Unilateral Orders as Constituency Outreach: Executive Orders, Proclamations, and the Public Presidency

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Scholarship on the unilateral presidency has focused on presidential policy making with the stroke of a pen. However, such studies overlook the influence that the public presidency can have on shaping the president's unilateral strategies. Our research question seeks to link these two elements by exploring the following question: under what conditions do presidents issue executive orders and proclamations as part of their public presidency? Using new data charting the use of these directives to target populations in society, we analyze the role of the political environment on engendering both more constituency-based executive orders and proclamations. The results suggest presidents issue more constituency-based proclamations, but not executive orders, when Congress and the executive branch are more likely to disagree on policy or when Congress is institutionally stronger compared to the president. Presidents are less likely to issue these orders during election years (for proclamations), in changing popularity, or when their party has returned to office. The implications suggest the importance of broadening the study of unilateral orders to link the public and administrative presidencies.

Scholarship on the unilateral presidency has focused on presidential policy making with the stroke of a pen, with attention placed on presidential executive orders (Howell 2003; Mayer 2001; Rudalevige 2012; Warber 2006), proclamations (Rottinghaus and Maier 2007), signing statements (Conley 2013; Kelley 2006; Kelley and Marshall 2010), and other directives. Many studies have shifted from merely describing these powers and their constitutionality to providing predictive models to explain institutional factors

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concerning when presidents issue unilateral orders. One tradition has assessed the legality of the president's executive order power (Cooper 1986; Fleishman and Aufses 1976; Marcus 1977; Mershon and Schlossman 1998; Morgan 1970; Raven-Hansen 1983; Wigton 1996). Another tradition has made use of longitudinal studies and major content analyses of unilateral orders. Such efforts have resulted in extending the traditional legal approach in presidential studies into the realm of a quantitative legal framework for assessing various dimensions of the unilateral presidency (Howell 2003; Mayer 2001; Warber 2006). These two frameworks have enhanced our knowledge about how presidents strategically use unilateral orders to pursue their policy agendas in order to build their legacies and to skirt the formal legislative process in Congress.

Despite a powerful and potentially dangerous use of unilateral orders by presidents to establish, implement, or direct public policy, presidents also use these orders for nonpolicy purposes: appealing to political constituencies. Indeed, Teten (2011) argues that even presidential unilateral directives have a public, rhetorical function. Both executive orders and proclamations, two prominent types of unilateral orders, frequently mention specific constituency groups, either to praise them, celebrate a unique milestone, or comment on the historical significance of these groups. A growing constituency demand, inability to meet expectations of the office, and the fragmentation of the New Deal coalition into atomized groups create an incentive for presidents to use their offices to appeal to individual constituencies in formal, high-level but "inexpensive" ways. That is, through executive action, sometimes with but often without congressional sanction, presidents can appease constituencies, attract new constituencies, or repay constituencies for past support, depending on their political circumstances. Similarly, despite the significant growth of research in this area, most studies have either focused on one type of unilateral policy tool or they have isolated these policy tools from each other during their analyses when assessing more than one such tool (but see Cooper 2002). However, the scope and use of individual unilateral orders is similar, especially considering their common roles in the public presidency, necessitating the joint study of multiple directives (see Kelley, Marshall, and Watts 2013).

Our research question seeks to link the unilateral presidency (where presidents issue unilateral directives as a means to establish, implement, and execute policy) with the public presidency (where presidents seek to lead and represent the public) by exploring the following research question: under what conditions do presidents issue executive orders and proclamations as part of their public presidency? As we noted above, studies on the unilateral presidency generally analyze one type of unilateral tool in isolation rather than exploring how presidents strategically use a variety of them in tandem. Likewise, the rise in the use of unilateral orders allows presidents to develop or preserve a direct connection to the public using the formal (and unilateral) means of the executive office. In this article, we focus on the president's constituency-based unilateral strategies and extend the literature on the conditions under which presidents use these types of orders. We seek to bridge research in the public presidency and unilateral presidency to better understand how presidents strategically use their unilateral tools to reach out to specific constituencies with executive directives. The power of the office provides the president an opportunity to address the possible expectations gap

(Waterman, Silva, and Jenkins-Smith 2014) generated as presidents promise (often overpromising) specific attention to the issues of concern to their constituencies but are less able to deliver. An analysis of constituency-based unilateral orders allows us to more carefully examine how presidents use these orders as a way to use their unilateral authority without necessarily bargaining with Congress but in order to meet the demands of a modern public presidency.

In order to merge the unilateral and public presidencies into a more cohesive presidential strategy, we explore how presidents reach out to constituency groups using executive orders and proclamations. This article proceeds in six sections. First, we identify examples of how presidents over time have used constituency unilateral orders. Second, we outline how the literatures on unilateral orders and the public presidency complement each other. Third, we develop several expectations concerning when presidents might issue constituency-based unilateral orders based upon their political environment and institutional needs. We expect that presidents should use these orders when they are stymied by an opposition Congress over legislation as a way to provide tangible policy-based help to specific groups. Presidents are also likely to use these orders to meet rising expectations in office such as after winning an election, when running for reelection, or when their popularity is lower. Fourth, we describe our novel data, which segment the president's orders into constituency-level orders and we identify the methodology used to analyze these measures. The fifth section examines the constituency orders over the history of the modern presidency, tests the hypotheses, and examines the findings. The sixth section concludes and relates the findings to important extensions of the unilateral presidency literature.

Examples of Unilateral Policy Tools and the Public Presidency

Presidential unilateral orders allow presidents to set policy (in a limited way) by issuing a directive (Dodds 2013; Howell 2003; Warber 2006). In addition to the use of these orders as policy initiation, implementation, and execution, presidential unilateral orders can be used for ceremonial, symbolic, or hortatory purposes. The use of these orders for constituency-specific or symbolic purposes is often merged with their policy function (see Mayer 2001; Telen 2011). Cooper (2002, 142) notes that even proclamations, which are most frequently used as tools to inform the public about events or actions, are not completely "relegated to ceremonial uses" and are used for multiple reasons (see also Dodds 2013, 7-8; Rottinghaus and Maier 2007). Presidents, as rational and unilateral actors, are attuned to reaching out to their specific constituencies in order to maintain support from them. One specific way in which presidents may appeal to constituencies is to issue a unilateral order that is of importance to specific constituency groups that comprise presidential coalitions. In this context, presidents often use executive orders and proclamations to celebrate the history, accomplishments, or actions of groups or individuals, or to develop public policies that are of interest to certain segments of society. Presidents can narrow the expectations gap with these groups by paying attention to their history and their policy concerns.

History is replete with examples of presidents using unilateral orders, especially executive orders and proclamations, as a constituency tool (or "constituency-based" unilateral orders as we term them here). The White House of Harry Truman saw the potential of executive orders as a valuable tool for its public presidency in order to pull in more African American voters to the Democratic Party (Burk 1984, 14). On December 5, 1946, Truman signed Executive Order 9808 that created the President's Committee on Civil Rights. Morgan's (1970, 14-15) pioneering study on executive orders suggests that one of Truman's motivations for signing this directive was to respond to various concerns held by leaders of the civil rights movement at the time. In addition, there is a wealth of evidence to suggest that Truman timed the signing of his Executive Order 9981 to desegregate the armed services during the summer of 1948 in anticipation of the upcoming presidential election that fall in order to seek more African American voter support for the Democratic Party (Mershon and Schlossman 1998, 161; Morgan 1970, 18-19; Taylor 2013, 92-96).

In addition to the potential of executive orders in aiding presidents with their public presidencies, proclamations are also a valuable and potent unilateral tool that the White House could rely on to reach out for support among constituencies in the general public. Cooper (2002) ascribes "serious significance" to these hortatory proclamations because they involve nationally significant events or actions. Indeed, Corwin (1957, 392) described presidential proclamations as "the social acts of the highest official government" referring primarily to the Thanksgiving Day Proclamation first issued by George Washington and continuing as a tradition each Thanksgiving since. Even though ceremonial proclamations are not designed to have legal or policy weight, they offer presidents an effective way to connect with political allies and advance their rhetorical policy agenda. For instance, President Bill Clinton issued proclamations proclaiming National Health Care Month, National AIDS Awareness Month, and Women's Equality Day, while President George W. Bush issued proclamations on National Family Week, National Charter Schools Week, and National Character Counts Week. For President Barack Obama, some of these orders are "vestiges of old special-interest groups that one president or another wanted to please" and "sometimes the proclamations read like a checklist of potential voter groups: National Hispanic Heritage Month; National Caribbean-American Heritage Month; Irish-American Heritage Month; Lesbian, Gay, Bisexual, and Transgender Pride Month; Small Business Week" (Beam 2009).

Overall, presidents possess discretion in determining how to use unilateral orders. In part, this means that they can issue these orders of significant interest to various groups that their administrations rely on for political support such as women, educators, African Americans, Native Americans, environmentalists, businesses and industry, and labor unions (Warber 2006, 2014). These directives provide chief executives flexibility in that they allow the White House to cope with changes in public approval. If a president encounters a period in which presidential approval begins to dip or stagnate, unilateral orders provide presidents with a quick way to immediately address a policy issue that is of great concern to certain segments in the population with the hope that presidential attention to a group and its issues can win back some approval from those groups. Presidents may also promise attention to the policy concerns of groups in their coalitions

but have trouble meeting those goals with policy as other political matters intervene or as other policy issues displace these issues on the president's agenda. In this instance, unilateral orders might be viewed by administrations as an agent to stop some of the siphoning of support that the White House encounters from negative shifts in public opinion.

Apart from weathering changes in presidential approval, unilateral orders can also be part of a president's public strategy to either maintain existing political relations with a constituency group or for cultivating support in which the president's party is attempting to court. For instance, these orders may be used to gain support from a new group that traditionally was not a major supporter of the president's party. In other cases, presidents might issue a unilateral order to repair political rifts within certain constituency groups. There is some evidence that the Obama administration resorted to the use of an executive order to overcome political problems that blossomed during his first term with Hispanics who were disappointed with his administration's lack of attention to immigration reform (Schier 2011, 203-4). Furthermore, the Obama administration's "Race to the Top" achievement in the area of education generally overlooked Hispanics as a group. Specifically, "less than 1 percent of Latino students would benefit from the first round of the competition" regarding educational funding through the Race to the Top initiative that the federal government would funnel to the states (Schier 2011, 205). On October 10, 2010, President Obama signed Executive Order 13555, "White House Initiative on Educational Excellence for Hispanics," in order "to help restore the United States to its role as the global leader in education and to strengthen the Nation by expanding educational opportunities and improving educational outcomes for Hispanics of all ages and by helping to ensure that all Hispanics receive a complete and competitive education that prepares them for college, a career, and productive and satisfying lives" (Obama 2010, 65417).

It is not clear if this executive order was a direct response to Obama's frosty political relations with Hispanics in his first term over immigration and educational reform initiatives. However, the administration may have been eager to put such problems with Hispanics behind before his reelection efforts in 2012.

Are these orders noticed by constituencies? In several instances, the White House's attention to a group and their issues is noticed. For instance, after using a proclamation to proclaim it "Equal Pay Day," President Obama issued executive orders banning federal contractors from retaliating against employees who discuss their compensation and requiring federal contractors to submit compensation paid to their employees by gender. The White House, seeking to make this a campaign issue in the 2014 midterm elections, argued that fighting for equality and making sure that women have equal pay was important to facilitating equal rights. The actions were "already winning praise from some activists" including the American Civil Liberties Union and the National Paycheck Fairness Coalition (Madhani 2014). The news of presidential orders is also distributed to the membership of local organizations and as a way to call attention to serious issues affecting the economic, social, or political concerns of the public.[1] For example,

1. See http://sapac.umich.edu/article/president-obamas-sexual-assault-awareness-month (accessed January 13, 2015).

President Obama proclaimed March 2014 as National Colorectal Cancer Awareness Month. The American Gastroenterological Association (AGA) and American Society for Gastrointestinal Endoscopy (ASGE) "applaud[ed]" it and argued that it "highlights a profound opportunity to save lives from this largely preventable disease."[2]

Linking the Unilateral and the Public Presidency

Presidents have long used their position to attempt to lead public opinion as a way to bargain with Congress or narrow the expectations gap. These efforts have all come with mixed success. Neustadt (1990, 30) identifies prospects for presidential leadership as moments where presidents serve as "teacher" (as a resource in the "power to persuade") where "a president concerned for leeway inside government must try to shape the thoughts of men outside." Kernell (2007) argues that presidential efforts to persuade the mass public are directed at persuading members of Congress who are "on the fence." Cohen (2010, 3) augments "going public" by arguing that "presidents now go narrow; that is, they focus their public activities on building support in their party base, some interest groups, and select localities." Empirically, Canes-Wrone (2006) finds that presidential appeals to the public on issues of domestic and foreign policy expenditures do produce an increase in allocated spending in the following budget cycle (see also Eshbaugh-Soha and Peake 2011). However, critiquing the ability of presidents to accomplish this, Edwards (2003) suggests that presidents are unable to lead public opinion because of a fragmented media and a polarized public. The effect of the president's leadership is also short term (Rottinghaus 2010) and temporary (Cavari 2013).

We know that, once in office, administrations engage in public strategies to lead the general public on policy issues (Edwards 2003, 4-5). However, as noted, presidents may find it difficult to engage in leading the public using their rhetoric. As described in the previous sections, executive orders and proclamations are implied powers of the presidency that have evolved over time and have been utilized for many purposes (Cooper 2002). As a result, chief executives use unilateral orders to communicate policy instructions to the federal bureaucracy *and* use these orders as a way to make overtures to the public (especially specific publics of interest to the president's coalition). As rational actors, we should expect that presidents will look to exploit their various formal and informal powers in order to assist them in pursuing their policy agendas and to increase public support toward their administrations. Therefore, unilateral directives provide the White House with strategic opportunities to enhance their public presidency strategies, thus merging the unilateral and public presidencies. In a saturated and often hostile media environment, presidents will use as many resources of the office as they can to craft their political agenda. As with the example above concerning "Equal Pay Day," President Obama made public remarks, signed a proclamation and two executive orders, leveraging several powers of his office to formalize his administration's agenda.

2. http://www.prnewswire.com/news-releases/president-declares-march-2014-national-colorectal-cancer-awareness-month-248240341.html (accessed January 13, 2015).

Generally, then, we should expect presidents to turn to constituency-based unilateral orders as a means to further their public standing when they are disadvantaged by other political events or confronted with circumstances that limit their communication pathways or truncate their ability to pursue their policy goals. Presidents may prefer to lead from the bully pulpit, yet, finding little success by using their rhetoric to persuade the public to endorse the White House's preferences on policy should lead presidents to alternative means. Presidents also prefer to legislate, yet deleterious political circumstances may not always allow this approach. These unilateral orders may not ultimately have a large effect on the president's approval, political capital, or bargaining strength; however, given a narrowing range of tactical options through which to maintain public support (especially among key constituencies) or demonstrate sensitivity to particular publics, presidents turn to these unilateral options. Because constituency-based unilateral orders can be issued independent of Congress and within a broad range of discretion, presidents can use them strategically to combat worsening political conditions and combine their public role with their unilateral authority. Specific conditions under which this is likely are identified more expansively in the expectations section below.

Theoretical Expectations

In order to examine the influence of the president's political environment on his likelihood of issuing a constituency-based unilateral order, we formulate four expectations drawn from the general theory described in the previous section and the discussion of the literature above. We expect that presidents should use these orders when they are stymied by an opposition Congress, when they are less able to legislate to provide tangible policy-based help to specific groups, or in moments to truss electoral support (either paying back support or reclaiming new support). Although both the president and interested groups would prefer legislation or a substantive policy unilateral order, a president presented with fewer opportunities to do this will use the means politically allowable and issue a symbolic order that may give rise to less significant opposition. This is not to imply that presidents would not legislate and issue substantive orders in addition to these orders. These constituency-based orders allow for extra publicity for a policy position, a supplemental way to demonstrate issue solidarity and serve to highlight the president's attention to these issues (as the "Equal Pay Week" example from President Obama above demonstrates). These expectations are detailed below.

> $\mathbf{H}_1$: Lower presidential popularity will encourage the president to issue more constituency-based orders.

Studies have demonstrated that presidential approval can influence presidential decisions about whether and when to issue executive orders (Krause and Cohen 1997, 472-73). For example, Mayer (2001) and Deering and Maltzman (1999) demonstrate that presidents sign more executive orders when their approval ratings are in a period of decline (see also Fine and Warber 2012, 268-69). These variables are important to

include in such models given that they have been described as core variables to explain presidential actions in bargaining with Congress (see, e.g., Bond and Fleisher 1990; Edwards 1980, 1989, 2009). There should be a close link between public approval and constituency-based unilateral orders, which are specifically designed to capture public attention and aid the president in addressing the issues of concern to these groups. Therefore, presidents who are politically challenged with lower public approval will turn more to consistency-based unilateral orders as a way to make good on implicit or tacit promises to specific groups. These orders offer the president a low-cost way to turn attention to the importance of a group and their issues, with or without a substantive policy to accompany it. That is, presidents use these unilateral orders to buttress their standing with certain constituencies as a way to attempt to increase overall slumping approval.

> $\mathbf{H}_2$: A stronger Congress will encourage the president to issue more constituency-based orders.

Scholars generally expect unilateral politics to increase when there is institutional friction between the branches because of less ability for the president and Congress to negotiate on legislation. Mayer (1999), for example, hypothesizes that presidents should issue more executive orders when faced with more potential opposition in Congress. Howell (2003) also shows that divided government results in fewer significant executive orders (see also Gleiber and Shull 1992; Marshall and Pacelle 2005, 98; Mayer and Price 2002). Fine and Warber (2012) find that divided government only matters in some instances but not others. Likewise, a larger majority party size in Congress should encourage the president to issue fewer orders. This thesis builds on the findings of Howell (2003) who argues that unilateral activity is related to the power of the majority party in Congress and to the size and unity of the congressional majority (see also Krause and Cohen 2000). The president, according to Howell (2003), is more likely to use his unilateral powers when the majority party is small and divided. In general, then, these moments (divided government or a larger majority size in Congress) are times where presidents are less able to legislate on their agenda items, Congress is less likely to stand for institutional unilateral activity by the president, and where presidents are reluctant to use orders as a way to advance their policy goals because of fear of having these orders overturned by a strong and unified Congress.

However, for our purposes, while institutional friction (in the form of divided government or a larger and unified Congress) may make governing more difficult and policy less likely to be created, it should *increase* the president's willingness to issue constituency-based orders that are less likely to be overturned. That is, presidents may be less able to legislate and less willing to use their unilateral powers to set substantive policy without Congress, but they should be more likely to attempt to use their unilateral powers to signal to specific constituency groups that the executive branch can still advance the symbolic agenda of specific groups. Divided government also signals a significant political divide in the country. In divided government, presidents can use constituency-based orders to curry political favor with various electoral constituencies

independent of Congress. Specifically, presidents can use these constituency-based unilateral orders to maintain a unique connection to specific constituency groups independent of policy passage or other negotiations with Congress. While media coverage of the fractious political environment in divided government congests the ability of presidents to get their messages to the public (Eshbaugh-Soha and Peake 2011; Rottinghaus 2010), presidents can use their unilateral tools to bypass this coverage and communicate their tailored political messages directly to specific publics. Therefore, we expect that presidents should be more likely to issue these orders when there is divided government or when the majority party in Congress is larger.

> H_3: A president who is new to office from a party that has been out of power will issue more constituency-based orders.

The logic to this expectation is that the party that has just won election after an absence from controlling the White House should be more eager to court constituent groups, to repay electoral constituencies who assisted in the election of the president, or to recapture an agenda for their specific constituency groups. This is one theoretical way in which new presidents institutionalize their public activities. These new administrations are also disadvantaged by years of institutional uses of the White House by the opposition party who also previously used their unilateral powers to court their own constituencies. New presidents may seek to quickly initiate their own institutional connections to a new yield of constituency groups. Indeed, empirically, both Cooper (2002, 142) and Howell (2003) note that unilateral orders are likely to be more frequently used by new administrations. In the present case, we suggest that new presidents will be eager to start early and establish their public goals.

> H_4: Presidents will issue more constituency-based orders during an election year.

Given that presidents attempt to navigate several constituencies during a campaign, constituency-based unilateral orders can be used in election years as a way to court or to maintain electoral coalitions. Given these connections, the use of these orders should be heightened during presidential and midterm election years. Indeed, presidents are found to use unilateral orders to appear "presidential" in an election year (Mayer 2001). Presidents do not solely spend time campaigning or legislating—they also use their unilateral powers to great effect in election years. For instance, Warber (2006, 74) found that presidents are almost as aggressive at issuing executive orders during presidential election and nonelection years. Presidents from 1936 through 2008 issued a yearly average of 34 major policy executive orders during nonelection years, while they issued 32.4 and 24.5 major policy directives per year during midterm and presidential election years, respectively. As suggested above, presidents may work on pushing for legislation and issuing substantive orders during election years, but these constituency-based orders provide extra insurance that the needs of a group are being addressed.

Data and Methods

In order to test the expectations outlined in the previous section, we have coded all executive orders that are directed toward groups in society and ceremonial presidential proclamations issued by Presidents Eisenhower to George W. Bush, encompassing years 1953 to 2009.[3] Executive orders and proclamations are the two most numerous unilateral orders found over time and carry the weight of an act of Congress (*Jenkins* v. *Collard* 1891, 560-61). Although the ways in which both of these types of orders describe or refer to individual constituencies is different, the effect should theoretically be the same. Scholars have always treated these directives as different types of unilateral policy tools, even though the differences between these types of directives, apart from having different titles, are legally equivalent. Cooper (2002, 16) provides us with the conventional definition that scholars and politicians have used for executive orders by stating that they "are directives issued by the president to officers of the executive branch, requiring them to take an action, stop a certain type of activity, alter policy, change management practices, or accept a delegation of authority under which they will henceforth be responsible for the implementation of law." Presidential proclamations have been viewed as a unilateral tool that presidents use to deal with policy matters concerning the general public at large (Cooper 2002, 16).

First, our data set for executive orders consists of the number of all published executive orders each year that reach out to specific groups or constituencies. We used the *Federal Register* and the National Archives and Records Administration's executive orders disposition tables in order to locate the text of all published executive orders. We then content analyzed each directive to determine whether it targeted a certain constituency group. In some instances, the target population was clearly identified within an executive order. For example, Clinton signed Executive Order 13084 on May 14, 1998, entitled "Consultation and Coordination with Indian Tribal Governments." This directive was designed to reduce the amount of federal regulations placed on tribal governments (Clinton 1998). Based on the title of this executive order, it is clear that Native Americans are one group that is targeted by this directive. However, we cannot rely purely on the titles of executive orders to determine if they reach out to specific constituencies because we run the risk of underestimating the number of executive orders that target groups. Specifically, there are some executive orders that do not clearly identify an actual target group in their policy statements, but we are able to discern from reading those directives as to the groups that they are attempting to reach. On January 8, 1937, Franklin Roosevelt signed Executive Order 7532 that created the Shinnecock Migratory Bird Refuge in New York (Roosevelt 1937, 63). Although this directive did not formally refer to a specific target group, it is clear based on the wording in this executive order that Roosevelt was reaching out to wildlife enthusiasts. The total number of executive orders is 2,103.

3. Policy (nonceremonial) proclamations span a range of policy-making uses, and we define a policy proclamation as any proclamation directly affecting government process, structure or actions, including both international and domestic affairs.

Our data for presidential proclamations focus on presidential ceremonial orders. A presidential proclamation is "an instrument that states a condition, declares a law and requires obedience, recognizes an event or triggers the implementation of a law" and allows the president to take specific action (Cooper 2002, 116). Ceremonial proclamations celebrate common history or collective national moments of pride (Howell 2003; Mayer 1999, 2001, 35; Tulis 1988).[4] For instance, President Obama issued a proclamation calling on Americans to celebrate the life and legacy of Cesar Chavez Day (March 29, 2013). Likewise, new incoming presidents often proclaim a "day of prayer" to mark the peaceful transition from power of one presidential administration to another. Several sources had to be searched to generate this complete record including the *Codification of Presidential Proclamations Disposition Tables*, the *United States Statutes at Large*, the U.S. *Federal Code*, the *CIS Information to Presidential Executive Orders and Proclamations*, the U.S. *Federal Register*, and the *Public Papers of the Presidents*. The search yielded a comprehensive list of 4,567 proclamations during the time period studied.

In order to test the expectations above about the relationship between the president's political environment and the use of constituency orders, we include a number of independent variables in the models below. First, because we are interested in examining the institutional dynamic between Congress and the president, as described in H_1, and following similar models used by Howell (2003) and Mayer (1999), we focus on two variables that capture the relative likelihood of interbranch disagreement with Congress: the average size of the majority party and divided government. First, we employ a variable for the size of the majority (*Majority Size*) by averaging the size of the majority in each house for each congressional session. Second, we include a dichotomous measure of divided government, where any divided government (in either or both chambers) is treated as divided government (*Divided*).[5]

Next, we include several variables that characterize moments where a president might be more likely to issue a constituency-based unilateral order, consistent with the hypotheses offered above. First, we include a dummy variable for when a president of a new party enters office (*New President*), starting with the first Congress over which they govern (coded 1 if yes and 0 if no). Second, *Election Year* is coded 1 if the order was issued in any full year in which there is a presidential or midterm election. Third, we measure the change in presidential approval from the previous year (*Change in Popularity*). This variable is measured from the Gallup approval question, "Do you approve or disapprove of the way that President [insert name] is handling his job as president?" Each survey within each year was summarized and an annual average (and change from the previous year) was recorded. These data are taken from Ragsdale (2008). These are consistent with how Mayer (1999, 2001) constructs these variables.

Finally, we include three control variables. First, we include the number of press conferences presidents host (including joint and solo press conferences) as a way to

4. About one-sixth of proclamations offered by modern presidents are policy related.

5. During this time period, there was "split" control of the Senate from 1981 to 1986. As noted in the text, we include this as "divided" government with the assumption that presidents are still restrained agents in that they are less likely to get what they want and alter their public and unilateral strategies accordingly.

determine the degree to which the president had access to the media to discuss issues of concern to his constituency (*Press Conferences*). This variable allows us to control for the president's other public appearances, which may compete with the number of constituency-based orders issued. These data are taken from Ragsdale (2008). Second, we include a dummy variable for party, where Democratic presidents are indicated as 1 and Republican presidents as 0. Third, we include a dummy variable for "era" effects, where presidents including and after Ronald Reagan are coded as 1 (*Post-Reagan Era*). These latter two control variables provide some important variation to understand the nature of the use of these orders over time.

Because we are interested in the frequency of an event, we employ several event count models for use in our analysis (Cameron and Trivedi 1998). Event count models take as the dependent variable the number of discrete times (nonnegative integers, bounded at zero, unbounded above) an event occurred (e.g., the number of times a unilateral order was issued in a given year) where variable Y_i where $Y \in \{0, 1, 2, \ldots\}$ with the assumption that the process generating the event is independent of time (t) (Long and Freese 2006). Ordinary least squares is inappropriate in these instances because they yield inaccurate and inefficient estimates (King 1988). Linear regression models may result in inefficient and biased estimates for the count of events, and it is "much safer to use models specifically designed for count outcomes" (Long and Freese 2006, 349). For the count models described below, we aggregate these into years. This allows our model to comport with other models so the findings can be comparable (Deering and Maltzman 1999; Fine and Warber 2012; Howell 2003; Mayer and Price 2002). The trends in the data do not display significant autoregressive elements.[6] For example, the individual time-structured series for each autocorrelation function reveal relatively low counts and no internal time dynamics, making a Poisson or negative binomial model appropriate in these series.[7]

We employ one of two models below, depending on the degree of overdispersion in the data. First, a Poisson model count models the probability of observing any observed count using the Poisson distribution. The model is specified as

$$u_i = E(y_i|x_i) = \exp(x_i\beta_1 + \ldots + x_1\beta_n)$$

where each observation has a value of u and the observed count for observation i is drawn from a Poisson distribution with mean u_i (Long and Freese 2006) and n is the total number of independent variables. Second, a negative binomial model (which accounts for observed heterogeneity, or "overdispersion") is modeled for any series where tests of the log likelihood ratio $= \alpha$ reveal positive and significant tests for overdispersion (when the variance is larger than the mean). Because overdispersion can artificially deflate standard

6. When events are not independent of one another, these count models are insufficient in that an event count model will be biased if the events counted are characterized by a dynamic, temporal process. One could utilize Brandt and Williams' (2001) techniques to allow for an autoregressive character to the data (in this case, exponential increasing linear trends, or a random walk with drift) called the Poisson Exponentially Weighted Moving Average (PEWMA) (see also Harvey and Fernandes 1989). However, the dynamics from the autocorrelation functions do not demonstrate the need for controlling for autocorrelation since the dynamics suggest the absence of or weakly autocorrelated counts with respect to time.

7. Additional comparison of the goodness of fit for using the Poisson versus the Poisson Autoregressive model suggests that the Poisson is appropriate for these cases.

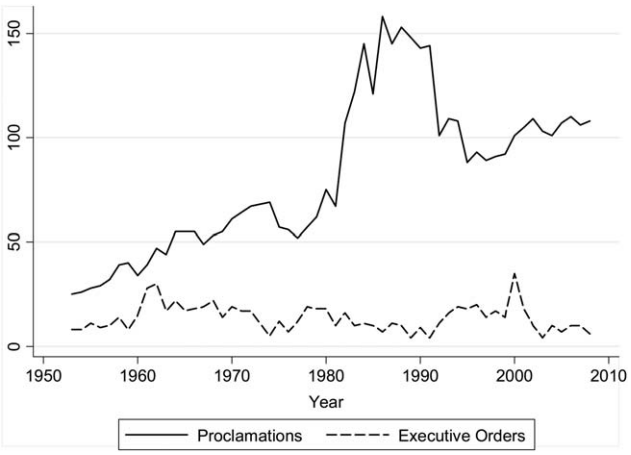

FIGURE 1. Graph of Constituency-Based Unilateral Orders.

errors, tests for such overdispersion are utilized to determine the appropriate model (tests use a log likelihood-ratio test that $\alpha = 0$). The negative binominal is specified as

$$u_i = \exp(\beta_0 + \beta_1 x_{i1} + \cdots + \beta_n x_{in})$$

where n is the total number of independent variables. The estimated results will be interpreted with respect to the change expected count.[8] Substantive interpretations of the predicted change accompany the analysis below.

How Presidents Use Constituency Orders

Figure 1 charts the total number of unilateral directives (proclamations and executive orders) that reached out to a specific constituency issued annually from 1953 to 2009. Proclamations began a linear increase beginning in the 1950s. The growth of political coalitions, especially following the New Deal and the growth of the middle class, created more possible constituencies to be courted by the White House. This upward trend continues until the number of proclamations increased exponentially lasting briefly during the 1980s and early 1990s in the Reagan and Bush (41) administrations. The Reagan administration, followed by the George H. W. Bush administration, made a greater concerted effort to use these directives to court specific constituencies, especially among conservative religious constituencies, partly explaining the rapid increase (Erickson 1985). Subsequent presidents followed suit and began to add their own specific constituencies to the rotating list of groups mentioned in these directives.

8. Percentage change calculated by: 100 {exp (β_k x δ) – 1 }; where β_k is a favor change in x_k. Stata command "mfx" is used to calculate this estimate.

This appears to be a phenomenon concerning proclamations rather than executive orders since most of the increase comes from the spike in proclamations.

In contrast, the number of executive orders increases and decreases over the time period studied but never rises above 25 in a given year. The patterns that occur for executive orders fit conventional thinking that the Democratic Party has a larger and more diverse set of constituencies that it must cater to while Republican constituencies are much narrower in number and scope (see Maisel 2002, 168-69). Specifically, those areas in the trend line that demonstrate presidential increases at using executive orders to reach out to constituencies often occur during Democratic administrations (early 1960s during the Kennedy administration, late 1970s under Jimmy Carter, and during the 1990s when Clinton was in office). In contrast, the patterns during Republican administrations either show a decline (late 1960s and early 1970s in the Nixon administration and especially a sharp drop at the beginning of the George W. Bush presidency around 2001 and 2002).

Figure 1 also demonstrates that there is a wide gap that exists between the number of constituency-based proclamations and executive orders. Both executive orders and proclamations serve many purposes within an administration. However, the manner in which presidents have historically used them might explain part of the difference between these two directives. Cooper (2002, 135-36) underscores this point by stating that "because they [proclamations] are the traditional way that presidents designate holidays, special days of observances, or citations of honor for individuals or groups, they [proclamations] are widely used to respond to constituents." As a result, we should not be too surprised that the overall number of constituency-based proclamations is higher during each year than with respect to executive orders.

Table 1 reveals the results of the individual models, which estimate the effects individually for proclamations and executive orders.[9] In general, presidents use these constituency-based unilateral orders in unique but predictable ways. First, as presidents turn away from other methods to trumpet their constituency-based politics, they are more likely to issue constituency-based unilateral orders. In both the proclamations and executive order models, the effect for press conferences is negative and significant, with presidents issuing fewer orders when they host more press conferences. Although the effects are slight, the trends suggest presidents trade off venues for promoting their symbolic politics. Second, for proclamations, but not for executive orders, there is a sizeable increase of constituency-based orders in the post-Reagan era (about 58 more per year), confirming the ocular results in Figure 1. There was not a similar effect for executive orders. Third, Democratic presidents are more likely to issue constituency-based executive orders (about 12 per year more than Republicans) but not proclamations (about 16 fewer per year). Because the executive orders examined in these models have policy as well as symbolic impacts, it may be that Democratic presidents prefer this tactic to their Republican colleagues who traditionally attempt to minimize the scope of government

9. Collinearity between the other independent and two dependent variables is low. Correlations between average majority party size and divided government are high (r = -.69), but including only one in the models has no effect on individual coefficients in the models. Correlations between the other independent variables are low, with none greater than r = .25. Those that are higher are logical—for instance, a new party to office is correlated at r = .25 with change in popularity.

TABLE 1
Count Models for Constituency Unilateral Orders

	Proclamations[†]	Executive Orders[‡]
Change in Popularity	.001 (.002)	−.009 (.004)
Divided Government	.171** (.094) **[12.5]**	.040 (.131)
New Party	−.135 (.062)	.429*** (.159) **[6.53]**
Election Year	.062 (.054)	.237** (.081) **[3.02]**
Average Majority Party Size	.034*** (.008) **[2.54]**	−.013 (.011)
Democrat	−.218*** (.081) **[−15.7]**	.798*** (.111) **[11.7]**
Post-Reagan Era	.759*** (.060) **[57.8]**	−.102 (.084)
Press Conferences	−.004* (.002) [1.2]	−.009* (.004) **[−.12]**
Constant	2.11 (.513)	3.04 (.667)
N	56	56
Pseudo R^2	**.173**	**.250**
Log-Likelihood	**−230.8**	**−150.2**
Likelihood Ratio χ^2	**96.9*** **	**100.2*** **
$\alpha = 0$	**51.7*** **	**.16**

Note: Dependent variable: "statute" or "nonstatute" sources of authority, 73rd Congress to 109th Congress. [†]Models are Negative binomial count models. [‡]Models are Poisson models. Predicted number of orders for significant coefficients is below the coefficient in brackets. *** $p < .01$, ** $p < .05$, * $p < .10$.

authority. Democratic presidents in our sample have also come to power after a long period of a Republican-led White House (Kennedy following Dwight Eisenhower, Carter following Richard Nixon and Gerald Ford, Clinton following Reagan and Bush). Democratic presidents may be more eager to quickly establish a rapport or to pay back specific constituencies using the power of their office.

We also test the hypotheses described above concerning the frequency of presidential issuance of constituency orders. Table 1 displays multiple models with the number of constituency orders as the dependent variable and several independent variables (both discussed above). Presidential constituency-based proclamations (column 1) reveal an expected pattern: presidents are more likely to issue these types of orders when government is divided and when the average size of the majority party is larger, providing evidence to support H_1. Explaining this, presidents use their unilateral advantage to issue more constituency-based orders when they face a stronger Congress (in the form of divided government or a larger majority party in Congress) that may desire institutional dominance over the executive branch and where the president has less opportunity to legislate to his satisfaction. In both cases, the White House addresses their constituencies directly by using their unilateral executive powers, which are independent of Congress, especially if the president is less likely to get his way in terms of substantive policy.

The results displayed in Table 1 also examine constituency-based executive orders (column 2). Unlike constituency proclamations, presidential executive orders are *less* likely to be issued when the average majority size in Congress is larger. The coefficient for divided government, however, is positive as expected, although it does not reach conventional levels of statistical significance as it did in the models for proclamations. Why

do presidents not issue more constituency-based executive orders when institutional friction is higher as expected? Several causes may explain this. First, being more visible orders, presidents may be reluctant to issue an executive order in these circumstances, whereas they may be more willing to issue a proclamation that may be less visible. Second, as described above, the executive orders in the sample (but not the proclamations) have a policy effect. Presidents may be less willing to use an order that has policy implications in these circumstances whereas they may not hesitate to use a proclamation that has no associated substantive effect.

In addition to these interbranch variables, during election years, presidents are more likely to issue executive constituency orders (about three more per election year), although the statistical significance is modest and limited to only executive orders. This partially confirms the expectation from H_4—the effect is only specific to executive orders, although the coefficients for proclamations are positive as well. The need to stoke constituencies is most prominent during election years, and presidents seek to use their unilateral authority to meet the demands of constituency groups. As is often the case, presidents, especially modern presidents, find difficulty in the legislative process during election years as the opposition to the president on Capitol Hill digs in its heels and resists passing legislation that might help the president or his electoral base. In these instances, presidents appear to have greater strategic luck in issuing constituency-based executive orders (and to a lesser degree proclamations) during elections as a way to communicate with specific interest groups.

The variables that reach statistical significance generally demonstrate that worsening conditions for the White House encourage issuing more constituency-based orders. However, what is not significant in the models is as revealing as what is significant. For instance, the change in the president's popularity has no effect on the number of orders issued in the subsequent year when it was expected in H_1 that it would be an important indicator of presidential unilateral constituency outreach during these times.[10] Presidents do not seem to respond to high or low approval with the issuance of more unilateral orders. Presidents may instead prefer to travel or make speeches to buttress their popularity (Brace and Hinckley 1992), believing these to be a more direct effect on improving popularity. Presidents may also turn to other types of unilateral orders that have policy-based ramifications. For instance, Kelley, Marshall, and Watts (2013) find that presidents are more likely to issue a signing statement when their popularity is higher, reflecting more political capital with which to bargain with Congress.

Similarly, when the president's party is new to office after being out of power, presidents are expected to generate more unilateral constituency orders in H_3. However, contradicting this expectation, presidents do not increase the number of constituency-based proclamations issued in their first year in office. Other means to refashion government or reestablish their party's role may be more prominent than the issuance of such orders such as political appointments or major legislation. In addition, these early-term

10. As a robustness check on this finding, in alternative models we also substituted the average approval for the year and the average approval for the previous year. In both cases, the results were not significant, similar to the finding in the text.

proclamations are often perfunctory, involving directives unifying the nation behind the new president rather than specific to narrow constituencies. For instance, President Clinton issued Proclamation 6525 as "National Day of Fellowship and Hope" after being inaugurated in 1993 proclaiming "As I assume the office of President, I stand humbly before God and ask for His guidance and blessings for our great Nation. At the same time, I ask the citizens of America to join me in renewing our commitment to the American ideals of fellowship and hope" and "we must always remember that the essence of our democracy is the recognition that we are united in a common purpose, working toward a common good."[11]

However, as expected, presidents are *more likely* to issue more executive orders when they are new to office. In Table 1, presidents new to the office issue about seven more constituency-based executive orders than when they are later in their term. Because executive orders are often more visible and have more expansive policy implications, presidents may prefer to use these to establish their footprint early in their administration. Perhaps more importantly, these directives provide a quick and efficient method for presidents to reach out and reward some of those constituencies that provided key support for the chief executive and his party during the recent election season with either symbolic or major policy. For example, George W. Bush did not hesitate to reach out to various religious constituencies nine days after his inauguration in 2001 by signing his first two executive orders to begin pursuing his faith-based and community programs agenda. Both orders were major policy initiatives indicating Bush's serious determination to provide greater policy influence among religious organizations regarding the implementation of some types of social welfare policies and their funding. Specifically, Executive Order 13198 was one of several presidential efforts to begin laying the organizational groundwork for this policy initiative within executive branch departments, agencies, and other units. This directive called for the creation of cabinet-level Centers for Faith-Based and Community Initiatives in the Departments of Justice, Education, Labor, Health and Human Services, and Housing and Urban Development (Bush 2001a). The second directive, Executive Order 13199, created the White House Office of Faith-Based and Community Initiatives which was the main unit overseeing Bush's pet project (Bush 2001b). As a result, Bush's use of executive orders without delay at the beginning of his first term provided the flexibility that was needed to begin pursuing some items on his policy agenda while shoring up and further building support among his constituencies, especially because these directives did not require formal congressional approval.

Conclusions

This article has described the influence of the president's political environment on the likelihood of the president issuing a constituency-based unilateral order. Although others have described the president's unilateral tools as a means to implement public policy without Congress, less attention has been paid to how and when presidents issue

11. We thank an anonymous reviewer for suggesting this point to us.

directives with an eye toward courting specific constituencies as an arm of the public presidency. This is important because most scholars ignore the role of these orders as a way for the president to either claim credit for ceremonial actions or to ingratiate himself with specific constituencies, a key function of these orders. These orders are an important way in which presidents merge the political and institutional functions of their office. In general, then, this article has expanded our understanding of when presidents issue unilateral orders and extends the literature on the institutional foundations of the public presidency. In particular, we argue that our two main contributions are (1) how presidents use these orders as a device to narrow the expectations gap, thus contributing to the unilateral powers of the office; and (2) although other scholars find negative relationships between a president's use of unilateral orders and the amount of institutional friction, we find positive relationships, suggesting that presidents do leverage their institutional advantages even when Congress is in a position to stop the president's ability to legislate or issue more substantive orders.

Specifically, the results suggest that presidents issue more constituency-based proclamations (but not necessarily executive orders) when Congress is stronger (i.e., possessing larger majorities), suggesting that the White House utilizes these directives as a means to solidify their constituencies over a Congress that also desires to establish an electoral connection to voters. Presidents also issue more constituency-based proclamations, but not executive orders, when Congress and the executive branch are more likely to disagree on policy, such as in divided government, or when Congress is institutionally stronger compared to the president, such as when Congress' majority party size is larger. When presidents find they have less clear pathways to make successful policy, presidents turn to these constituency orders as a way to continue to use the profound powers of the office to meet the expectations from individual constituencies. When legislation is less likely to be achieved and presidents turn away from other means to court these groups (such as press conferences), presidents issue more constituency-based orders to demonstrate a close, formal connection to the issues raised by these groups. However, presidents are less likely to issue these orders in other political conditions such as in election years (for proclamations), in changing popularity, or when their party has returned to office.

Several studies suggest presidents issue fewer significant, policy-based directives when there is greater interbranch friction, resulting from fear among chief executives of having their unilaterally set policies overturned (Howell 2003). In contrast to those findings, one important finding from this article demonstrates that the use of constituency-based unilateral orders increases with a larger institutional divide between presidents and their opposition Congresses. Presidents clearly fear less opposition or resistance from Congress for resistance to these orders, which allows the White House to carve out a constituency impact. These results demonstrate a strong institutional effect of the presidents' orders where they are more interested in maintaining an institutional advantage over the legislature than they are interested in stemming falling popularity. Thus, as other works have demonstrated, presidents alter their strategies in issuing these orders based upon their institutional incentives rather than strictly their political incentives. However, the findings here suggest that presidents

are willing to issue constituency orders even when Congress is more likely to be disagreeable to the president's unilateral actions.

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