

Landmark Executive Orders: Presidential Leadership Through Unilateral Action

ADAM L. WARBER, YU OUYANG, and RICHARD W. WATERMAN

Scholars focusing on landmark congressional legislation have not categorized executive orders as similar to legislation passed by Congress, although they have the same legal standing. It is clear that some executive orders have a greater impact than others and thus observers view them as being of greater importance. Ronald Reagan used executive orders to alter the manner in which agencies established regulations, creating a process of administrative central clearance that delegated considerable power to the Office of Management and Budget over the agency regulatory process. Truman used an executive order to desegregate the military. In this article, we examine those orders that are of a level of importance commensurate with landmark legislation, and, using expert scholarly opinion, we discuss and analyze orders that meet these criteria.

Keywords: executive orders, presidential leadership, unilateral presidency

There shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion, or national origin.

—Harry S. Truman, Executive Order 9981

The Secretary of State shall establish as an agency in the Department of State which shall be known as the Peace Corps.

—John F. Kennedy, Executive Order 10924

Just as presidents seek fundamental change through landmark legislation, presidents long have employed executive orders to adopt major policy change. Not all executive orders are alike, in terms of substance or importance, and while a vast literature on executive orders exists, much of it focuses on narrow questions such as whether presidents issue more orders during periods of divided government or ideological polarization (see, e.g., Deering and Maltzman 1999; Howell 2003; Mayer 2001; Warber 2006). While

Adam L. Warber is a professor of political science at Clemson University. His research focuses on the administrative presidency and the unilateral powers of the president. **Yu Ouyang** is an assistant professor of political science at Purdue University Northwest. His research focuses on the unilateral presidency and quantitative methods. **Richard W. Waterman** is a professor of political science at the University of Kentucky. His research focuses on the unilateral presidency, presidential appointments, and the politics of the bureaucracy. **AUTHORS' NOTE:** We thank the anonymous reviewers for their helpful comments and feedback and those presidency scholars that provided us with valuable information about the classification of landmark executive orders.

these are certainly important questions, **the substance of executive orders has received far less scholarly attention**. As the two executive orders referenced above demonstrate, presidents often address important substantive policies in executive orders. **Furthermore, these orders have the same legal standing as a law passed by Congress** (Mayer 2001, 35). In this article, we rely on expert scholarly opinion to identify these more important orders, similar in scope to significant landmark legislation, or what we call: landmark executive orders.

We argue that there is a critical need to address the issue of landmark orders. As a president's reputation rests on landmark legislation (such as Franklin Roosevelt's New Deal or Lyndon Johnson's Great Society legislation), **unilateral action also defines a president's historical standing**. Truman's order desegregating the military adds to his standing among presidential scholars, while Franklin Roosevelt's order regarding the internment of Japanese Americans represents a stain upon his historical reputation. Regarding unilateral action more generally, one of Lincoln's most important policies was established by executive action with his pronouncement of the Emancipation Proclamation. Thomas Jefferson commenced the Louisiana Purchase unilaterally. And presidents today initiate important policy action on the environment, immigration, and national security via executive orders, national security directives, proclamations, and other unilateral actions (Cooper 2014). Consequently, the substance of unilateral action matters. Surprisingly, then, there currently is no systematic analysis of the policy substance of unilateral action. Most textbooks on the American presidency either briefly examine executive orders, at best discussing a few important ones, or merely list the number of orders issued by each president. And while empirical research notes that the vast majority of executive orders can be characterized as routine, insignificant, or minor, there is little examination of the substance of these orders beyond these broad categorizations. Scholars have identified that while presidents issue fewer executive orders on average per year in recent administrations, they do issue more major orders (Warber 2006, 39–40). We posit that if presidents are issuing more major orders, we need to have a better systematic understanding of how these orders affect the policy and political process. Our task here is to begin to unpack the larger categories of major and significant orders and to identify those orders that have a more important impact policy-wise and on a president's reputation. To do so, we rely on expert opinion to identify what scholars perceive to be the most important executive orders. As we demonstrate, there is a considerable divergence of scholarly opinion regarding which orders are of a landmark nature, with presidential scholars more likely to identify orders related to civil rights and liberties.

The Study of Presidential Executive Orders

There has been an enormous advance in scholarly research on presidential executive orders during the past 20 years, both qualitatively and quantitatively (Cooper 2014; Deering and Maltzman 1999; Dodds 2008; 2013; Fine and Warber 2012; Howell 2003; Krause and Cohen 2000; Marshall and Pacelle 2005; Mayer 1999; 2001; Mayer and Price 2002; Ouyang and Waterman 2015; Rottinghaus and Warber 2015; Rudalevige 2012;

Warber 2006; Wigton 1996). This scholarship is marked by three major areas of research activity: utilizing legal, constitutional frameworks to analyze executive orders; the building of empirical models to explain presidential decisions to issue executive orders; and considering how scholars should treat executive orders within their studies and whether there are important justifications for classifying these presidential directives into different types of policy categories before analyzing them.

Most executive order studies have been rooted within a legal framework that assessed the constitutionality of the president's unilateral power, while also describing how presidents exercised this extraconstitutional power over time (see, e.g., Cooper 1986; Fleishman and Aufses 1976; Raven-Hansen 1983). In some instances, researchers used in-depth case studies to explore specific executive orders, or they concentrated on a collection of executive orders related to a specific policy domain. For example, rich qualitative studies exist on Franklin Roosevelt's internment of Japanese Americans on the West Coast during World War II (Robinson 2001), civil rights of African Americans (Morgan 1970), Harry Truman's Executive Order 9981 desegregating the armed services (Mershon and Schlossman 1998; Taylor 2013), and Truman's Executive Order 10340 instructing the Department of Commerce to seize the nation's steel mills to prevent a nationwide strike in that industry (Marcus 1977). In recent years, historians and political scientists have begun to identify unilateral actions taken by earlier administrations before the modern presidency, such as Thomas Jefferson and Abraham Lincoln (Dodds 2013). A recent biography by Ronald C. White (2016) demonstrates that Ulysses Grant initiated many civil rights actions through unilateral action (523). While much of this qualitative work generates rich, descriptive information, it only provides a further rationale for a more comprehensive study of the subject of important unilateral actions. It also demonstrates that if we ignore unilateral action and examine only so-called landmark legislation, we ignore much of importance that presidents achieve.

Contemporary research on executive orders also has centered on building empirical models to explain why the number of executive orders that presidents sign varies over time. Those studies discovered that numerous variables can influence the president's decisions to strategically issue an executive order, including the state of presidential approval and the role of the national economy (Krause and Cohen 1997, 472–73) along with party control of the White House (Mayer 1999, 457–59; Mayer 2001, 96; Warber 2006, 45). There also is evidence suggesting that the electoral environment, such as midterm and presidential election years, can shape the president's executive order activity (Mayer 1999, 457–59; Ragsdale and Rusk 1999, 112). A significant amount of this empirical research focuses on the influence of divided government. However, scholars have produced mixed findings that have left this topic open to further research. Most studies conclude that presidents issue a greater number of executive orders during unified rather than divided government (Gleiber and Shull 1992; Howell 2003; Krause and Cohen 1997; Mayer 1999; 2001; Warber 2006). Deering and Maltzman (1999) presented evidence that presidents use executive orders to bypass a Congress that is difficult to work with on public policy. Fine and Warber (2012) found that “presidents are more likely to sign symbolic and routine executive orders during unified government and when Congress is ideologically proximate. In contrast, major policy orders are more prevalent when

the *preferences* of the president and Congress diverge” (272; see also Ouyang and Waterman 2015).

More recently, some attention among scholars has shifted to assessing the influence of the public presidency on the types of unilateral strategies that chief executives undertake to pursue their policy agendas (Warber 2014). Specifically, those studies show that presidents use executive orders to create public policy that targets specific constituencies, including women, African Americans, labor unions, and environmentalists. Rottinghaus and Warber’s (2015) empirical models linking the public and the unilateral presidencies to both executive orders and presidential proclamations found that presidents use both of these tools strategically to build support with various constituencies in the public. However, “presidents issue more constituency-based proclamations (but not necessarily executive orders) when Congress is stronger (i.e., possessing larger majorities). . . [and] when Congress and the executive branch are more likely to disagree on policy, such as in divided government . . .” (Rottinghaus and Warber 2015, 306). Because these findings suggest that presidents use unilateral action strategically, these studies provide an additional rationale for studying the substance of unilateral action.

How then can we measure and analyze executive orders based on their policy substance? The common method is for scholars to treat each executive order equally in terms of importance and policy substance. Certainly this approach is appealing to scholars in today’s data-driven discipline. It is much easier and less time consuming for researchers to use the number of executive orders that presidents issue either on a yearly or monthly basis within their empirical models rather than content analyzing the text of each executive order. In fact, prior to Mayer’s (2001) groundbreaking research on executive orders, scholars did not even consider the importance of separating executive orders into different types of directives before analyzing them. In his seminal book, Mayer classified each executive order as either significant or nonsignificant. An executive order was significant if it resulted in “press attention, congressional notice, presidential emphasis, litigation, or creation of institutions with substantive policy responsibility” (Mayer 2001, 85). In another study, Mayer and Price (2002) added to these five criteria for classifying executive orders as significant by adding a sixth benchmark that they termed “scholarly treatment.” Specifically, they combed various research studies produced by legal and presidential scholars to identify those executive orders that they referred to in their works. However, in order for an executive order to be deemed significant, a directive only had to meet one of these six criteria (Mayer and Price 2002, 375).

In his equally influential book, Howell (2003) categorized his sample of executive orders by deeming directives significant if they were mentioned in the *Congressional Record*, court rulings, or the *New York Times* (Howell 2003, 80–81). Although both approaches move beyond treating each executive order as equal in terms of importance, Mayer and Howell focused on the coverage of executive orders rather than on the actual policy substance contained in the text of each directive. That is, they rely on various media outlets and political actors in government to assist them in determining which directives are deemed significant and those that are less important, as well as congressional or judicial interests. A limitation of this approach is that media sources may be biased toward certain policy areas (e.g., they may be more likely to report stories about the

environment). Furthermore, those executive orders that are reported in the various sources used by Mayer and Howell are automatically classified as significant directives. Why should we assume that media reporting or government documents merely make reference to so-called significant executive orders? Is it possible that media reporting occurs for those directives as well that might be deemed less important in terms of policy, such as those directives that the White House relies on for ceremonial or symbolic policy purposes? Members of Congress have their own particularistic policy concerns. Likewise, the courts only examine issues that are brought before them. Hence, none of these approaches assess common characteristics in a systematic manner that is related to the actual substance of unilateral action.

Warber (2006) is the first to content analyze the text of all executive orders from 1936 through the end of the George W. Bush administration. Specifically, each executive order is classified as either a symbolic, routine, or a major policy directive. Symbolic directives are those that are ceremonial such as the president issuing a new medal for soldiers in the armed forces or developing official seals for newly created federal departments or agencies (Warber 2006, 141). These directives are different from other types of executive orders in that the policies are noncontroversial and they should not receive much, if any, criticism from other governmental actors or the media. In essence, these are the types of executive orders where politicians are less likely to challenge the president in order to avoid burning unnecessary political capital. Those executive orders that are marked as routine are either directives that fulfill purely administrative, clerical, or housekeeping functions in the executive branch or they are directives that presidents use to implement existing federal laws established by Congress. As a result, routine executive orders do not create new policies, nor do they depart from already established public policies. Instead, this type of executive order is used by the president to fulfill his constitutional function of executing the laws. For example, Section 10 of the Railway Labor Act (45 U.S.C. 160 (1926)) grants to presidents the power to establish temporary emergency boards to mediate labor disputes that occur between employers in the transportation industry, such as the airline or railroad industry, and their employees, in order to avoid possible strikes. Chief executives commonly sign an executive order officially forming an emergency board along with providing an expiration date that denotes the time in which a board's authority and responsibilities to work on a dispute formally ends (Warber 2006, 142).

Those executive orders that are classified as major policies in Warber's data set represent efforts by chief executives to go around Congress by establishing policy on their own. More precisely, major policy executive orders are "either departing from the status quo of a specific policy that has already been implemented, or interpreting and implementing legislation that diverts from the original intent of Congress. In essence, an order is a policy initiative when its main function is presidential lawmaking" (Warber 2006, 143). George W. Bush circumvented Congress in relation to abortion policy by issuing Executive Order 13435 on June 20, 2007, which put the brakes on embryonic stem cell research (Bush 2007, 34591). This directive represented a major attempt by the president to establish policy unilaterally with the stroke of his pen.

Still, despite the efforts by Mayer, Howell, and Warber to separate directives into different policy types, much of the research since these studies continues to assume that each executive order is equal in terms of its policy substance. As a result, there have been limited efforts to create new classifications of executive orders based on their policy substance. This state of affairs is understandable given the significant time commitment required to classify executive orders. For example, the content analysis that Warber (2006) undertook to create his data took over a year and his data collection technique did not rely on computer software to conduct the content analysis. It also reflected the judgment of one presidential scholar.

We should note that there have been some studies that built on existing data sets that separated executive orders in order to analyze the strategic advantages of presidential unilateral activity (see, e.g., Chiou and Rothenberg 2014; Major 2014). However, the classification schemes used by Mayer, Howell, and Warber only go so far in advancing our understanding of the substance of unilateral action. They have not been scrutinized in detail by the scholarly field, nor has there been much discussion or consensus among scholars about how to best treat executive orders in terms of the policy substance of those directives. As a result, there exists no consensus among researchers regarding the criteria used to identify those executive orders in which the policy substance of those directives represents significant or landmark policies. In this study, we provide a preliminary examination using expert opinion as a means of identifying what we call landmark executive orders. Our goal is to begin the conversation in the field of the unilateral presidency for determining how scholars might more systematically pinpoint and assess those important executive orders that reach landmark status.

Landmark Executive Orders

Landmark legislation long has been considered a benchmark in evaluating a president's performance and historical standing. Whether it is *Congressional Quarterly's* measure of presidential success in passing legislation or historians citing what they identify as key laws enacted during each presidency, presidential reputations are forged on the steel of landmark legislation. Yet, presidents have other tools and resources at their disposal to build their policy legacies. As Moe (1985) argued, presidents continue to develop new resources in order to satisfy public expectations. As such, while landmark legislation provides one benchmark for evaluating each president's performance, it is insufficient. Unless we also examine how presidents accomplish their agendas through these other tools or resources, we are missing an important piece of the puzzle regarding presidential power. This next step involves an understanding of how presidents use various unilateral authorities to advance their policies, either directly by establishing new approaches or by inducing Congress to then enact legislation more favorable to the president's policy preferences. This step requires us to do more than simply examine the raw number of executive orders issued by presidents, for example, or even the major, routine, minor, significant, or nonsignificant orders. Just as a count of the number of laws passed during a president's term would be misleading, a mere count of unilateral actions only takes us so

far in understanding what presidents want and what they achieve. Cooper (2014) underscored this point by noting that merely counting executive orders for research purposes “is an unhelpful exercise because the issue is more about content than quantity” (16). Therefore, a more promising approach is to examine the actual policy substance of unilateral actions to determine whether certain directives represent landmark policies. To do so, we begin by examining scholarly perceptions of the most commonly studied unilateral activity, executive orders. Because executive orders are the better known and most often studied of unilateral actions, the substantive impact of these orders should be more apparent. However, before we can proceed, existing scholarship on landmark legislation in Congress serves as an important guide to how we might identify landmark executive orders.

How then have scholars identified landmark legislation? In his pivotal work, David Mayhew (1991) was interested in whether divided government impacted congressional passage of landmark legislation. He therefore identified landmark bills by (Sweep 1) examining data from the *New York Times* and *Washington Post* to detect important legislation passed by Congress during each year from 1947 to 1990 and (Sweep 2) expert retrospective opinions of the policy importance of legislation. Since Mayhew, other scholars have applied related methods to identify landmark legislation. Howell et al. (2000) classified legislation into four categories from minor to landmark. A fresh approach was adopted by Heitshusen and Young (2006), who employed legal history, and Clinton and Lapinsky (2005), who used an item-response method to measure this important concept. As these examples demonstrate, no one method has been employed to measure whether laws can be classified as achieving landmark status, but much progress has been made in terms of identifying the most important laws passed by Congress.

Likewise, different approaches are required to identify landmark executive orders. As we have noted, Mayer (2001), Mayer and Price (2002), Howell (2003), and Warber (2006) already have made important contributions in this regard. But their work leaves us with another interesting question. Are there executive orders that are of an even higher magnitude of impact and importance than the ones they categorized as significant or major orders? Clearly, not all substantive or major orders are of the same importance. Just as some legislation is important, yet more narrow in its impact, some executive orders can be expected to have a broader impact on policy than others, as well as exerting an impact over a longer duration. For instance, orders impacting the issuance of federal regulations can impact industries across the entire economy. Identifying landmark executive orders is therefore not merely an interesting academic exercise, a mere parlor game, but as with the identification of landmark legislation, one that helps us to unpack the still copious list of major orders and to identify the truly transformative orders. To begin this process, we identified presidential scholars in a range of different fields, including those who primarily examine unilateral action, presidential–congressional interactions, and generalists. We did not identify scholars using a random sample. Rather, we selected individuals who published widely in these three areas, in mainstream journals and books with important university and commercial presses. We also focused on individuals who currently are actively engaged in research and who teach presidency classes at their respective universities. Our approach therefore was to identify individuals who were most likely to be

knowledgeable about unilateral action and the unilateral presidency literature. We then contacted these scholars via e-mail and posited the following question:

While considerable attention has been paid to so-called landmark legislation, most of the focus on executive orders has been on examining whether presidents issue more major or significant orders during periods of divided government, etc. While scholars have developed different measures of major or significant orders, there has been much less attention paid to the actual substance of these orders. . . Could you please take a few minutes to consider this question and then send an email with what you consider to be the five or ten most important executive orders issued by presidents. The purpose of this initial focus is to see if there is any consensus among scholars on this point.

We then provided Truman's Executive Order 9981, desegregating the military, as an example of a landmark executive order. We did not limit the analysis to any one time period, leaving scholars the opportunity to choose executive orders from any presidential administration in American history. Again, we decided to focus only on executive orders given their familiarity because (1) they have received the most attention in the scholarly literature compared to other types of unilateral tools and (2) they are most often reported by the media. Our main interest was not to identify all landmark orders but merely, as a first step, to determine if there is any *consensus* among scholars on this point. Because this is a pilot study, we contacted 15 scholars and received 11 responses. Given the small number of respondents and the informal manner in which the question was posed, the results presented here should only be interpreted with regard to the narrow issue of whether a consensus exists among these scholars on the issue of the most important executive orders. Table 1 presents the responses given by our experts.

There was total agreement on one executive order: Franklin Roosevelt's order regarding the internment of Japanese Americans during World War II. The second-highest level of agreement related to Eisenhower's use of the National Guard in Little Rock, Arkansas; Lyndon Johnson's order on equal employment opportunity; and Reagan's implementation of a process for the central clearance of all government regulations. In addition, five of our respondents identified Roosevelt's order establishing the Works Progress Administration and Truman's steel seizure order. Slightly less than half of our experts identified Kennedy's establishment of the Committee on Equal Employment Opportunity and Reagan's order on intelligence activities. Among these eight orders, the most apparent observation is that most deal with issues related to civil rights/civil liberties and equal opportunity, a result that may be impacted by our example. Still, while the mention of civil rights orders is understandable, it is surprising that only one order deals with the regulatory process or foreign policy. When examining important executive orders, the presidential scholars that provided expert advice paid more attention to initiatives dealing with both domestic policy and civil rights/civil liberties issues.

Again, surprisingly to us, of the 39 different orders identified, about one half (19) were mentioned only once. These orders cover a wide range of policy areas, including civil rights, foreign policy, and economic policy, as well as the establishment of federal agencies. It is interesting to note that foreign policy-related orders were far more likely to be included in this latter category, as were those involving what can best be described as

TABLE 1
Expert Responses on Important Executive Orders

<i>Date</i>	<i>Title</i>	<i># of Times Mentioned</i>
2-Jul-1861	Executive Order - Authorizing General Winfield Scott To Suspend the Writ of Habeas Corpus	1
29-Jun-1934	Executive Order 6763 - Creating of the First National Labor Relations Board	1
6-May-1935	Executive Order 7034 - Creating Machinery for the Works Progress Administration	5
8-Sep-1939	Executive Order 8248 - Establishing the Divisions of the Executive Office of the President and Defining Their Functions and Duties	2
14-Sep-1941	Executive Order 8683 - Establishing Naval Defensive Sea Areas Around and Naval Airspace Reservations Over the Islands of Rose, Tutuila, and Guam	1
25-Jun-1941	Executive Order 8802 - Reaffirming Policy of Full Participation in the Defense Program by All Persons, Regardless of Race, Creed, Color, or National Origin, and Directing Certain Action in Furtherance of Said Policy	2
19-Feb-1942	Executive Order 9066 - Authorizing the Secretary of War To Prescribe Military Areas	11
16-Dec-1950	Executive Order 10193 - Providing for the Conduct of the Mobilization Effort of the Government	5
8-Apr-1952	Executive Order 10340 - Directing Secretary of Commerce to Take Possession and Operate the Plants and Facilities of Certain Steel Companies	5 1
5-Nov-1953	Executive Order 10501 - Safeguarding Official Information in the Interests of the Defense of the United States	1
24-Sep-1957	Executive Order 10730 - Providing Assistance for the Removal of an Obstruction of Justice Within the State of Arkansas	6
1-Mar-1961	Executive Order 10924 - Establishment and Administration of the Peace Corps in the Department of State	3
6-Mar-1961	Executive Order 10925 - Establishing the President's Committee on Equal Employment Opportunity	4
17-Jan-1962	Executive Order 10988 - Employee-Management Cooperation in the Federal Services	1
20-Nov-1962	Executive Order 11063 - Equal Opportunity in Housing	1
24-Sep-1965	Executive Order 11246 - Equal Employment Opportunity	7
8-Aug-1969	Executive Order 11478 - Equal Employment Opportunity in the Federal Government	1
1-Jul-1970	Executive Order 11541 - Prescribing the Duties of the Office of Management and Budget and the Domestic Council in the Executive Office of the President	1
15-Aug-1971	Executive Order 11615 - Providing for Stabilization of Prices, Rents, Wages, and Salaries	2
18-Feb-1976	Executive Order 11905 - United States Foreign Intelligence Activities	3
24-Jan-1978	Executive Order 12036 - United States Foreign Intelligence Activities	2

Table 1. *Continued*

<i>Date</i>	<i>Title</i>	<i># of Times Mentioned</i>
31-Mar-1979	Executive Order 12127 - Federal Emergency Management Agency	1
20-Jul-1979	Executive Order 12148 - Federal Emergency Management	3
17-Feb-1981	Executive Order 12291 - Federal Regulation	6
4-Dec-1981	Executive Order 12333 - United States Intelligence Activities	4
4-Jan-1985	Executive Order 12498 - Regulatory Planning Process	3
30-Sep-1993	Executive Order 12866 - Regulatory Planning and Review	2
8-Mar-1995	Executive Order 12954 - Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts	1
8-Oct-2001	Executive Order 13228 - Establishing the Office of Homeland Security and the Homeland Security Council	1
1-Nov-2001	Executive Order 13233 - Further Implementation of the Presidential Records Act	1
16-Nov-2001	Executive Order 13235 - National Emergency Construction Authority	1
18-Jan-2007	Executive Order 13422 - Further Amendment to Executive Order 12866 on Regulatory Planning and Review	1
22-Jan-2009	Executive Order 13491 - Ensuring Lawful Interrogations	3
9-Mar-2009	Executive Order 13505 - Removing Barriers to Responsible Scientific Research Involving Human Stem Cells	1
24-Mar-2010	Executive Order 13535 - Ensuring Enforcement and Implementation of Abortion Restrictions in the Patient Protection and Affordable Care Act	1
7-Mar-2011	Executive Order 13567 - Periodic Review of Individuals Detained at Guantanamo Bay Naval Station Pursuant to the Authorization for Use of Military Force	1
12-Feb-2014	Executive Order 13658 - Establishing a Minimum Wage for Contractors	2
21-Jul-2014	Executive Order 13672 - Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity	1
19-Mar-2015	Executive Order 13693 - Planning for Federal Sustainability in the Next Decade	1

Note: This table presents the results of the initial round of expert surveys. Listed in chronological order, the rightmost column displays the number of times that each executive order was noted by an area expert.

orders impacting administrative or bureaucratic activity. From these results, we surmise that if we were to have asked foreign policy experts or bureaucratic scholars for their opinions, these categories would have received far greater attention, suggesting that a formal survey should take into account the opinions of a wide variety of scholars and policy experts.

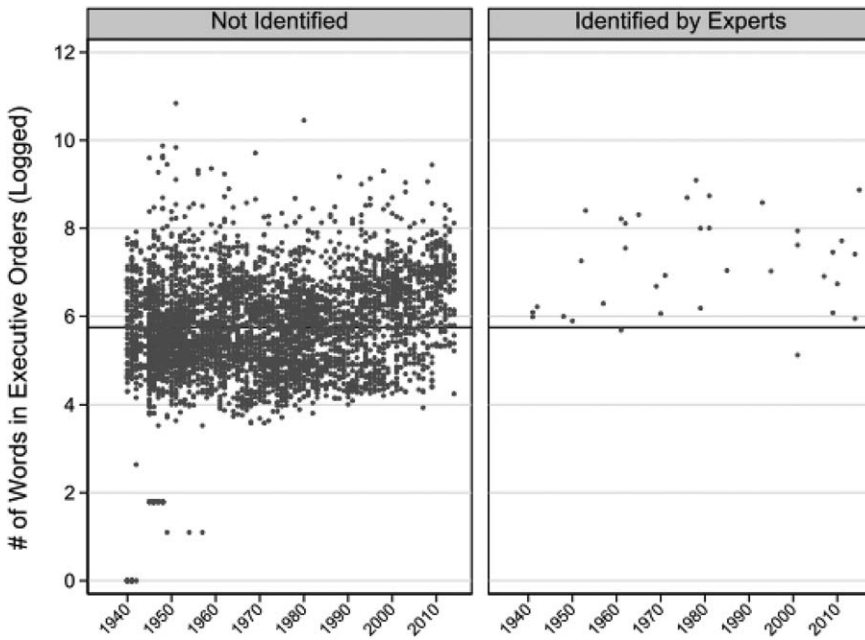


FIGURE 1. Expert-identified versus all other executive orders.

Notes: The y axis presents the number of words in each executive order (logged). The x axis marks the year in which the order was issued. The horizontal line represents the global average number of words in executive orders. As shown, landmark executive orders (with few exceptions) consistently contain a greater amount of policy context, compared to all other orders in the data set.

Because only eight of the 39 orders mentioned received four or more mentions, there is considerable variation with regard to what constitutes an important executive order. Given the lack of attention to this issue in past research, this is not a surprising result. Of the 39 executive orders, we can match 29 to Warber’s (2006) data. Twenty-two were coded by Warber as “major policy orders,” two as “routine” orders, and five as “hybrids” or executive orders “containing combinations [of]...routine and policy” components (145). These orders include Executive Orders 8248 (Establishing the Divisions of the Executive Office of the President), 8683 (Establishing Naval Defense), 11541 (Prescribing Duties of the Office of Management and Budget and Domestic Council), 11905 (U.S. Foreign Intelligence Activities), 12148 (Federal Emergency Management), 13233 (Further Implementation of the Presidential Records Act), and 13235 (National Emergency Construction Authority). These orders have certain features in common; they are either administrative in nature or relate to foreign policy. Again, as with our respondents, foreign policy experts and bureaucratic scholars likely would evaluate executive orders in different ways, therefore justifying a broader-based survey of political, policy, and historical experts beyond our preliminary study to identify landmark executive orders.

The Determinants of Landmark Executive Orders

As the previous section indicates, there is considerable variation in terms of the identification of landmark executive orders. This section examines how well previous methods of classifying executive orders match with our respondents' landmark order identifications. We first asked ourselves: Do landmark executive orders differ substantively from non-landmark orders in terms of policy content? To address this concern, we followed Ouyang and Waterman (2016) by employing a word count to gauge the amount of policy information embedded within each order. Elsewhere, in both the bureaucracy and the courts literature (e.g., see Huber and Shipan 2002; Randazzo and Waterman 2014), scholars established that greater document length is indicative of greater detail about the new policy, resulting in a lower level of bureaucratic or judicial discretion. Figure 1 provides a comparison of identified landmark versus all other executive orders in our initial round of expert survey. The goal is to provide an initial glimpse into the differing policy contents of important directives or what we call landmark executive orders versus non-landmark orders.

We next ask whether (1) policy substance/words of the orders, (2) interinstitutional dynamics, (3) media coverage, (4) political environment, and (5) administration-specific characteristics impact the issuance of landmark orders. Our intent is not to build a comprehensive empirical model but to provide an initial assessment into the potential determinants of the identified landmark executive orders. For instance: Are the landmark orders identified by our presidential experts more likely to be issued during times of greater turmoil between the executive and the legislature? Do periods of economic distress result in a greater probability of an executive order that will later be deemed landmark? To measure landmark orders, we again employ the orders identified by our respondents as the most important executive orders.

Again, because this is a pilot study, the results presented herein are designed mainly to provide the basis for the formulation of hypotheses moving forward in a more comprehensive study of expert opinion. Table 2 presents the results of six different logistic regression models.¹ Models 1 and 2 assess the impact of executive order policy content on the probability of said order being identified as landmark, a test of the Ouyang and Waterman (2016) measurement approach. Model 3 examines whether Congress and/or the courts are more likely to discuss landmark executive orders, two factors captured by Howell (2003) in his analysis of executive orders. Model 4 assesses the agreement between expert-identified landmark orders and Warber's (2006) comprehensive coding of executive order substance. Models 5 and 6 identify whether the media are more likely to report on landmark orders, another measure used by Howell (2003). Because of concerns about multicollinearity, we ran each of these models separately, though we included a number of control variables in each model: (1) presidential ideology, (2) policy differences between the president and the House, (3) policy differences between the president and the Senate, (4) divided government in the House, (5) divided government in the Senate,

1. As landmark executive orders are relatively rare events, we also replicated the same analyses using rare-events logistic models. The results are similar.

(6) presidential approval ratings (Gallup), and (7) the misery index. The unit of analysis is each executive order issued since Franklin Roosevelt. The dependent variable is coded 1 if an executive order is identified by experts as a landmark executive order.

As expected, the word count, discussions of executive orders in Congress and the courts, Warber's (2006) coding of executive order significance, and media coverage all predict the probability that experts will identify that particular order as a landmark directive. Hence, our results provide a validity test for our approach by comparing it to past methods of coding the importance of an executive order. As indicated by Figure 1, as the number of words in an executive order increases, the probability that an executive order is an important/landmark order increases. When Congress or the courts mention an executive order during discussions, that order is more likely to be of greater import than otherwise. Warber's (2006) coding of major policy executive orders is correlated with the likelihood of a landmark executive order. Lastly, Models 5 and 6 suggest that when the media reports on an executive order, it is more likely that an executive order is significant. Thus, the expert opinion reported here is consistent with existing measures of the importance of executive orders.

We are surprised, however, to find that almost none of the other variables predict the likelihood of a landmark executive order. In the studies we cited earlier, scholars note that various measures of divided government are strong predictors of the extent of the president's unilateral activity. Similarly, as executive orders provide an expedient means for presidents to exert influence over public policies, one would expect that presidential ideology, a measure of the chief executive's policy preferences, would strongly predict a landmark executive order. This was not the case. We found that, out of a set of variables that should theoretically impact unilateral executive policy making, only the binary variable denoting the president's first year in office is statistically significant in predicting landmark executive orders. We suspect that this is largely due to the fact that the chief executive is often more active when he first gets into office, as the administration attempts to reverse the predecessors' directives (as exemplified by the early activity of the Donald Trump presidency).

Again, one must assume caution in interpreting our results. The results may be due to the small number of orders identified. It also is possible that the most important orders reflect different determinants than do all major or substantive orders. After all, these so-called landmark orders are likely to be the ones for which presidents are most remembered and, as with Franklin Roosevelt's order on Japanese internment, most likely to impact their historical reputation.

Alternatively, it is possible that it may be exceptionally difficult for empirical models to predict or accurately capture which executive orders are landmarks. After all, identifying landmark-status executive orders, even those identified by subject experts, is fundamentally a judgment call, prone to subjective considerations, idiosyncratic factors, and arbitrary thresholds used to determine executive order significance. While this is a distinct possibility, given the growing body of literature in identifying and assessing the determinants of landmark legislations (see, e.g., Clinton and Lapinski 2005; Dodd and Schraufnagel 2012; Howell et al. 2000), as well as the development of methodological tools for such purposes (Chiou and Rotheberg 2014; Clinton and Lapinski 2006), we

TABLE 2
Determinants of Landmark Executive Orders

	(1)	(2)	(3)	(4)	(5)	(6)
Word Count (Logged)	1.20*** (0.16)					
Word Count (Raw Number)		0.00*** (0.00)				
Congressional & Judicial Mentions Warber (2006)			2.81*** (0.43)			
				3.33** (1.03)		
Press Coverage					2.28*** (0.40)	
NYT Coverage						2.45*** (0.45)
First Year in Office	0.98* (0.43)	1.01* (0.43)	0.98* (0.45)	0.84+ (0.46)	0.81+ (0.43)	0.91* (0.44)
Constant	-14.57*** (1.96)	-6.75*** (1.47)	-6.56*** (1.49)	-8.64*** (1.77)	-6.65*** (1.49)	-6.98*** (1.48)
N	3305	3305	3305	3158	3305	3305
pseudo R ²	0.191	0.055	0.162	0.119	0.125	0.137
AIC	289.06	334.27	298.46	276.95	310.80	307.00
BIC	350.09	395.30	359.50	337.53	371.83	368.03

Note: Logistic regression models are presented. The unit of analysis is an executive order. Dependent variable is coded 1 if identified by experts as an important executive order. Variables that are not statistically significant are not shown: presidential ideology, policy difference between president and House/Senate, divided government in House/Senate, presidential approval ratings (Gallup), and misery index. Standard errors are in parentheses. NYT = *New York Times*; AIC = Akaike's information criterion; BIC = Bayesian information criterion. ⁺ $p < .1$; * $p < .05$; ** $p < .01$; *** $p < .001$.

argue that the time is ripe for a similar, large-scale project on executive unilateralism that examines not only executive orders but additional presidential unilateral tools, including proclamations, executive memoranda, and signing statements. As such, this project represents the first step in our attempt to formulate a more comprehensive assessment of executive unilateralism and policy making by executive fiat.

Conclusion

This study is merely a first step toward the measurement and identification of the substance of unilateral action. The results, predictably, suggest that more empirical and theoretical work is required, particularly in the area of the subset of executive orders that arguably have the greatest impact on the policy landscape. Understanding the nature and extent to which presidents employ executive orders and other unilateral actions to effect change in public policy is a critical component of the study of the presidency and American politics. Though prior works tend to treat all executive orders as being either

major or minor orders or, alternatively, significant, routine, or insignificant orders, some executive orders are more important than others. Using expert opinions, we identified and examined a particular subset of executive orders that resulted in significant change to previous policies or what we call landmark executive orders.

In our initial effort to understand systematically how landmark executive orders affect the policy and political process, we find that not only is there a considerable divergence of expert opinion on the most important orders but existing models do a poor job of predicting landmark executive orders. This finding suggests that landmark executive orders, in addition to their critical impact on policies, belong to a unique set of unilateral executive decisions that warrants greater attention by scholars.

The next step involves a systematic approach to the analysis of executive actions. The most promising approach involves the use of programs to content analyze legislation in combination with past methods (such as those employed by Howell and Warber), which as we have demonstrated are related to our survey of expert opinions. There also are qualitative approaches that can be useful. Historians and political scientists have begun to focus on the unilateral actions of various presidents. The historical reputation of Ulysses Grant has improved markedly based on the 2009 and 2017 CSPAN historical ratings of each president, as recent scholarship has demonstrated that Grant initiated much of his civil rights actions through unilateral means (see White 2016). When we ignore the substance of such actions, we undervalue the accomplishments of presidents such as Grant, who heretofore was judged harshly by historians. As the presidency evolves, and as presidents identify new means of unilateral influence, such as George W. Bush's innovations with presidential signing statements or Ronald Reagan's increased use of national security directives to avoid congressional scrutiny of his foreign policy in Latin America, it is vital that scholars begin to focus greater attention on the substance of unilateral action, as well as its mere prevalence. We believe that this represents a new and exciting area of research for presidential scholars.

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