dependent on the legislature's realization of β_L.

To show that these strategies constitute an equilibrium, the voter must adhere to the proposed election rule: reelect both politicians when $x^1 = 1$ and replace them otherwise. To build intuition about the voter's posterior belief at the end of the first period, consider a 2×2 table, as in Figure 1, where each cell represents one of the four possible executive-legislature type combinations, $\{(\theta_E = C, \theta_L = C), (\theta_E = C, \theta_L = D) \ldots\}$, and so on. When both politicians are congruent, the only outcome is the voter's preferred policy. When the politicians have different types, the divergent actor may either pool on the voter's favorite policy or cause gridlock. When both agents are divergent, the legislature's agenda-setting power allows it to dictate policy.

If the voter ever observes $x^1 = -1$, she can conclude that both agents are divergent, and she will replace them both. If the voter observes gridlock, she knows one agent is divergent and one is congruent. However, she does not observe her agents' individual policy choices, so she cannot know which is which. Following Bayes' Rule, her belief

that either agent is congruent will be less than her prior that their replacement will be congruent. Consider, for example, the posterior belief that the executive is congruent conditional on observing $x^1 = 0$:

$$\Pr(\theta_E = C|x^1 = 0) = \frac{\gamma(1-\pi)\left(\frac{2}{3+\pi}\right)}{\gamma(1-\pi)\left(\frac{2}{3+\pi}\right) + (1-\gamma)\pi\left(\frac{2}{3+\pi}\right)} = \frac{\gamma - \gamma\pi}{\gamma + \pi - 2\gamma\pi} < \gamma \text{ iff } \pi > \frac{1}{2}$$

which is true by assumption. A similar logic holds for $\Pr(\theta_L = C|x^1 = 0)$. As such, she replaces both. Finally, if she observes $x^1 = 1$, her belief that either agent is congruent is weakly greater than the prior that their replacement would be congruent. Therefore, the voter will not deviate from the proposed voting rule. Proposition 1 summarizes the actors' strategies under Checks and Balances. The proof can be found in the supplemental appendix.

Proposition 1. *(Checks and Balances Equilibrium) There exists an equilibrium in which the voter reelects both politicians after observing $x^1 = 1$ and replaces both politicians otherwise. Both politicians choose their type-preferred policy in the second period, and in the first period:*

  a. *If both politicians are congruent, they select policy $x_i^1 = 1$.*

  b. *If $\theta_i = C$ and $\theta_j = D$, the congruent politician selects policy $x_i^1 = 1$. If $\beta_j \geq 1$, the divergent politician also selects $x_j^1 = 1$ and $x_j^1 = -1$ otherwise.*

  c. *If both politicians are divergent and $\beta_L \geq 1$, both politicians select $x_i^1 = 1$. If $\beta_L < 1$, they both select $x_i^1 = -1$.*

Considering the strategies of the politicians established in Proposition 1, the voter's expected welfare under Checks and Balances is given by:

$$W_C \equiv \gamma\pi(2) + \gamma(1-\pi)\left[\frac{2}{3+\pi}(\gamma + \pi - 1) + (1 - \frac{2}{3+\pi})\right] + \tag{1}$$
$$(1-\gamma)\pi\left[\frac{2}{3+\pi}(\gamma + \pi - 1) + (1 - \frac{2}{3+\pi})\right] + (1-\gamma)(1-\pi)\left[\frac{2}{3+\pi}(\gamma + \pi - 2)\right]$$

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The four terms in Equation 1 represent expected gains and losses the voter receives from each type combination. For example, the first term $\gamma\pi(2)$ indicates that with probability $\gamma\pi$ the voter receives a payoff of 1 in each period. The second term is the expected payoff of drawing a congruent executive and divergent legislature with probability $\gamma(1-\pi)$. With probability $(1 - \frac{2}{3+\pi})$, the legislature is sufficiently office-motivated to choose $x_L^1 = 1$ in the first period and $x_L^2 = 0$ in the second period, for a total welfare gain of 1. With probability $\frac{2}{3+\pi}$, the legislature is policy motivated and gridlock occurs in the first period, which results in a payoff of 0. The voter replaces both politicians, and in the second period, her expected utility from a random draw of two new politicians is $\gamma + \pi - 1$. Payoffs for the second two terms are similarly constructed to build the full welfare equation.

5   Unilateralism

I turn my attention to an alternative separation-of-powers regime in which the executive is given unilateral authority to make policy without legislative consent. However, the use of these powers is costly. As such, the executive may forgo unilateral action and work with the legislature to pass mutually agreeable policy as under Checks and Balances. This new decision, as well as the choice over policy, reveals information to the voter about her politicians' types that she can leverage in the electoral phase to more finely tune her selection.

5.1   Sequence Under Unilateralism

Unilateralism follows the same sequence as Checks and Balances with one key difference: after the legislature chooses its policy, the executive chooses his policy, x_E^t, *as well as a means of passing that policy*, $\alpha^t \in \{0, 1\}$. If the executive passes the policy legislatively ($\alpha^t = 0$), the outcome is the same as it would be under Checks and Balances. If the executive chooses unilateral action ($\alpha^t = 1$), his choice is immediately implemented such that

$x_E^t = x^t$. Consistent with findings that unilateral action is costly (Christenson and Kriner 2017; Rudalevige 2012; Thrower 2017; Turner 2020), I assume that the executive pays a private cost of $\frac{1}{2}$ when choosing $\alpha^t = 1$. Analytically, this ensures that the executive's choice between legislation and unilateral action is meaningful.

The legislature's and voter's utility functions do not change, while the executive's per-period utility function under Unilateralism is given by:

$$
u_E^t(x^t, \alpha^t; \beta_E) =
\begin{cases}
x^t - \frac{1}{2}\alpha^t + \beta_E & \text{if } \theta_E = C \\
-x^t - \frac{1}{2}\alpha^t + \beta_E & \text{if } \theta_E = D
\end{cases}
$$

The voter does not observe either politician's individual policy selection, however, the voter does observe α^t—the way policy is implemented. If the executive chooses unilateral action, the voter learns his policy choice, which allows her to make inferences about his and the legislature's type.[9] Additionally, to ensure the voter has an incentive to select a congruent legislature, I assume she bears a cost of unilateral action ε close to 0.[10]

5.2 Analysis Under Unilateralism

In the second period each politician will select their most preferred policy. If both agents share a type, they will pass that type's preferred policy legislatively (recall, unilateral action is costly). If the politicians' types differ, the executive will unilaterally enact his type-preferred policy. Although unilateral action is costly, that cost does not overwhelm the policy benefit.

Lemma 1. *(Unilateralism Second Period Strategies) If the executive and legislature do not share*

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[9] In the supplemental appendix, I relax these assumptions and allow the voter to observe the politicians' individual policy selections with positive probability. For low-to-moderate levels of transparency, the main conclusions are similar but attenuated. For high levels of transparency, Checks and Balances becomes increasingly preferable as unilateral action does not provide as much new information.

[10] Perhaps obviously, if ε is too large, Unilateralism can never be preferable as the voter's constitutional qualms would offset any potential gains from signaling and selection.

types in the second period, the executive will pass his preferred policy unilaterally. Otherwise, the

executive and legislature will pass the policy they both prefer legislatively.

Before making her electoral selections, the voter will have observed both x^t and α^t, giving her additional information with which to make her decision. To construct the equilibrium under Unilateralism, I assume the voter adopts the following decision rule: reelect both politicians when policy $x^1 = 1$ is enacted legislatively. Replace both politicians given any other legislative outcome. Reelect the executive and replace the legislature when $x^1 = 1$ is enacted unilaterally; replace the executive and retain the legislature if $x^1 = -1$ is enacted unilaterally.

The policymaking choice when both politicians are congruent is trivial: they maximize their payoffs and secure reelection by enacting $x^1 = 1$ legislatively. Suppose, now, that the executive is congruent and the legislature is divergent. Regardless of either politician's realization of β_i, the voter will always get her favorite policy in both periods. If $\beta_L \geq 1$, the legislature is office motivated and proposes $x^1 = 1$. The executive passes the policy legislatively, both politicians are reelected, and the executive passes $x^1 = 1$ unilaterally in the second period per Lemma 1. The executive never unilaterally enacts $x^1 = 1$ if the legislature is divergent but office-motivated as doing so entails a cost of $\frac{1}{2}$ in the first period and an expected cost of $\frac{1-\pi}{2}$ in the second period versus a cost of just $\frac{1}{2}$ in the second period by acting legislatively in this circumstance. In the case that the legislature is policy motivated, the legislature will select $x_L^1 = -1$, but the executive will unilaterally pass $x^1 = 1$ in the first period. The voter will reelect the executive and replace the legislature. In the second period, the executive will enact $x^1 = 1$ legislatively if the new legislature is congruent or unilaterally if the new legislature is divergent.[11]

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[11]It may seem strange that a divergent legislature would propose $x^1 = -1$ if $\beta_L < 1$, which leads to electoral defeat. If the policy motivated legislature had pooled with congruent types and offered $x^1 = 1$, it would have secured reelection and thus earned 2β for winning reelection. This outcome is a consequence of the assumption that losing politicians' payoffs are normalized to 0. If the assumption were that a losing politician's second-period payoff is equivalent to the voter's, then for $\beta_L < \gamma$, the legislature would make a similar strategic calculation and sacrifice the second-period benefit by presenting $x^1 = -1$. It is only if we assume the losing legislature's second-period payoff is $-x^2$ that pure pooling occurs. In this case,

Figure 2: First-period equilibrium policy outcomes across all possible type combinations under Unilateralism.

E

	$\theta_E = C$	$\theta_E = D$
$\theta_L = C$	$x^1 = 1, \alpha^1 = 0$	$x^1 = 1, \alpha^1 \in \{0,1\}$
$\theta_L = D$	$x^1 = 1, \alpha^1 = 0$ or $x^1 = -1, \alpha^1 = 1$	$x^1 \in \{0,1\}, \alpha^1 \in \{0,1\}$

L

When the executive is divergent and the legislature is congruent, the executive has the option to unilaterally enact the voter's least favorite policy. Doing so reveals his type which leads to electoral defeat, whereas pooling with congruent types in the first period allows him to unilaterally enact his favorite policy in the second period and earn the office benefit. The relevant cut point is still $\beta_E = 1$.

Finally, suppose both politicians are divergent. The executive and legislature would like to enact policy $x^1 = -1$, but electoral considerations may prevent them from acting in their short-term interests. Unlike Checks and Balances, the legislature does not have full agenda-setting power given the executive's outside option to use unilateral action if sufficiently office motivated.[12] Even if the legislature were to choose $x^1 = 1$, the executive may still unilaterally enact $x^1 = -1$ when:

$$u_E((1, \alpha^1 = 0), (-1, \alpha^1 = 0); \beta_E) = 2\beta_E < \beta_E + \frac{1}{2} = u_E((-1, \alpha^1 = 1); \beta_E)$$

$$\beta_E < \frac{1}{2}$$

I outline possible first period outcomes by type combination in Figure 2.

a congruent executive would never have an incentive to enact $x^1 = 1$ unilaterally. The only observed unilateral action would be divergent unilateral action. The voter's two-period welfare would not change, only the interpretation of the model.

[12] The legislature's decision is also more complicated given the executive's incentive to separate when sufficiently policy motivated. As it plays no analytical role in the voter's welfare function, I leave a discussion of this aspect of the game to the supplemental appendix but note the cut point and outcomes in Proposition 2.

To constitute a Perfect Bayesian equilibrium, the voting rule must be sequentially rational. Of particular relevance is what the voter believes following the executive's choice to act unilaterally. Only a congruent executive enacts $x^1 = 1$ unilaterally, and he does so only when the legislature is divergent, giving the voter perfect information about the politicians' types. Only a divergent executive enacts $x^1 = -1$ unilaterally, however, he may do so when the legislature is either congruent or divergent. Following Bayes' Rule, the voter updates in the legislature's favor. Additionally, gridlock is never observed in equilibrium under Unilateralism. Consistent with the refinement criteria established previously, were the voter to see gridlock, she would believe at least one agent were divergent and update unfavorably about both politicians. Proposition 2 summarizes the actors' strategies under Unilateralism. A proof can be found in the supplemental appendix.

Proposition 2. *(Unilateralism Equilibrium) There exists an equilibrium in which the voter re-elects both politicians after observing $x^1 = 1, \alpha^1 = 0$ and replaces both politicians otherwise when $\alpha^1 = 0$. She retains the executive and replaces the legislature when $x^1 = 1, \alpha^1 = 1$ and replaces the executive and retains the legislature when $x^1 = -1, \alpha^1 = 1$. Both politicians choose their type-preferred policy in the second period and follow Lemma 1. In the first period:*

a. *If both politicians are congruent, they select policy $x_i^1 = 1$ and the executive selects $\alpha^1 = 0$.*

b. *If $\theta_E = C$ and $\theta_L = D$ and:*

- *$\beta_L \geq 1$, the legislature selects $x_L^1 = 1$ and the executive selects $x_E^1 = 1, \alpha^1 = 0$.*

- *$\beta_L < 1$, the legislature selects $x_L^1 = -1$ and the executive selects $x_E^1 = 1, \alpha^1 = 1$.*

c. *If $\theta_E = D$ and $\theta_L = C$ and:*

- *$\beta_E \geq 1$, the legislature selects $x_L^1 = 1$ and the executive selects $x_E^1 = 1, \alpha^1 = 0$.*

- *$\beta_E < 1$, the legislature selects $x_L^1 = 1$ and the executive selects $x_E^1 = -1, \alpha^1 = 1$.*

d. *If both politicians are divergent and:*

- $\beta_E \geq \frac{1}{2}$ and $\beta_L \geq 1$, both politicians select $x_i^1 = 1$ and the executive selects $\alpha^1 = 0$.

- $\beta_E \geq \frac{1}{2}$ and $\beta_L < 1$, both politicians select $x_i^1 = -1$ and the executive selects $\alpha^1 = 0$.

- $\beta_E < \frac{1}{2}$ and $\beta_L \geq 2\gamma - 1$, the legislature selects $x_L^1 = 1$ and the executive selects $x_E^1 = -1, \alpha^1 = 1$.

- $\beta_E < \frac{1}{2}$ and $\beta_L < 2\gamma - 1$, both politicians select $x_i^1 = -1$ and the executive selects $\alpha^1 = 0$.

Considering the strategies of the politicians established in Proposition 2, the voter's welfare under Unilateralism is formally given by:

$$
\begin{aligned}
W_U \equiv \gamma\pi(2) + \gamma(1-\pi)(2) + (1-\gamma)\pi\left[\frac{2}{3+\pi}(2\gamma-2)\right] + \\
(1-\gamma)(1-\pi)\left[\left(1-\left(\left(1-\frac{2}{3+\pi}\right)\left(1-\frac{1}{3+\pi}\right)\right)\right)(2\gamma-2)\right]
\end{aligned}
\tag{2}
$$

As is apparent from the first two terms of Equation 2, if the executive is congruent, the voter gets her most preferred policy in both periods. If the executive is divergent, the voter may get her least preferred outcome, but the signaling dimension of unilateral action acts as a constraint unless the executive is sufficiently policy-motivated.

6   Voter Welfare Under Alternative Regimes

It is not surprising that the voter stands to gain from unilateral action under the assumption that the executive shares her policy preference. But voters do not necessarily know an executive's type *ex ante*. As Kagan (2001) writes, "The desirability of such [presidential] leadership depends on its content; energy is beneficial when placed in the service of meritorious policies, threatening when associated with the opposite" (2341). The Constitution separates power precisely to guard against the malign impulses of a divergent actor. Yet some argue that the benefits of an energetic executive outweigh the risks in the current environment. The relevant question, then, is in which institutional framework are
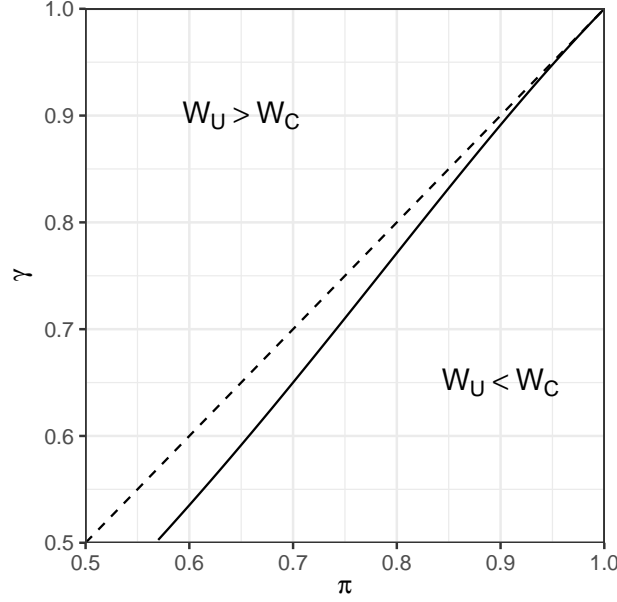
Figure 3: A comparison of voter welfare under Checks and Balances and Unilateralism. The x-axis tracks π, the prior on legislature congruence, while the y-axis plots γ, the prior on executive congruence. The solid line is $\tilde{\gamma}(\pi)$, the threshold at which the voter is indifferent between either regime type for the given prior probabilities of congruence. The area above (below) the curve indicates where voter welfare is higher under Unilateralism (Checks and Balances) for the given combination of prior probabilities of congruence. The dotted line is the 45-degree line.

voters better off—assuming the executive may not act in a meritorious fashion?

It stands to reason that the voter might simply fare better in a separation-of-powers regime that empowers the agent most likely to be congruent. The hypothesis would be that if $\pi > \gamma$, the voter would prefer Checks and Balances, but if $\gamma > \pi$, the voter would prefer Unilateralism. To investigate this possibility, I construct a function $\tilde{\gamma}(\pi)$, which is derived by setting $W_C = W_U$ and solving for γ on the left-hand side. In Figure 3, I plot this function where the x-axis is π and the y-axis is γ. Every point along the curve is a (π, γ) double at which voter welfare is equal between regimes. In the area above the curve, welfare is higher under Unilateralsim. The area under the curve indicates the opposite.

As expected, when one agent is especially likely to be congruent and the other is not, voters do indeed fare better in the regime that empowers the agent most likely to be

congruent. But if preferences over separation of powers followed directly from which agent were most likely to be congruent, $\tilde{\gamma}(\pi)$ would fall squarely along the 45-degree line. In Figure 3, that is not the case. There are a range of π values that exceed γ for which the voter would still prefer Unilateralism, depicted as a wedge area between the dashed and solid lines. This wedge area is decreasing as both agents are more likely to be congruent, but it persists throughout.

Even in some cases where the legislature is more likely to share the voter's preferences, welfare is higher when the executive is given broad unilateral powers. The driving force behind these results are as follows. First, gridlock is a key source of welfare loss under Checks and Balances. It lowers the voter's policy payoff and incentive compatibility constraints require her to replace both politicians despite the fact that one must be congruent. Under Unilateralism, gridlock never occurs in equilibrium, which allows the voter to draw clearer inferences about the politicians' types at the end of the first period. Second, unilateral action allows the executive to act without the consent of the legislature. When the executive is congruent, this redounds to the voter's benefit as a divergent legislature cannot block the enactment of $x^t = 1$. The risk, of course, is that a congruent legislature cannot protect the voter from a divergent executive who enacts $x^t = -1$. Focusing just on these two cases in which politicians have opposing types, the expected welfare effects of Unilateralism are asymmetric and positive. When the divergent executive unilaterally enacts $x^1 = -1$, the voter is able to infer his type and replace him, which acts a constraint. Under Checks and Balances, the voter's expected welfare is not affected by which agent is divergent as gridlock clouds responsibility and does not permit the voter to draw clear inferences. Even though they have the power, career-concerned divergent executives may not find it optimal to enact their most preferred policy.

7   Scope Conditions

In the supplemental appendix, I explore three extensions of the baseline model. First, I relax the assumption that the voter only observes x^t by allowing her to observe x_i^t with some fixed positive probability τ. The result is that as τ increases, the Checks and Balances regime becomes increasingly preferable. A higher probability of transparency allows the voter to better screen out divergent politicians conditional on gridlock. The strategies and outcomes under Unilateralism are essentially unchanged from the baseline model as gridlock does not occur in equilibrium under Unilateralism. The main welfare conclusions from Section 6 are attenuated for low and moderate τ. For larger values of τ, Checks and Balances become increasingly preferable as Unilateralism loses its informational advantages. Conclusions about the welfare effects of executive power seem partially dependent on how closely voters follow the policymaking process in Washington.

In a second extension, I allow the voter's loss from her least favorite policy to vary on the interval $(-c, 1)$ where $c \in (-1, \infty)$. Intuitively, if $c < 1$, the voter's least favorite policy is not so costly and divergent unilateral action poses little danger. However, when $c > 1$, even a small chance of divergent unilateral action begins to offset expected gains from congruent unilateral action, making Checks and Balances more preferable. It is likely the Framers were thinking about these cases when drafting the Constitution, such as the executive unilaterally starting a costly war. Today, however, concerns about Congress's inability to address large-scale challenges like climate change, the opioid crisis, or income inequality may imply that *any* solution is less costly than the status quo.

In the final extension, I relax two additional assumptions. First, that β_i is drawn from a uniform distribution, and second, that the cost of unilateral action is equal to $\frac{1}{2}$. Instead, I allow β_i to be drawn from any strictly increasing CDF and allow the cost of unilateral action, κ, to range on the $(0, 1)$ interval. The substantive results from both changes are minimal, however the interpretation is more nuanced. The size of the wedge area in

Figure 3 is highly dependent on the probability that $\beta_i > 1$. As it becomes more probable that $\beta_i < 1$, Unilateralism becomes increasingly preferable. The logic behind this comparative static is as follows: if it's likely that the divergent politician will be policy-motivated (and thus cause gridlock or enact the voter's least preferred policy) the more welfare-enhancing unilateral action becomes. Although the risk of a divergent executive unilaterally enacting the voter's least favorite policy increases, that risk is offset by the expected gains from a congruent executive unilaterally enacting the voter's favorite policy, as compared to increasingly probable gridlock under Checks and Balances.

8 Conclusion

Americans have always been skeptical of executive power, yet many also see a role for the president in tackling the nation's increasingly complex challenges. Recent increases in polarization, divided government, and gridlock have tempered concerns and led to proposals that would expand the president's authority. However, these proposals often begin from a presumption of presidential "universalism"—that a president, elected by a national constituency, will act in the national interest. If this assumption does not hold, then we must examine the overall welfare effects of expansive executive power given our *ex-ante* uncertainty about the executive's type.

In this model, I integrate two strands of the formal literature about executive unilateralism—separation of powers and electoral signaling—while also allowing the executive to have congruent or divergent policy preferences. I then compare the strategic interaction between the executive and the legislature as well as accountability and voter welfare across two regimes. If gridlock occurs under Checks and Balances, the voter must dismiss both agents despite knowing one of them is congruent—a key source of welfare loss in the model. Under Unilateralism, a congruent executive can enact the voter's preferred policy in both periods as well as signal important information about the legislature's type.

Although a divergent executive can unilaterally enact the voter's least favorite policy (overcoming what would have been beneficial gridlock), electoral incentives are often a sufficient constraint. In the event that a divergent executive *does* act in his own self-interest, the voter can at least infer his type with certainty and replace him. Comparing welfare across regimes, even in some cases when the legislature is more likely to be congruent, the effects of policy and selection outweigh the risk that a divergent executive will act against the voter's interest under Unilateralism.

Formal models necessarily present stylized versions of the policymaking process. One key assumption of the model is that the executive and legislature know each other's types with certainty, which may not hold in the real world. Although some degree of uncertainty among the politicians would likely preserve the main result, unilateral action may not always serve as a perfect signal. A second simplifying assumption is that the cost of unilateral action is always lower than the benefit the executive can obtain by acting unilaterally. This choice actually limits the extent to which the information gained from unilateral action can benefit the voter. In the case that unilateral action is not always possible in the second period (for example, if the cost is a random variable drawn in each period), then the voter's choice over the legislature takes on more weight and would likely increase the value of the executive's unilateral signal. Finally, I assume strong presidential powers under Unilateralism but do not consider the possibility of democratic backsliding or authoritarianism. If the executive is able to use his newfound powers to circumvent or subvert future elections, then the conclusions about accountability would no longer be relevant.

If we assume a more powerful executive upholds democratic norms, then an increase in executive power increases voter welfare when Congress is unlikely to be congruent and/or when the potential for gridlock is high. These gains come both from policy and signaling. Unilateral action allows the executive to reveal information about the politicians' types, which cannot be communicated through gridlock. While divergent execu-

tives do take advantage of unilateral action to implement "bad" policies in equilibrium, they are constrained by their electoral ambitions. If members of Congress continue to focus on "message politics" at the expense of pursuing much needed reform (e.g. Lee 2016), expanding executive energy—even beyond the current fast track proposals (Judd and Rothenberg 2020; Howell and Moe 2016)—has the potential to improve voter welfare without an overwhelming risk to "safety in the republican sense."

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