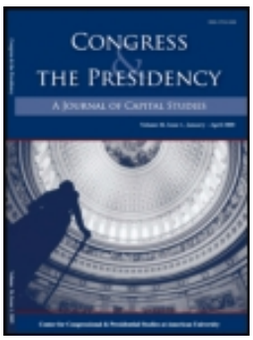

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Executive Branch Management and Presidential Unilateralism: Centralization and the Issuance of Executive Orders

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Despite the useful simplifying assumptions of recent work on unilateral power, archival analysis shows the issuance of executive orders is a process rife with transaction costs as presidents bargain with the bureaucracy over formulating their scope and substance. As a result, presidents must create what Williamson (1985) called "governance structures" to minimize those costs, with the Office of Management and Budget's clearance process at its heart. As with legislative policy formulation, presidents assert more centralized control over executive orders (EO) production on items that affect large numbers of departments, on matters of executive reorganization, and on significant matters. Political contexts are trumped by managerial concerns. Orders dealing with implementation of recently passed statutes or other presidential "clerkship" functions tend to follow a far less centralized formulation process.

In recent years, scholarship on the American presidency has returned the legal, organizational, and unilateral aspects of the presidency to center stage (see, among many others, Cameron 2000; Cooper 2014; Howell 2003, 2005; Kelley 2007; Mayer 1999, 2001; Moe 1993, 1995; Moe and Howell 1999; Rodrigues 2007; Warber 2006). After all, as Kenneth Mayer argues (2001, 11), even in difficult political contexts, "in most cases, presidents retain a broad capacity to take significant action on their own, action that is meaningful both in substantive policy terms and in the sense of protecting and furthering the president's political and strategic interests." The assertive stances taken by recent presidents on this front provide frequent reminders of its relevance. In his 2014 State of the Union Address, for instance, President Barack Obama promised "a year of action" on issues ranging from health care to environmental protection to immigration: "working with Congress where I can... but I'm also going to act on my own if Congress is deadlocked."

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Color versions of one or more of the figures in the article can be found online at www. tandfonline.com/uctp.

Because of this research, we know a fair bit about "unilateral presidential directives" (Dodds 2013), especially the subset known as executive orders. Most of the literature to date seeks to explain when an order is issued, and what conditions make it more or less likely that will happen. Various hypotheses have been tested to show the impact of contextual variables, many of them tied to political realities. These impacts include unified versus divided government; the size of a partisan majority in Congress; shifts between presidents of different parties; ongoing electoral campaigns; and so on (see, e.g., Chiou and Rothenberg 2014; Deering and Maltzman 1999; Fine and Warber 2012; Howell 2003; Krause and Cohen 2000; Marshall and Pacelle 2005; Warber 2006).

However, there remains a "black box" aspect to this approach, such that "orders tend to spring from a sort of immaculate conception" (Rudalevige 2012, 140). That is, in most studies the dependent variable is the fact of an order's issuance, linked to its correlation with external circumstance. Of necessity this skips over the backstory that explains *how* the order come to be, and in turn misses topics of theoretical and empirical interest that appear if we cast our gaze backward over the formulation sequence. For instance, the black box approach assumes, if only tacitly, that any given order reflects a unitary executive branch and, thus, presidential preferences, more or less purely enacted into action. Terry Moe (1995, 417) puts it bluntly: "presidents are not hobbled by... collective action problems. ..." But this rests uneasily with the history of the study of the executive branch as seen through the lens of public administration. That literature has long sought to complicate the idea that the executive branch is a single unified entity under the hierarchical control of the president (Allison and Zelikow 1999; Heclo 1977; Neustadt 1990; Seidman and Gilmour 1986; Wilson 1989). Furthermore, more recently, it has explored the empirical contexts and contingencies associated with the political branches' authority vis-à-vis the bureaucracy (Carpenter 1996; Krause 1999; Potter 2013). Krause (2009, 75) argues "analyses grounded exclusively in formal executive powers understate organizational complexity, and thus overstate presidential capacity for controlling the bureaucracy."

This matters, in turn, because it suggests that presidents will have to manage unilateral action and its complications similar to how they manage interbranch relations: that, for instance, managing the formulation of a unilateral directive is similar in kind to managing the formulation of a legislative proposal. Most work on transaction costs, rightly, has centered on the legislative branch—whose burdens of collective action leave legislators at a key disadvantage when facing off against the president, for instance in the "politics of bureaucratic structure" (e.g., Moe and Howell 1999; Moe and Wilson 1994). But if the executive branch is also a "they," not an "it," then we might expect transaction costs to arise in its internal workings as well. If so, presidents must invest in managerial resources (time, effort, staff) to reduce the "friction" (Williamson 1985, 19) that may produce some level of variance from pure presidential preferences as the process moves from wish to deed.

The remainder of this essay seeks to test that general hypothesis, using data garnered from the provenance of more than 500 executive orders from the period 1937–2004. Do presidents create governance structures (Williamson 1985) that reduce transaction costs? And do the management patterns evident in earlier work on legislative policy formulation (Rudalevige 2002) hold true for the formulation of executive orders as well?

The next sections present the theoretical expectations for presidential management; describe the data to be used; and assess the hypotheses qualitatively and quantitatively. To preview the conclusions, I find that presidents established and have long utilized a standard coordinating process for dealing with executive orders; that a majority of executive orders are formulated from the bottom-up, rather than as centralized directives, and are subject to the same intra-bureaucratic (and sometimes inter-branch) negotiations as other presidential actions; and that centralized formulation processes seem to be consistent with much of the same managerial logic guiding contingent centralization in other areas.

Transaction Costs, Centralization, and Governance Structures

In 1985, Terry Moe's seminal article on "The Politicized Presidency" posited that since expectations of presidential performance had risen far above the capacities of the office to respond satisfactorily, presidents must rationally act to expand their capacity to have an impact on policy. Two tactics necessarily resulted: the politicization of appointments across the executive branch, and centralization: the shift of duties and functions from the wider executive branch to the president's personal staff in the White House.

My earlier research (Rudalevige 2002) extended this notion to develop a broader approach to presidential management, specifically, regarding the process of legislative policy formulation. Using insights derived from organizational economics (Milgrom and Roberts 1990; Moe 1984; Williamson 1985, 1996), I argued that the question facing presidents in search of information about the substance of legislative proposals was akin, at least as a heuristic, to the "make or buy" question facing firms in the private sector (Coase 1937; Demsetz 1988).[1] Should they "make" their policy inside the Executive Office of the President—that is to say, should they centralize it, or should they pursue a decentralized policy by "buying it" from the wider executive branch?

Either choice brings with it associated managerial transaction costs, or what Oliver Williamson (1996, 58) analogized to "friction."[2] Thus, in order to reduce their uncertainty about the expected utility of a given proposal, presidents should choose on a case-by-case basis the source of policy production providing the optimal combination of reliability and cost. The "cheaper" (in a managerial sense) the information is, the better. Williamson (1985, 18; and see 1996, 111) argues that the first mechanism for reducing transaction costs is to produce a governance structure suitable to the bargain at hand. That is, "transaction costs are economized by assigning transactions (which differ in their attributes) to governance structures

(the adaptive capacities and associated costs of which differ) in a discriminating way." Therefore, the creation of a centralized staff for specialized, substantive policy making has advantages, when bargains are made frequently in a given area. But it has costs, too—in time, in the personal outlay of management effort, and sometimes in quality (since, all else equal, departments have more policy expertise than do presidents' personal staff.)[3]

Rudalevige (2002, 15) found that the three strongest predictors of centralization were whether a policy proposal cut across different departmental jurisdictions (and how many), whether it had a strong reorganizational impact, and whether it was old or new. Centralization also increased with the size of the presidential in-house capacity for policy making, and declined as a given proposal became more complex or as congressional ideology coincided more closely with the president's. These findings were consistent with the expectations developed theoretically about the likely conditions under which information would be "cheaper" from centralized sources versus the executive branch agencies.

Remember that, from this vantage, legislative policy making is a managerial question, grounded in the president's interactions with various parts of the executive and (cf. Hart [1995]) the "presidential" branch.[4] As such, there is no reason to think it is the only possible test of contingent centralization. The analysis section discusses more specific hypotheses regarding the governance structures that might be expected to develop in the context of formulating executive orders. However, it is important to establish first that the formulation of executive orders is a question of management (Krause 1999). After all, in the strongest form of the "unitary executive," executive orders near automatically reflect presidential preferences. Nevertheless, as recent literature suggests (Krause 1999; Potter 2013) and as we will see, the wider executive branch has a lot to do with executive orders, too.

Executive Order Formulation

Executive orders (EOs) are not defined or even described in the Constitution, but they have been utilized, as a practical implication of the vesting of the "executive power" in the president, from the Washington administration onward (see Bailey and Rottinghaus 2014; Mayer 2001, Ch. 2.) The Congressional Research Service (Burrows 2010, 1) cites a widely accepted definition developed by a congressional committee in 1957:

> Executive orders and proclamations are directives or actions by the President. When they are founded on the authority of the President derived from the Constitution or statute, they may have the force and effect of law ... In the narrower sense Executive orders and proclamations are written documents denominated as such ... Executive orders are generally directed to, and govern actions by, Government officials and agencies. They usually affect private individuals only indirectly.[5]

However, even indirect impact can be important. Presidents can influence the private sector economy by, for instance, limiting government procurement to contractors following certain policies (e.g., banning discrimination on racial grounds, as in John F. Kennedy's EO 11063 on housing, issued in November 1962, or on the basis of sexual orientation and identity, as with Obama's EO 13672, issued in July 2014). The scale of that influence varies with the scope of the federal government. "Significant" executive orders thus seem to have risen over time, as governmental responsibilities have expanded (Howell 2003; Mayer 2001). Complaints about the power embodied in orders persist throughout the history of the presidency.

Executive orders are not the entire universe of presidential directives (Cooper 2014; Dodds 2013; Relyea 2008). In one 1973 OMB document, the directives family was described as comprising executive orders, proclamations, presidential memoranda, and "executive instructions issued by elements of the Executive Office of the President or designated federal agency officials to implement Presidential or legislative initiatives."[6] (Obama's 2014 immigration "order" would seem to fall into that last category.) We should account, too, for a range of national security orders.[7]

However, if EOs are merely one tool in the box, for present purposes—the study of presidential management—they are a particularly apt subject for study. First, they matter. As Mayer argues, "executive orders have played a critical role in the development and exercise of presidential power," and indeed, of the various unilateral tools, "executive orders combine the highest level of substance, discretion, and direct presidential involvement" (Mayer 2001, 31, 35). Further—and vitally, given the aims of this study—executive orders are aimed within the administration, at governmental behavior. Thus, they relate directly to presidential control of the bureaucracy and questions of a unitary executive, both across the executive branch and within the presidential branch.[8]

As noted previously, the growing body of research on the presidential administrative toolkit is particularly rich when it comes to executive orders, but little of it deals with their formulation. However, in earlier work I utilized archival files kept by the Office of Management and Budget (OMB), and White House records from a number of presidential libraries, to study just that (Rudalevige 2012). That work, based on a sample of 293 orders from 1947–1987, found that some 65% of orders were originally proposed outside the Executive Office of the President, and that even orders originating within the EOP received clearance across, and extensive input from, agencies across the executive branch. This bottom-up process meant that presidents did have to bargain with the bureaucracy even in the production of unilateral directives.

The present article extends the 2012 dataset by some two decades, back to 1937 and forward to 2004. This raises the overall *n* to 539 orders, largely by adding to the mix of sources the more recent records held in the Washington National Records Center in Suitland, Maryland. The present research thus includes orders

from the following administrations: F.D. Roosevelt (second to fourth), Truman, Eisenhower, Kennedy/Johnson, Nixon/Ford, Carter, Reagan, G. H. W. Bush, Clinton, and G. W. Bush (first). The theory does not predict that managerial costs will vary by president. Thus, the target sampling frame aimed to give sufficient *n* per president to allow comparisons across administrations without over-representing prolific presidents: 32 orders per 4-year presidential term (thus, 32 for Carter, say, and 64 for Eisenhower). The data also include a limited oversample of significant orders (as identified by Mayer 2001) to aid in analysis of that subset of orders.[9] Available archival records do not support the confident coding of every order (or every variable) in the overall sample; thus, at least at this stage, *n* varies by president and in the larger analysis (see Table 2).[10]

Governance Structures, Mark I. As a first cut at thinking about governance structures, note that presidents early in the administrative age set up a process to manage the development of executive orders and to mitigate the informational difficulties their formulation might cause. The OMB (until 1970 known as the Bureau of the Budget, or BoB)[11] is the key presidential player here. Its role was codified by (what else?) executive order back in 1933. In EO 6247 of that year, codified Franklin Roosevelt ordered "the draft of an Executive order or proclamation shall first be submitted to the Director of the Bureau of the Budget," and if approved there, to the Attorney General. In EO 7298 a few years later, FDR strengthened the Director's hand with the proviso that orders could be effectively vetoed by either actor, though Justice's role here was limited to signing off on the "form and legality" of the order.

This process remained in place until 1962, when John F. Kennedy's EO 11030 made several additional changes to reflect administrative experience. The new standard operating procedure required that departments and agencies (including the White House) seeking issuance of an order had to include clear documentation "explaining the nature, purpose, background, and effect of the proposed Executive order or proclamation and its relationship, if any, to pertinent laws and other Executive orders or proclamations."

OMB's top lawyer stressed to Kennedy aide Ted Sorensen what that meant: crucially, a process that would allow all aspects of an issue to be considered before an order was "presented to the President. In most cases," he went on, "a proposed order. . . handled under this procedure can be issued more expeditiously, *and with greater protection to the President*, than one which is presented and processed outside the normal channels."[12] This excerpt is notable—first, for its basic but often unappreciated assumption that orders are in fact normally proposed by actors outside the EOP. Second, in a truly unitary executive, it would surely be strange for the president to need "protection" from the agencies, requiring procedural insulation against being manipulated by his own executive branch.

The process set forth in EO 11030 remains in place to this day.[13] OMB continued across administrations to detail the help it could offer in providing centralized

review of the substantive and political implications of proposed orders. Attached to one such memo in the Nixon archives there is even an intriguing Post-It note illustrated by chief of staff H. R. Haldeman, diagramming the proper sequence: "Originator" to "Budget" [OMB] to "AG" to "[White House] Counsel" and finally "to Pres."[14] As such, the OMB central clearance process follows the parallel processes carried out for legislation (since the 1930s) and (since the 1980s) for regulation.[15]

This standard procedure is not always followed, of course. Orders flow from numerous sources; some are drafted directly in the OMB, and others in the White House proper. Some come from departments or agencies, some from outside entities (such as presidential commissions and even from members of Congress). Still, the evasion of the process is rare and nearly always notable. OMB consistently seeks to gather information, build consensus, and trade language and substance across agencies. Even White House-driven orders were (usually) subject to clearance and consultation—agencies were given notice of the proposed order, invited to comment, and their comments were (often) heeded. In short, nearly all orders exhibit a good deal of back and forth inside the executive branch and, sometimes, within the Executive Office itself.

The EO 11030 process seems to match presidential needs in reducing transaction costs. That is, it is centered on gaining both information and consensus: on locating where the bureaucratic zone of preferences lay and in ensuring that the wider executive branch agreed, to the extent possible, on the text of an order moving forward (see Rudalevige 2012 for more detail and case studies).

The Birds and Bees of Executive Orders. The archival data collected on the provenance of executive orders allows more systematic analysis of the origins of those orders.

In earlier iterations of this research (see Rudalevige 2012), the categories were simply "OMB," "elsewhere in EOP," and "Departmental." Here, however, this blunt categorization is replaced by a four-point index, running from 0 to 3, where zero represents an order produced with no real substantive input from centralized EOP staff and three represents an order solely produced by those centralized staff (normally in the EOP, and thus including BoB/OMB.) A code of "1" is a mixed process with the department predominant; "2" is a mixed process with the higher relative workload borne by the EOP.

For instance, EO 12412 in 1983, which reconstituted a Peace Corps Advisory Council was, as OMB director David Stockman noted, drafted "in this office, at the request of the White House Office." EO 12350, which terminated the Urban Impact Statements imposed on agencies by Jimmy Carter, was prepared rather straightforwardly in OMB, since it revoked an OMB circular the agency thought had "not made a useful contribution to the decision process and is redundant."[16]

On the other end of things are agency-initiated actions prompted by need, recent statute, or congressional request. In the first category would be Harry Truman's authorization to suspend the eight-hour workday for employees of the armed services; in the second, something like EO 12340, which was prompted

TABLE 1. Centralization of Issued Executive Orders, 1937–2004

Value	N	% of total
0	245	45.45
1	85	15.77
2	100	18.55
3	109	20.22

Mean = 1.13; s.d. = 1.20; n = 539

by the Military Justice Amendments of 1981 (Public Law 97-81) to amend court martial procedures and regulations. In the third comes something like Senator John Stennis's appeal for his "close personal friend since high school days" to be exempted from mandatory retirement.[17]

Applying the new coding both to the originally coded 293 orders and to the 246 new orders in the sample, we find little change in the overall results despite the expansion of the sample size. Namely, the orders show an approximately 60–40 split in their provenance, decentralized versus centralized. This translates to a mean value of centralization of just over 1.1 on the 0-3 index noted previously. As Table 1 reports, nearly half (45%) of orders come from the "de-centralized" executive branch and about a fifth from the White House or its immediate environs; the remainder are produced by some mix of staffs. This is strong evidence for a bottom-up process reflecting pro-active agency behavior and shared power (the "two way street" Krause (1999) identified), rather than a simple model of Oval Office dominance.

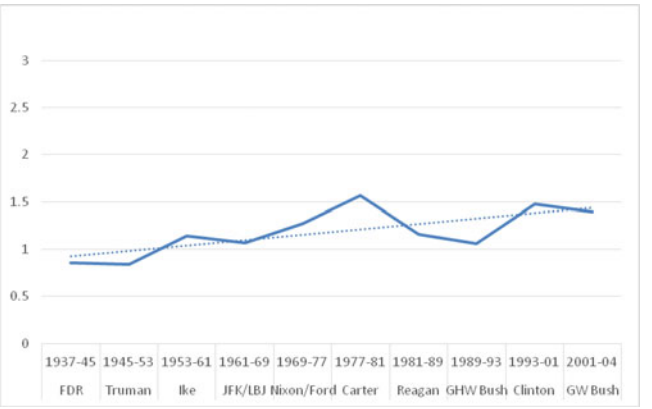
These aggregate figures should be broken down over time. Does centralization increase over the years? Figure 1 provides one quick answer: slightly. The underlying data are included in Table 2.

TABLE 2. Centralization of Issued Executive Orders, by Administration, 1937–2004

Administration	Mean Centralization	S.D.	N
Roosevelt ('37–'45)	0.86	1.19	66
Truman	0.84	1.08	63
Eisenhower	1.14	1.18	64
Kennedy/Johnson	1.07	1.23	82
Nixon/Ford	1.27	1.22	63
Carter	1.57	1.21	37
Reagan	1.16	1.20	70
GHW Bush	1.06	1.30	33
Clinton	1.48	1.08	21
GW Bush ('01–'04)	1.40	1.15	40

Note. Overall mean = 1.13; s.d. = 1.20; n = 539

FIGURE 1. Centralization, by Administration, 1937–2004

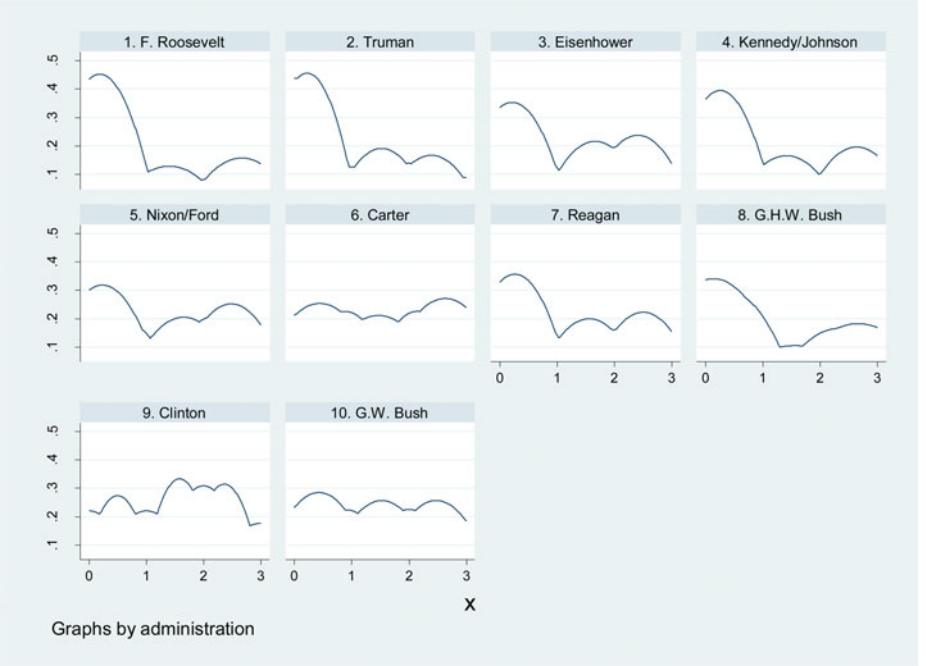


The means do begin to track upward a bit around the time the literature on the administrative presidency suggests they should—with Richard Nixon. It is actually the unlikely Jimmy Carter who serves as the powerhouse here, largely driven by Carter's preoccupation with government reorganization (which, as discussed later, is a factor heavily associated with centralization). It is interesting to note that the figures for Reagan—seen as the exemplar of the administrative presidency—are the same as for Eisenhower, usually associated with "Cabinet government." One wonders whether Reagan, more effective than Carter at the other side of centralization—politicization—was able to rely more readily on a more responsive set of departmental officials than his predecessor was.[18] Given that Clinton and George W. Bush seem to increase their levels of centralization more consistently than their predecessors (albeit with a small *n* for Clinton), are we observing an enhanced "new normal" for White House involvement in the executive order process?

Figure 2 shows this variation graphically by presenting the distribution of centralization for each administration using kernel density estimation. Seven of the 10 administrations are extremely similar, with decentralized orders dominant. Carter, Clinton, and Bush II stand out as providing a far flatter distribution.

In each case (and most notably for Clinton), there is an emphasis on mixed processes, ensuring that EOP staff have involvement in the formulation of orders. In fact, a wide range of formulation tactics were utilized by Carter, Clinton, and Bush, with more than half of Bush's orders more decentralized than not. Even for Clinton, decentralized items (coded 0 or 1) make up just under half (10) of the 21 orders I have been able to locate in the archives to date; as this suggests, the Clinton data spring from a small sample size owing to data collection issues. In general, the consistency of the distributions over nearly 70 years suggests that time is not the key factor in determining centralization (only Carter's appears to be statistically

FIGURE 2. Centralization by Administration: Kernel Density Estimation



distinct from the broader distribution.)[19] Thus we turn to other factors that might determine presidential choices in this matter.

Governance Structures, II: The Causes of Centralization. Indeed, these aggregate data can be examined more systematically in order to isolate the causes of centralization and to assess them in light of the managerial hypotheses noted previously. The extant literatures on executive orders and legislative formulation suggest five main categories of explanatory variables to consider: the legislative, statutory, policy, political, and managerial contexts.

1. The legislative backdrop. Much of the literature on executive orders deals with the legislative context, though with mixed results regarding the impact of divided government on the likelihood of the order issuance. One possibility is that the role of divided government itself varies with time, or rather with the variation in legislative capacity over time (Bolton and Thrower n.d.), which suggests that presidents will issue fewer orders in the modern era. However, this might or might not require less (or more) centralized *formulation* of those orders. If the managerial dynamic is similar to legislative policy formulation (Rudalevige 2002), we would expect more delegation to the departments (i.e., more decentralized strategies) when the president has more allies in Congress than when he does not. This is because given that bureaucratic agents have multiple principals—the president

and Congress both—the departments will be cross-pressured in times of divided government, meaning presidents may want to restrict their policy autonomy at those times. Thus, we can hypothesize that the higher the percentage of legislative seats in House and Senate held by the president's co-partisans, the lower the level of centralization.[20]

2. The statutory backdrop. Executive orders are frequently related to legislation. They can follow from recently passed law that requires changes in administrative behavior or, conversely, may seek to preempt pending legislation. Orders may also relate to what Neustadt (1990) called the president's function as "clerk"—implementing duties placed on the presidential office by past law, such as issuing exemptions from the civil service laws or creating mediation boards to settle industrial disputes. Preemption suggests higher political stakes, with formulation brought in-house; but, conversely, we might expect routine orders to be handled by the departments to which a given statute delegates specified functions.

Thus, *statute* is a dummy variable tracking whether the archived executive order file notes that the order was issued in response to a recent statute, which requires making changes requiring executive implementation. These represent about one-fifth of issues in the sample. For orders issued under broad grants of past (sometimes long-past) authority, though, such as in the cases noted previously, the dichotomous *clerk* variable is coded "1" instead (this represents about a quarter of cases in these data). Finally, a dummy variable named *preempt* represents an order which the record shows was issued to forestall congressional action on the same topic. However, such cases are quite rare, at least in these data ($n = 11$).

3. The policy backdrop. Questions of policy type, and especially those regarding orders' substantive significance, are rather unsettled in the scholarship on executive orders, though for different reasons. We can ask, first, if the order deals with foreign or domestic, or for that matter "intermestic," policy. Rudalevige (2002) found that foreign policy was a good predictor of centralized policy making, but that a skewed subset of foreign policy proposals arose in the legislative arena. Indeed, foreign policy is often seen as a centralized arena, at the heart of the unitary executive. However, the foreign policy issues dealt with by numbered executive order (rather than by National Security Directive or classified order, for instance) seem more likely to be outsourced to the departments, especially since they largely concern "inner Cabinet" departments such as State and Defense. Thus, a negative coefficient is predicted. As in Rudalevige (2002), the *foreign policy* variable is an index taking the values 0–2: 0 if purely domestic policy, 1 if containing both domestic and foreign policy elements (such as with most trade issues), 2 if predominantly foreign policy.

The question of significance divides the scholarship on executive orders. A priori, one would expect significant orders to receive more attention from the president and his centralized staff. However, two questions arise: how should we measure significance? And, should we care about the rest—"insignificant" orders—at all? I suggest the answer to that latter question is "yes." After all, depending on one's

answer to the first question, answering "no" to the second throws away information on 70–90% of the universe of orders. Further, if the focus is on intra-executive management, questions of significance may themselves reveal parameters of that management. If nothing else, it is tricky to define significance solely in terms *external* to the executive branch (e.g., by reference to an order receiving attention from another branch, or from the media, two sorting mechanisms used in the literature and discussed below.) Issued by President Nixon in June 1971, EO 11602 appears on no prior list of significant orders. In apparently innocuous bureaucratese, it simply provides for "Administration of the Clean Air Act with Respect to Federal Contracts, Grants, or Loans." That order, when proposed, prompted a file five inches thick, full of denunciation and proposed revision. For the intended audience of government procurement officers (and for a wide range of private sector contractors as well) this was a hugely significant order. Exempting employees from the statutory retirement age is likewise rather unexciting. Mayer (2001) omits these sorts of orders entirely from his sampling. However, what if that employee is J. Edgar Hoover?[21] The question asked in this article differs enough from the standard literature to justify a broad view on order inclusion.

On the other hand, there is certainly clear variation in the importance of orders. We do not want to equate (to take examples from the current administration) such issues as a ban on text-messaging while driving federal vehicles with a reshaping of the terms under which terrorism suspects held at Guantanamo Bay might be held without trial.[22] So, how to define significance? Mayer (2001) identified 149 of his 1,028 sampled orders from 1936 to 1999 as such, grounded in his assessment of their substantive significance. Others have sought to utilize external markers. Best known, perhaps, is Howell's (2005) method, which included as significant any order (between 1945 and 2001) that made it to the front page of the *New York Times*.[23] More recently, Chiou and Rothenberg (2014) expanded this approach to produce a continuous scale of significance based on a given order's appearance in one or more of up to nineteen sources, including newspapers, political magazines (e.g., the *National Journal*) and legal journals (see 2014, online appendix D1, for a full list.) Their data cover 1949 to 2002.

In the following analysis, I utilize four specifications of significance. The first (*subst. sig.*) includes orders deemed substantively significant along the lines of Mayer's (2001) identification of the same: thus, all of his orders that overlap with my sample, and those outside of his timeframe that match his requirements. By contrast, the second model (*gov. sig.*) utilizes my own coding of items that were significant for executive branch operations, such as the Nixon order mentioned previously. This does not always include orders with external significance and, indeed, this measure correlates with *subst. sig*. at only .252.

The other two models utilize Howell's (2005) data on *New York Times* appearances and Chiou and Rothenberg's (2014) item response theory (IRT) model covering multiple publications: *NYT sig.* and *IRT sig.*, respectively. Since these

datasets cover less temporal ground than the data utilized here, *n* will be smaller when these measures are used.

In each case, the expectation is that significant items are more likely to be centralized.

4. The political backdrop. The extant literature asks a number of questions about the contexts that might affect the frequency with which orders are issued. For instance: how close is a presidential election? Has there just been a change of party in the presidency? Does public approval of the president affect order issuance? Although these contexts do not have clear managerial implications, they are useful controls. One might hypothesize that a popular president, or one coming closer to an election (and thus requiring enhanced speed, control, or simply desiring clearer credit claiming), would centralize more. One could also posit that a change of party will lead to additional centralization since, at least, at the start of their term, presidents will not realize the value residing in the expertise of the permanent civil service or even OMB, and in any case may not have many of their own appointees to the departments and agencies confirmed (Mackenzie et al. 2001).

Thus, *party change* is a dichotomous variable taking the value of "1" in the first year of a president's term, following an administration of the opposing party (e.g., in 1969 or 1993.) *Pres. Pop.* tracks the Gallup approval rating of the president in the poll released most closely prior to the release of a given order. *Time to elect* measures the number of months until the next presidential election, from 48 to zero. In models utilizing this variable, orders issued by lame duck presidents (e.g., Jimmy Carter from November 1980 through January 19, 1981) *after* a given election are not included.

5. The bureaucratic/management backdrop. Finally, we come to the variables of most interest to the current research: those linked to the governance patterns established by the managerial costs of various types of proposals. Four can be tested using present data.

First, a strong predictor of legislative policy centralization is the number of departmental jurisdictions a given proposal cuts across. As the number of departments involved rises, so should centralization. The same should be true for executive orders, since the management issues that arise should be roughly the same: the president needs a point of coordination that can assess and integrate the wide range of (self-serving) advice being offered by the different departments. The *crosscut* variable, then, simply measures the number of departments and agencies involved with a given EO, according to OMB clearance records where possible.[24] This variable is likely undercounted over time, but there is no reason to think that the undercount varies in a biased way across observations.

Second, issues dealing with reorganization tend to produce more centralization. Since individual bureaus protect their turf fiercely (and since Congress tends to favor the bureaucratic status quo in this regard), if presidents want unbiased information on the rationale for reorganization it normally necessitates more cen-

tralized involvement. Thus, *reorg* is a dichotomous variable measuring whether the order's primary function is to reorganize or create a new executive office or agency. (It is not used to mark the creation of short-term advisory commissions or interagency bodies, or for changes in the way bureaus report to the president.)

Third, we might posit that the larger the staff resources available to the president in the EOP, the more centralized policy will be. The repeated transaction of related bargains should lead to something of an economy of scale, making the institutionalization of a policy-proficient EOP staff more efficient. Once a structure is in place to "make" policy, that is, the more likely it is to be used. The *staff size* variable tracks the size of the EOP staff year-to-year.[25]

Another management hypothesis simply tests presidential learning as a president's term in office progresses. As time goes on, presidents should presumably become more expert in (and trusting of) their utilization of more farflung staff resources (see, e.g., Light 1999). Further, the deeper into the administration one goes, the broader array of departmental staff will have been appointed under (or even directly by) the current president. The logic is the same as the party change variable above, though the empirical impact is the reverse. That is, we should see centralization decrease over time. The *month term* variable starts with the date a president took over from his successor, normally January 20 (but also, e.g., November 22, 1963), and counts the months that a president has served in office. (Thus, it runs from 1 to 48 for a one-term president, but up to 145 for Franklin Roosevelt.)

A final hypothesis would link to the general issue of presidential-agency trust: more formally, to a bureau's ideological proximity to the president. It makes sense that centralization grows as an agency moves farther away from the president's preferences. However, this intuition cannot be tested with the data currently available. A variety of recent work has made important—even heroic—advances in measuring agency ideology (see, e.g., Bertelli and Grose 2011; Clinton et al. 2012; Clinton and Lewis 2008; Krause and O'Connell 2014), but not across the seven decades required by the broad approach taken here. However, this will be a useful addition to future iterations of this analysis.

Analysis

Table 3a and 3b present ordered probit analysis of the level of centralization for the orders utilizing the variables drawn from the various contexts just discussed. Ordered probit models are designed to analyze situations where the dependent variable has discrete outcomes that can be measured ordinally. That is the case here, where the level of centralization—again, from zero (fully decentralized) to three (fully centralized)—is categorical but not assumed to be evenly spaced, as would be required for an OLS model.[26] Ordered probit, however, also makes a different assumption, which is that the relationship of the covariates are equivalent across the categorical outcomes—that the effect of crosscutting jurisdictions, say, is the same across all levels of centralization. A diagnostic test shows that this assumption may

TABLE 3A. Executive Order Formulation: The Contexts of Centralization

	A 1937–2004	B 1949–2004	C 1937–2004	D 1949–2004
Crosscut	.111***	.097***	.102***	.089***
	(.013)	(.014)	(.014)	(.015)
Reorg	1.185***	1.139***	1.198***	1.155***
	(.160)	(.185)	(.160)	(.186)
Statute	−.495***	−.599***	−.489***	−.593***
	(.131)	(.142)	(.132)	(.142)
Clerk	−1.089***	−1.252***	−1.081***	−1.238***
	(.143)	(.165)	(.143)	(.165)
Preempt	1.064**	1.063**	1.218**	1.161**
	(.397)	(.435)	(.396)	(.430)
Co-partisans	−.008	−.006	−.008	−.006
	(.006)	(.007)	(.006)	(.007)
Subst. sig.	.274	.167		
	(.146)	(.156)		
Gov. sig.			.435**	.341
			(.172)	(.188)
Foreign policy	−.320***	−.268**	−.305***	−.262**
	(.084)	(.089)	(.083)	(.088)
Pres. pop.	−.001	−.001	−.002	−.001
	(.004)	(.005)	(.004)	(.005)
Party change	−.009	−.076	−.049	−.113
	(.202)	(.215)	(.203)	(.216)
Time to elect.	.006	.006	.006	.006
	(.004)	(.005)	(.004)	(.005)
Month of term	−.001	−.003	−.002	−.003
	(.002)	(.003)	(.002)	(.003)
Staff size		.000		.000
		(.000)		(.000)
N	*537*	*435*	*537*	*435*
Pseudo-r^2	*.22*	*.22*	*.23*	*.22*
LLR	*−535.8*	*−445.5*	*−534.3*	*−444.4*
Prob > chi^2	*.000*	*.000*	*.000*	*.000*

Note: Ordered probit analysis. Dependent variable is the 0-3 index of centralization discussed previously: "0" represents an order formulated via a decentralized process, "3" a wholly centralized process.
$^*p < .05$; $^{**}p < .01$; $^{***}p < .001$ (two-tailed tests).

be violated for two variables (notably the copartisans and significance measures). Thus, standard ordered probit results will be reported here (since their interpretation is familiar and relatively parsimonious, and the alternatives far from such) but any substantive shifts in variables calculated by an alternative analysis using a generalized ordered logit estimator will also be discussed.[27]

Depending on the specification, a different range of years can be analyzed. The four models in Table 3a utilize the "sub. sig." and "gov. sig." measures of significance, with and without the inclusion of the staff size measure (since using it

TABLE 3B. Executive Order Formulation: The Contexts of Centralization

	E 1945–2001	F 1949–2002
Crosscut	.101***	.096***
	(.015)	(.014)
Reorg	1.116***	1.173***
	(.177)	(.191)
Statute	−.519***	−.498**
	(.174)	(.145)
Clerk	−1.315***	−1.273***
	(.174)	(.174)
Preempt	1.086**	1.060**
	(.434)	(.434)
Co-partisans	−.005	−.006
	(.007)	(.007)
NYT sig.	.142	
	(.128)	
IRT sig.		.111
		(.069)
For pol	−.306**	−.286**
	(.089)	(.091)
Pres pop	−.002	−.001
	(.004)	(.004)
Party chg	.063	−.102
	(.209)	(.217)
Time to elect.	.008	.008
	(.005)	(.005)
Month of term	−.000	−.003
	(.003)	(.003)
N	*444*	*412*
Pseudo-r^2	*.22*	*.22*
LLR	*−408.4*	*−417.0*
Prob > chi^2	*.000*	*.000*

Note: Ordered probit analysis. Dependent variable is the 0-3 index of centralization discussed previously.
*$p < .05$; **$p < .01$; ***$p < .001$ (two-tailed tests).

cuts off a dozen years before 1949.) The two models in Table 4b utilize the "NYT sig." and "IRT sig." models instead. However, the results are robust across all of these specifications.

In short, political contexts mostly don't seem to matter; statutory, policy and especially management contexts do matter.

As to the first, there appears to be little relationship between the time to go before an election and centralized formulation, and even less to presidential approval. Party changes are also insignificant and, in most specifications, wrongly signed. As the president's co-partisan numbers rise, orders become less centralized, as predicted. If this is tantalizing, in ordered probit it is not anywhere close to statistically significant. (Other ways of calculating divided government give near-

TABLE 4. Substantive Impact on Centralization and Decentralization, Selected Variables

	Percentage Point Change on Probability of...			
Variable	Centralized (3)	Mixed (2)	Mixed (1)	Decentralized (0)
Reorg	34.3	10.5	−7.1	−37.8
Crosscut	9.1	8.8	1.9	−19.8
Sig. Gov.	10.2	6.4	−0.7	−15.9
Clerk	−15.4	−17.9	−7.7	41.0
Statute	−7.7	−8.5	−2.7	19.0
For. Pol.	−5.5	−5.4	−1.1	12.0

Note: Based on shift in each variable from its 25th to 75th percentile and on Table 3a, Model C.

identical results.) However, this is the variable that shifts most with different levels of centralization, as noted previously. Generalized ordered logit analysis shows, interestingly, that an increase in co-partisans has no impact when examining only wholly decentralized items, or when items are wholly centralized. However, when the two decentralized values (0 and 1) are set at zero and the two centralized values (2 and 3) are set at one, an increase in co-partisans does in fact lead to a statistically significant level of decentralization ($p < .013$). If not consistent across all specifications, this tentative result is nonetheless intriguing, and will require attention in further iterations of this research. Generally, though, presidents do not seem to be relying on these external contexts to govern their decisions about administrative policy formulation. If so, this differs from legislative policy formulation.

However, the two converge strongly in the managerial contexts. The timing of order formulation within a president's term does not seem to matter much (consistent with the election proximity variable, though the two are not highly correlated.) Nor does staff size: the key shift seems to be the change in kind that occurs with the creation of the OMB clearance process. With that resource in place, additional EOP staff are, if anything, another counter-bureaucracy that must itself be coordinated via OMB.

On the other hand, centralization is very strongly associated with the cross-cutting involvement of multiple agencies, and with whether a proposal involves reorganization.

These impacts are both statistically significant and substantively meaningful, as Table 4 indicates. For instance, as a proposal moves from the 25th percentile on the "crosscut" variable (involving two agencies) to the 75th (eight agencies), the likelihood of a fully centralized process increases by nine percentage points, all else equal—and similarly increases the likelihood of a predominantly centralized process (i.e., a value of "2"). Conversely, the probability of a fully *de*-centralized process decreases by just under 20 percentage points. (Moving from the minimum to the maximum values on this variable, instead of cutting off the tails of the

distribution, the impact is even more striking: *ceteris paribus*, an increase of 60 percentage points in the likelihood of centralization, and a 55-percentage point decrease in the chances of a decentralized process.)[28] Reorganization proposals have even more impact. Moving from an order that is not such a proposal, to one that is, increases the probability of a wholly centralized process by some 34 percentage points (and a predominantly centralized process by 10.5 percentage points), all else equal.

Several statutory contexts relating to a given proposal also have an impact on its formulation process. These of course, do not have an exact analogue in the process of managing legislative policy formulation, though there is some parallel to the idea of "old" and "new" proposals (Rudalevige (2002) found that new proposals were more likely to be centralized.) Here, orders flowing either from statutes—thus, "old," in a key sense, not presidential creations—tend to be produced via a decentralized process, all else equal. This is true for both recent and longstanding statutes—the "statute" and "clerk" variables, respectively. Indeed, as Table 4 shows, an order flowing from the presidents' clerkship duties is 41 percentage points more likely to be wholly decentralized, and less likely to be anything *but* decentralized. Likewise, the chances of an order that flows directly from a recent statute having a decentralized process increases by close to 20 percentage points compared to those orders issued for other reasons. These findings are in keeping with the previous hypotheses. (So is the fact that preemptive proposals also seem to produce more centralization, but the tiny number of those cases under study here should give pause.)

Orders involving foreign policy are more likely to be decentralized as well, though this has less of an impact. As suggested previously, this likely reflects a sort of technical deference to (usually) the Departments of State and Defense on the sorts of issues appropriate for executive order as opposed to NSDD. (If we can assume that State and Defense, as "inner" cabinet agencies, are generally more proximate to the president's preferences than other departments, this finding could also be a partial proxy for the notion of bureaucratic trust raised above.)

Finally, significant orders do seem to be formulated more centrally than those deemed less important. The ordered probit results show that across the reported specifications (and various others not reported here), all the coefficients for significance are positive. Only the "sig gov" variable is statistically significant at a $p < .05$ level, which makes sense managerially. After all, orders significant to actors within the government are likely to require some of the same coordinated attention by centralized staffs as crosscutting issues do.[29] Other measures of significance—attention paid by the *New York Times* or other media outlets, for instance—seem to matter less to the internal formulation process in the aggregate. Here, however, using generalized ordered logit shows interesting variation for each of the significance specifications. The size of the coefficients varies somewhat, yet each significance variable shows the following similar pattern. They are strongly statistically signif-

icant in predicting a process that is not wholly decentralized (i.e., anything except a "0"), somewhat significant in predicting cases that are at least partly centralized (a "2" or a "3"), but then insignificant statistically (and negative, substantively) in predicting fully centralized processes.[30] This suggests that significant orders prompt a wide range of formulation processes including numerous actors in the wider executive branch—but that it is rare for them to be left to the departments entirely unmonitored.

Concluding Thoughts

This essay has sought to add to knowledge of presidential unilateralism in several ways. First, it provided new descriptive data on the formulation of executive orders drawn from the archival analysis of more than 500 orders. This showed that a strong plurality of orders originate in the bureaucracy, rather than the EOP; and the wide variance in their formulation process suggested that despite the simplifying assumptions of the unilateralism literature, presidents do, indeed, have to manage transaction costs involved in order development.

Second, this complexity provided the opportunity to develop hypotheses about the managerial presidency—more specifically, the conditions under which presidents will seek to invest managerial resources in a centralized governance structure for formulating executive orders and when they will rely on a decentralized process. Finally, large-*n* quantitative analysis tested those hypotheses.

In any event, some of the results are the same as the findings on legislative policy formulation published a decade-plus ago (Rudalevige 2002). Crosscutting jurisdictions and reorganization proposals have a strong impact on centralization, consistent with legislative policy development. Under some circumstances, so does the president's level of partisan congressional support. Overall staff size does not, and other political variables matter even less. However, contexts specific to executive orders—which, after all, often implement statutes old and new—were strongly influential as well. There are clear managerial contexts associated with enhanced (and decreased) EOP involvement. Is an order likely to be bottom-up, or top-down? It depends—and this project helps tease out some of what it depends upon.

In short, the analysis above has shown that presidents do indeed seek consistent governance structures for their order formulation, and those structures shift from those used for the formulation of legislative proposals in rational ways. The bargaining arena may shift, as the president looks to the bureaucracy instead of Congress, but the need to bargain certainly does not vanish, even when significant orders are at hand.

Still, findings on "significant" orders were ambiguous, suggesting that more work needs to be done on determining a consistent definition of significance across this research agenda. Future work generally can push forward on some of the additional quantitative analysis suggested above, and should also seek to specify transaction costs more systematically. One possibility here is to take advantage of

the varying lengths of time it takes for a given order to move from proposal to issuance, studying what order characteristics or contexts are most associated with that duration. This could serve as a proxy measurement of transaction costs. It might also allow for the inclusion of unissued orders in the wider analysis, as these can be included in the data with the issued orders, treated as censored observations. Doing so may shed some useful light on the role of managerial transaction costs in constraining presidential preferences and showing the pushback of the bureaucracy on White House desires. Do different agencies have differential influence in this regard? If so, why?

All this aims to add back some crucial nuance to the question of unilateral action, without losing the shape of the order—or rather the executive orders?—underneath (cf. Cameron 2000). In so doing it fleshes out Neustadt's old worries (1990, 33) about "the illusion that administrative agencies comprise a single structure, 'the' executive branch, where presidential word is law, or ought to be. . . ." The findings here are consistent too with the recent work noted previously that takes a sophisticated look at the relative influence of agencies and their maneuverings relative to the president and the Executive Office staff—that asks when "agencies have agency" (Yaver 2015).

These complexities do not mean shifting away from the important gains made using a unilateral vantage on presidential power. However, by melding the insights of the new unilateralism with the empirical realities of intra-branch policy making, we gain enhanced leverage into where and when unilateral tools can be most effective—and when they represent wishful thinking.

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NOTES

1. The "theory of the firm" literature springs from a simple question: If markets are so great at allocating prices and goods, why did firms create a hierarchy devoted to internalizing market transactions? The Coase theorem pointed out that one answer lay in the fact that market bargains bore their own transaction costs: the currency might be time to negotiate a contract, or information about preferences or substance, or of "asset specificity" —that specialized knowledge or equipment is needed to use the asset in question.
2. James Q. Wilson (1989, 358) defines transaction costs as "the costs of planning, negotiating, directing, and evaluating the activities necessary to produce something."
3. Policy expertise is, basically, a version of the "asset specificity" discussed in note 1, and in Williamson (1996, 59).
4. Rudalevige (2002, Ch. 6–7) also developed hypotheses about the impact of centralization on legislative behavior (i.e., on the success of the president's program in Congress), but these do not apply to unilateral administrative action.
5. The original study was by the staff of the House Committee on Government Operations, 85th Cong., 1st Sess., *Executive Orders and Proclamations: A Study of a Use of Presidential Powers*, published as a committee print in 1957.
6. General Counsel, Department of Commerce, to General Counsel, OMB, letter of 9/20/73. File on "Presidential Directives," closed 8/24/80, RG 51, OMB Office of the Director, Executive Order Files 1977-80, NN3-051-95-001, Box 3, NARA-II.
7. See Cooper (2014); Korte (2015) provides a useful summary.
8. It might also be noted that EOs are (mostly) matters of public record, with documentation available for research in the National Archives and elsewhere. For this article, I used records held at the Hoover Institution Archives at Stanford University, the Dwight D. Eisenhower Library, the John F. Kennedy Library, the Richard M. Nixon Library, the Ronald Reagan Library, and the National Archives and Records Administration facilities in Suitland and College Park, Maryland.
9. This aspect of the sample is an artifact of earlier stages of the research focusing on the Kennedy/Johnson and Reagan administrations, when the overall n was far smaller; thus, those administrations reflect more observations than the sampling frame would otherwise require. No substantive differences result in the quantitative analysis reported below if the "extra" observations are omitted. Thus, I have not committed the sin of discarding data.
10. Totals for Kennedy and Johnson, and Nixon and Ford, are combined in the analysis here, since this reflects the way OMB records are kept.
11. To avoid confusion, the agency will generally be referred to as OMB in this article, even in its BoB era pre-1970.
12. Focke to Sorensen, 19 April 1962 memo, Box 4, [Preparation, Presentation, Filing and Publication of Executive Orders and Proclamations (9/29/60) EO11030; E5-3/62.1 (E18-4/60.1)], NARA-II. Emphasis added.
13. Changes since 1962 have reflected mostly changes in word processing, shifting the kinds of paper, font, and the like required. Most recently, EO 13683 (issued in December 2014) separated trade proclamations from the mass of "special day" proclamations, and gave the Office of the U.S. Trade Representative additional responsibility for the former.
14. Attached to Haldeman to Ken Cole, 1/27/69 memo, Box 7, [EX FE6 Executive Orders], White House Central Files: Subject Files, Richard Nixon Library.
15. Interviews with OMB staff suggest the process is the same for executive memoranda as well.
16. RG 51, Series 61.4, Box 7, [M1-10/61.1], NARA-II; RG 51, Records of the Office of General Counsel – Executive Order and Proclamation Files – 1983 [Series FRC 51-84-13], Box 2, EO12412, NARA-II; RG 51, Executive Orders and Proclamations - 1982 [Series FRC 51-83-47], Box 1, EO12350, NARA-II
17. Stennis, as chair of the Armed Services Committee in a presidential election year, got what he wanted. See the file on EO 11653, coded "F4-2/72.2," RG 51, Series 69.4, Box 12.
18. For a discussion of this tradeoff see Rudalevige and Lewis (2005).
19. Kolmogorov-Smirnov tests checking the equality of the distribution for each administration versus the sample as a whole suggest that Carter's distribution is distinct in this sense. But the other administrations —including

Clinton and Bush II—cannot be confidently distinguished from the overall distribution. (This will need to be confirmed when the number of observations for the Clinton administration increases.)

20. Separate House and Senate variables, as well as a dummy variable for divided government, were also calculated, but returned very similar results (not surprisingly given how correlated the three are: the *co-partisans* variable correlates at .96 with House and Senate control, and at .87 with divided government more generically).
21. EO 11154, issued May 1964.
22. EO 13153 and EO 13567, respectively.
23. Howell (2003) also codes orders that receive legislative or judicial attention.
24. Where the clearance letter could not be located, the crosscut figure is extrapolated from the text of the order (e.g., creation of an advisory committee is assumed to involve the departmental members of that committee.)
25. For 1949–1996 this count is drawn from Rudalevige (2002, 88), then updated from 1997 through 2004 from the staff figures given in the president's annual budget request. As noted in Rudalevige (2002), the figure does not include staff from OEO or USTR since those are not defined as centralized staff units.
26. However, running the same specifications using OLS gives quite similar results.
27. The "omodel" function in Stata was used for diagnosis of the parallel regression assumption; a confirmatory Brant test could not be calculated, however. More generally analysis here was drawn from the generalized ordered logit estimation ("Gologit2") package developed by Williams (2006). Gologit2's autofit function isolated the variables likely to violate the parallel regression assumption.
28. Calculated in Stata 11 based on Table 3A, Model C, using the Clarify utility, written by Michael Tomz, Jason Wittenberg, and Gary King.
29. Interestingly and somewhat surprisingly, the two correlate only at $r = .42$.
30. These calculations are available from the author.

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