Circumventing Adversity: Executive Orders and Divided Government

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Scholars of the unilateral presidency are left with an empirical puzzle regarding whether and how divided government influences presidential use of executive orders. While the strategic model suggests that presidents should issue more executive orders when faced with an adverse situation vis-à-vis Congress, most of the research finds just the opposite. We offer a more appropriate test of the strategic model by examining how presidential-congressional adversity influences presidential decisions to issue symbolic, routine, and major policy executive orders. We find support for the strategic model and present new findings to demonstrate that presidents behave differently with respect to distinct types of executive orders during periods of unified and divided government.

The influence of divided government on the president's executive order activity remains largely unresolved in research on the unilateral presidency. Much of the literature has analyzed the "strategic model,"[1] which theorizes that presidents rely on executive orders to circumvent a hostile Congress (see Deering and Maltzman 1999). To date, this strategic model has been met with mixed results. The bulk of the research challenges this model by finding little evidence to show that presidents are more likely to behave unilaterally through executive orders when faced with an adverse political climate on Capitol Hill (Gleiber and Shull 1992; Mayer 1999; 2001; Mayer and Price 2002; Warber 2006). However, other studies find that presidents do indeed issue more executive orders when they encounter a

1. We recognize that other actions by the president can be categorized as being "strategic." However, our referral to the "strategic model" in this study is tied to the terminology used by Deering and Maltzman (1999).

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Congress that is less willing to cooperate with the White House on policy making (Deering and Maltzman 1999). As a result, scholars of the unilateral presidency are left with an empirical puzzle regarding whether and how divided government influences presidential use of executive orders. We argue that this puzzle persists because the existing literature has yet to test fully the underlying assumptions of the strategic model.

In this article, we examine the influence of presidential-congressional adversity on the president's decisions to issue executive orders. We argue that a more robust test is necessary to assess the validity of the strategic model by accounting for the effect of several dimensions of divided government on different types of executive orders. While previous studies have tested the strategic model by treating all executive orders as equal in terms of policy substance, the theory behind this model should only apply to major *policy* executive orders. Furthermore, since the justification for examining party control is that divided government is likely to translate into policy conflict between the president and Congress, we distinguish between Congresses in terms of the number of seats held by the president's party and the amount of ideological congruence between these political actors. By incorporating these factors, we offer a new and more complete test of the strategic model to investigate differences across distinct types of executive orders from Dwight Eisenhower through George W. Bush.

Our study makes two primary contributions to the literature. First, we show that the strategic model is an appropriate framework for understanding the president's executive order power. Second, and more importantly, we demonstrate that partisan and ideological differences between the president and Congress affect the different types of executive orders that presidents issue in substantively distinct ways.

Mixed Evidence on the Strategic Model

The strategic model of executive orders posits that presidents are most likely to engage in unilateral actions when they are unable to achieve their preferred policy outcomes directly through the legislative process (see Bessette and Tulis 2009, 165-68; Deering and Maltzman 1999). Accordingly, presidents will prefer legislation enacted by Congress because such policy outcomes are more permanent than a signed executive order that could be easily reversed by later administrations or challenged by the Congress or in federal courts. However, when presidents are unable to achieve policy success by working with Congress, they may prefer to use their unilateral policy tools (Barilleaux and Kelley 2010, 192).

Conventional wisdom suggests that the strategic model provides the best explanation for understanding how presidents exercise their unilateral powers in relation to the political environment in Congress. Accordingly, presidents should issue more executive orders during divided government. Despite Mayhew's (1991) early work on the effect (or lack thereof) of divided government, most subsequent studies find that periods of divided government lead to failed legislation and policy gridlock (e.g., Binder 2003; Bond and Fleisher 1990; Edwards, Barrett, and Peake 1997; Rudalevige 2002). This legislative gridlock gives presidents the incentive to issue more executive orders when their policy proposals reach an impasse in Congress.

Some scholars have found evidence to support the strategic model, concluding that presidents use executive orders to avoid an unsympathetic Congress (e.g., Deering and Maltzman 1999), though the degree to which Congress is sympathetic or hostile is the product of more than just party control. Specifically, presidents with more seats in Congress issue fewer executive orders than presidents with fewer party allies on the Hill.[2] Additionally, the level of ideological (dis)agreement between the president and Congress also matters, as presidents issue more executive orders when faced with an ideologically adverse Congress (e.g., Cooper 2002, 100-02; Deering and Maltzman 1999). These findings demonstrate that presidents issue executive orders to "circumvent a {politically} hostile Congress" (Deering and Maltzman 1999, 767).

The majority of studies, however, casts considerable doubt on the strategic model by finding that presidents issue more executive orders during *unified* government (Gleiber and Shull 1992; Howell 2003; Krause and Cohen 1997; Mayer 1999, 2001; Warber 2006). Mayer (1999, 2001, 99) asserts that this finding may be the result of measurement limitations, as the president's party and divided government are methodologically indistinguishable (before Clinton, all Democratic presidents since 1945 governed during unified government). Howell's (2003, 89) explanation is that presidents strategically issue executive orders when the political environment is more favorable toward their administration such as during unified government. The likelihood of a congressional challenge toward a newly created executive order is less likely when the president's own party controls Congress (Howell 2003, 27-28, 85).

Other studies have tested the strategic model in slightly different ways by examining the relationship between presidential seat shares in Congress and the yearly number of executive orders (Deering and Maltzman 1999; Gleiber and Shull 1992; Krause and Cohen 2000). Although some scholars argue that seat shares are negatively related to the number of executive orders issued (Deering and Maltzman 1999), others have posited that executive orders are more likely to be issued when the president's party controls *more* seats in Congress (Gleiber and Shull 1992; Marshall and Pacelle 2005).[3]

At this stage, the literature provides mixed findings regarding the president's strategic use of executive orders in relation to party control of Congress. We argue that the story remains incomplete and that scholars must account for the different types of executive orders as well as the partisan and ideological congruence between the president and Congress in their unilateral presidency models.

Strategically Using Executive Orders to Outflank the Congress

Presidents are interested in building policy records while in office. As a result of the American political system's separation of powers, it is important for them to work with Congress to convert their policy ideas into outcomes. However, if presidents encounter

2. Deering and Maltzman (1999) find that the president's seat share in the Senate is significant while the seat share in the House is not significantly related to the dependent variable in their models.

3. Krause and Cohen (2000) find no significant relationship between the president's seat allocation in Congress and the likelihood of presidential use of executive orders.

major legislative roadblocks on Capitol Hill, they may be forced to consider unilateral action to achieve their policy results. Theoretically, the unilateral presidency rests on the assumption that presidents can command the policy process by exercising a variety of unilateral powers such as executive orders, proclamations, presidential memoranda, national security directives, and presidential signing statements. Congress has no formal role in approving presidents' unilateral directives since they have the "force of law" once the president signs them (Cooper 2002). As a result, it is not surprising that unilateral tools are core policy weapons in the administrative presidency (Durant 1992; Nathan 1983; Waterman 1989). These tools have become essential during the modern presidency for presidents to control the policy-making process during the administrative state and in dealing with the rising neoadministrative state[4] over the past several decades (Durant and Warber 2001).

Although presidents can use their unilateral powers to shape the policy process directly, in reality they are rarely in a position to exercise them at will. As with other presidential powers, they are limited in their ability to command by decree and must be strategic in how they use them (see Neustadt 1990). Presidential decisions regarding when and what types of unilateral powers to exercise are shaped by a variety of conditions in the political environment, especially the president's political relationship with Congress. With respect to executive orders, we expect that chief executives will likely sign directives when they perceive that conditions in the political environment will garner them more political payoffs rather than costs. In certain circumstances, conditions might be ripe for presidents to pursue executive orders that initiate significant policies. At other times, there may be less political incentive to act unilaterally resulting in presidents pursuing policy success through the traditional legislative route in Congress.

What is it about the president's political relationship with Congress that might lead him to eschew the legislative process in favor of unilateral action? The literature typically focuses on divided government, as it serves as a proxy for periods when the president and Congress might disagree on policy solutions (e.g., Deering and Maltzman 1999; Howell 2003; Mayer 2001). However, scholars have not yet fully tested the underlying theory behind *why* divided government should affect presidents' decisions to use executive orders. The presence of divided government should matter because (1) it is often harder for presidents to assemble a sufficient number of votes to achieve policy success through the legislative process because their party holds fewer seats, and (2) the policy preferences of presidents and legislators are more likely to diverge when different parties control these institutions. These are distinct components that are associated with party control, and we should assume that each will influence executive order activity.

From the president's perspective, larger seat majorities in Congress should make it easier to achieve his preferred policies. When the president has a majority of seats in the

4. The neoadministrative state represents marked changes in the traditional administrative state in the United States. Specifically, the neoadministrative state embodies the notion that "the challenges, choices, and opportunities faced in a post-cold war information age of global markets are met best by decentralizing, dispersing, and fragmenting federal responsibilities and authorities. These responsibilities and authorities move 'upward' to international bodies like the World Trade Organization, 'downward' within public agencies and to states and localities, and 'outward' to private and nonprofit organizations" (Durant and Warber 2001, 222).

House and a filibuster-proof supermajority in the Senate, as the Democratic party possessed in 2009 and 2010, it is easier (though by no means a certainty) for his party to usher in major policy change through the legislative process. Thus, presidents will have less need to issue major executive orders to achieve policy success since Congress may be more receptive to their policy proposals. During these conditions, presidents also might be more reticent to use executive orders to achieve significant policies for fear that such actions might be viewed by Congress as an assault on the legislative process. This approach could backfire by disrupting the cooperative relationship that a president might enjoy with his party in Congress.

The *preferences* of these individuals (and the congruence between these preferences and those of the president) also matter. The ideological distance between the president and key members of Congress will affect the likelihood of policy gridlock (Cameron 2000) and should affect the president's calculus with respect to executive orders (see Howell 2003). Consider the following hypothetical scenario. If the number of Republicans in the 112th Senate remained the same but each was replaced with a "Tea Party" Republican, the ideology of the Republican delegation would move markedly to the right. This ideological shift would pose a greater threat to President Obama, and he might be forced to behave unilaterally more often to achieve policy success. Thus, presidents' proclivity to issue executive orders might hinge on a variety of partisan and ideological factors beyond mere party control of these institutions.

We also should expect presidents to prioritize and be strategic in the *types* of executive orders that they create to maneuver around a hostile Congress. There are a variety of reasons that can drive a president's decision. For example, presidents can use an executive order to move the status quo of a policy issue to a position that is closer to their ideal point. By doing so, presidents are able to pressure Congress to respond, perhaps by passing a new law that represents a compromise between the preferences of the president and Congress. Forcing Congress's hand to enact legislation might be a preferred option for the president, if he perceives Congress to be unable or unwilling to pass meaningful legislation in the first place. While it is possible that such unilateral actions might spur Congress to pass a law to modify or reverse a president's order, such responses by Congress are rare (Howell 2003, 113-117; Warber 2006, 119). Enacting a major policy executive order allows the president to move the equilibrium toward his preferred outcome without having to spend time lining up votes or forming coalitions with legislators. As a result, and since reversal from Congress is unlikely, presidents have a greater incentive to issue major policy orders to overcome legislative hurdles.

Presidents also may sign major directives to shift policy issues *away* from the ideal points of a hostile Congress. An administration might create an order that takes a moderate stance on a policy issue to weaken a bill in Congress that has enough of a coalition behind it to override a presidential veto. The president's goal is to siphon off enough congressional support for a bill and to devise a directive that is far weaker in policy substance than the congressional proposal to avoid losing a veto fight. (Howell 2003, 57-59). Therefore, presidents might initiate major policies with executive orders both to overcome their policy failures within a hostile Congress and also to disrupt and maim congressional agendas with which they disagree.

In contrast, we do not expect presidents to have the same incentive to issue executive orders that are less significant, namely, those that are symbolic or routine (see Warber 2006), when their preferences differ from those of Congress. In general, some symbolic and routine directives are perfunctory and do not provide presidents with the same political payoff as major policy orders. We are not suggesting that these directives provide no benefits. Presidents might use these directives to address less controversial policy concerns that might engender support from certain groups in society during elections. However, presidents will be more likely to issue orders that initiate significant policies because these types can net greater benefits such as building a solid policy record for the president to highlight during an election or establishing an historical legacy. Furthermore, during divided government, the president's party in Congress might even pressure the White House to focus more energy on major rather than less important executive orders. As the minority party in Congress, they might perceive executive orders as their next best option for developing a policy record if their agenda stalls in Congress or is derailed by the party in power. As a result, we should expect the executive branch to be preoccupied more with pursuing major policies with executive orders during divided government and/or when they are ideologically opposed, rather than spending their limited resources on less important policies that are more ceremonial or routine.

Of course, differences regarding when and how presidents issue various types of executive orders (major versus less important policy orders) is an empirical question, as is the effect of the level of presidential-congressional discord on the unilateral behavior of presidents. These important empirical issues have not been addressed fully in the literature and we tackle them in our study.

Measuring the President's Executive Order Activity

Many studies have enhanced our understanding of presidential power by employing the yearly and monthly number of executive orders as dependent variables in their models. Mayer uses monthly counts of executive orders, but he discards those directives that "exempted individuals from mandatory retirement or orders that addressed a specific tract of public land" (Mayer 2001, 92). One problem is that some of these decrees on administrative matters have major policy implications and should be included in executive order models. For example, some directives have tinkered with presidential appointments to control the policy-making process in the executive branch. A notable directive was Lyndon Johnson's Executive Order 11154 (May 8, 1963) that exempted J. Edgar Hoover from mandatory retirement at age 70 as head of the FBI (Johnson 1965, 655). Apart from using this executive order to exert control over the appointment process, Johnson's directive ensured that the controversial policy agenda of Hoover's FBI would continue down the same path for the remainder of his term in office.

Although Mayer (2001) and Howell (2003) distinguish between significant and nonsignificant directives, their classifications are not based on the actual policy substance found in the text of executive orders. Howell (2003, 80-81) classifies an executive order as significant if it was referenced in *Congressional Record*, court rulings, or the *New York*

Times. In contrast, Mayer identified an order as significant if it led to "press attention, congressional notice, presidential emphasis, litigation, or creation of institutions with substantive policy responsibility" (2001, 85). A limitation of these classifications is that they allow *coverage* of executive orders rather than the policy content of the directives themselves to dictate whether an order is "significant." As a result, using the media or other actors to determine the significance of executive orders may give the illusion that some orders are significant when their policy implications are more limited (or in other cases, some orders that received less attention may have meaningful policy implications).

To overcome this limitation and to observe differences across the types of executive orders, we use Warber's (2006) data set from 1953[5] through 2008[6] that classifies each executive order as a symbolic, routine, or major policy directive as our dependent variables. Symbolic executive orders address matters that are ceremonial. For example, symbolic executive orders would include those that develop new medals that honor military service, create seals for new federal agencies, or honor well-known political figures that pass away. George W. Bush issued Executive Order 13289 on March 12, 2003, to create the Global War on Terrorism Service Medal for members of the armed forces who served in operations to fight terrorism (Bush 2003, 12567-68).

Routine executive orders are those directives that "do not drastically depart from existing or newly created policies enacted by Congress. Instead, these orders execute responsibilities that are within the legal or perceived scope of presidential authority" (Warber 2006, 141). In these instances, presidents are carrying out the intended will of Congress, or they are undertaking administrative duties that are routine and uncontroversial. For example, it is customary at the end of each year for presidents to issue a directive that makes incremental changes to the pay rates for appointees and federal personnel to deal with the cost of living. These changes are made in accordance with existing federal laws and are standard procedures (Clinton 1997, 68521-30). In our study, we combine symbolic and routine executive orders into a single measure as we seek to contrast major policy executive orders with those that do not generate a significant policy change.[7]

Finally, policy executive orders create significant and substantive public policies. These directives are those "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" (Warber 2006, 143).[8] Two infamous policy orders were Franklin Roosevelt's Executive Order 9066 (February 19, 1942) to intern Japanese

5. Our analysis begins in 1953 as we include the president's monthly approval rating in our models. We are constrained by the availability of public opinion data since Gallup's monthly presidential approval series began in 1953 (Edwards 1990).

6. While Warber's (2006) book examines executive orders through 2004, he has updated the data to include the orders that George W. Bush signed from 2005 through 2008.

7. It also makes sense to combine symbolic with routine executive orders since the number of symbolic executive orders that presidents have signed is relatively small in contrast to routine and major policy directives. Of all the published executive orders that presidents have signed since 1936, less than 5.0% have been symbolic. The average number of symbolic executive orders issued each year typically ranges from zero to four directives (see Warber 2006).

8. Scholars seeking a more detailed discussion of Warber's (2006) classification of executive orders should consult Appendix A in his study.

Americans living on the West Coast during World War II and Truman's Executive Order 9981 (July 26, 1948) desegregating the armed forces (Morgan 1970; Robinson 2001). More recently, George W. Bush signed Executive Order 13435 (June 20, 2007) to further his "right to life" agenda by restricting embryonic stem cell research (Bush 2007, 34591).

Major policy executive orders are not always this dramatic. Presidents can issue directives that make more subtle, but important, changes in the interpretations or implementation of existing laws that can have long-term policy effects. For example, Clinton's Executive Order 12849 (May 25, 1993), which sought to implement an agreement with the European Community, included language that was slipped into the preamble indicating that President Clinton planned to ignore parts of the Buy American Act (41 U.S.C. sections10a-10d) when implementing this agreement (Clinton 1993, 30931).

By distinguishing major policy executive orders from those that do not generate sweeping policy change, we are in a better position to understand more fully whether and how presidents develop specific strategies when using their executive order power to circumvent Congress. Based on theory, we should expect that major policy executive orders should be the gold standard for presidents.

Presidential-Congressional "Adversity"

The independent variables for our models build on the existing unilateral presidency literature. We start by including the traditional dichotomous divided government variable found in past research (e.g., Howell 2003; Mayer 1999, 2001; Warber 2006). This variable has well-documented limitations (Deering and Maltzman 1999; Mayer 1999). One problem is that it only captures party control, which is only one dimension of the relationship between the president and Congress. The degree to which government is "divided" also is a reflection of the president's seat threshold in Congress and the ideology of these actors. We build on existing studies (Deering and Maltzman 1999) by incorporating variables that capture partisan and ideological congruence, as we are interested in the extent to which the president uses symbolic, routine, and major policy executive orders to circumvent an adverse Congress.

A second limitation of the dichotomous divided government variable is that for much of the post–World War II period, it is statistically indistinguishable from a dummy variable that captures party control of the presidency (Mayer 1999, 460). Prior to Clinton's administration, all Democratic presidents since Truman (Kennedy, Johnson, and Carter) governed during times of unified party control, while all of the Republican presidents (Eisenhower, Nixon, Ford, Reagan, and George H. W. Bush) governed during periods of divided party control, most for a majority of their time in office.

Building on the work of Deering and Maltzman (1999), we supplement the divided government variable with measures of the ideological distance between the president and Congress and the president's seat share in Congress (also see Marshall and Pacelle 2005, 90). We expect that ideological distance drives executive order activity:

H_{1A}: Presidents will issue more major policy-related executive orders when the ideological distance between the president and Congress increases.

H_{1B}: Presidents will not issue more symbolic and routine executive orders when the ideological distance between the president and Congress increases

To calculate the ideological distance between the president and Congress, we take the absolute distance between the president and the median member of the House and Senate.[9] To create these scores, we employ the Common Space DW-Nominate scores (Carroll et al. 2011), which contain scores for members of the House, Senate, and each of the presidents in our data set. Higher values indicate greater ideological distances between the president and Congress. If the strategic model is correct, presidents should have a harder time working through the normal legislative channels when their preferences diverge from those of Congress. Ideally, we would include both the House and the Senate's ideological distance scores together (Deering and Maltzman 1999), but doing so causes multicollinearity.[10] Since multicollinearity is present, we include only the absolute ideological distance between the president and the median member of the Senate. Our results are substantively the same if we use the House measure instead, or if we take the average of the House and Senate measures.[11] We use the Senate measure because previous research has found that distance to matter (see Deering and Maltzman 1999).

We also include a measure capturing the size of the president's seat share in Congress. Without including this measure (and instead only including the standard divided government dummy used in most studies), we would be assuming that a narrow one seat deficit in the Senate (such as the 49-50 seat deficit that George W. Bush faced in late 2001) would be the same as a larger deficit (such as the 23-seat deficit that Gerald Ford faced in 1976).[12] Therefore,

H_{2A}: Presidents will issue more major policy-related executive orders when their party controls fewer seats in Congress.

H_{2B}: Presidents will not issue more symbolic and routine executive orders when their party controls fewer seats in Congress.

9. Given the rising number of filibusters in recent years, we also have calculated the ideological distance using the Senate's filibuster pivot (Krehbiel 1998) instead of the median member of the Senate. Our results are substantively unchanged when substituting this alternate specification for the one described above using the median member.

10. We have run Variance Inflation Factor (VIF) diagnostics for our models. The results indicate that multicollinearity is present when both of these are included. The VIF test yields values over the critical number of 10. As such, we do not include both measures together.

11. As the Senate often operates in a supermajoritarian manner, especially with respect to major policy initiatives, we have also run each of the models presented in Table 2 using the absolute ideological distance between the president and the filibuster pivot in the Senate. The results in Table 2 are substantively the same using this alternate specification regarding the effect of ideological distance and each of our other main independent variables. We also have employed the absolute ideological distance between the president and the Senate veto pivot with substantively the same results as discussed above.

12. Similarly, coding all periods of unified government with the same value equates George W. Bush's 50-50 "majority" in early 2001 (as a result of Vice President Dick Cheney's tie-breaking vote in the Senate) with Lyndon Johnson's supermajority in 1967.

To measure the president's seat share, we first calculate the percentage of seats held by the president's party in each chamber. We operationalize seat shares by using the percentage of seats held in the Senate,[13] though our results are substantively the same if we use the House seat share or the average percentage of seats held by the president's party in both chambers. This variable is coded so that the range of possible values is from "0" to "1", where "1" would signify that the president's party controls every seat in that chamber.[14] We should not expect this variable to exert a purely linear effect. The difference between holding 49% and 51% of seats is not the same as the difference between 51% and 53%, since the former also coincides with a shift in the control of the chamber. We account for this issue by including party control in our model, allowing for an intercept shift to occur at the 50% threshold. It also is possible that the slope of the effect of party seats changes based on party control. As such, we include an interaction term (*DG * Seat Share)* that multiplies the divided government dummy variable with the percentage of seats held by the president's party. This interaction term allows us to test the possibility that the effect of having more seats in Congress on executive order activity is conditional on whether the president's party controls Congress.

Including measures of the ideological and seat composition of Congress in our models gives us leverage to more fully test the strategic model of executive orders. If we only include the divided government dummy variable, we cannot distinguish between these different dimensions of presidential-congressional adversity. By including these measures alongside the divided government dummy variable, we are able to compartmentalize these effects to better understand the nature of the relationship.[15]

Control Variables

In addition to these main independent variables, we control for a variety of factors that may affect the president's decisions to issue executive orders. First, we test whether the president's party affects the amount of executive orders presidents sign in office. Studies have shown that the president's party is an important predictor with Democratic presidents issuing more executive orders than Republicans (e.g., Mayer 2001; Warber 2006). Deering and Maltzman (1999) suggest that the party of the president might serve as a proxy for Democrats' preferences for a larger and more active federal government. Another plausible explanation for this finding might be that the core base of the

13. Inclusion of both the House and Senate percentages leads to problems of multicollinearity. Even with different parties controlling the House and Senate for roughly six and a half years (91 months) during our time period (1981-86 and July 2001 through January 2003), the House and Senate seat percentages are highly correlated (.8192, significant at the 0.001 level) and yield VIF scores above 10.

14. This variable ranges from .35 (the president's party only controls 35% of seats) to .68 (the president's party controls 68% of seats).

15. While our measures of "adversity"—party control, ideological distance, and seat share—are correlated with one another (party control and seat share are correlated at -.84, party control and ideological distance are correlated at .65, and ideological distance and seat share are correlated at −.66), our models that include all three do not suffer from multicollinearity. We have run a Variance Inflation Factor (VIF) diagnostic, and the resulting values for each model are well below the critical value of 10 (each is under 4).

Democratic Party is more diverse and has a wider net of constituents than do Republican presidents. As a result, Democratic presidents might use a greater number of executive orders to actively reach out to their different constituents that traditionally support their party such as African Americans, women, environmentalists, and members of labor unions. Although both Republican and Democratic presidents seek political capital by exploiting executive power, we expect to find the following:

> **H_3:** Democratic presidents will issue more symbolic, routine, and major policy executive orders than Republican administrations.

As a result of Mayer's (1999) observation that the effects of divided government cannot be distinguished from those of the president's party, we include the president's party as a separate variable in the model (1 = Democratic, 0 = Republican).

We also control for whether our observations occurred during a presidential election year (1 = election year, 0 = nonelection year) because these elections can significantly shape the politics of an administration. Executive orders provide presidents with an opportunity to add to their policy accomplishments and to maximize support among their constituents within the American electorate. It also is possible that presidents issue executive orders during election years when they are in the final year of an eight-year term or when their prospects for reelection are dim. In both of these situations, presidents might view executive orders as their best chance at last-minute policy making to strengthen their historical legacies. Therefore,

> **H_4:** Presidents will sign a greater number of symbolic, routine, and major policy executive orders during presidential election years.

Research has shown that presidential approval affects executive order activity, but there is no consensus regarding its role (e.g., Deering and Maltzman 1999; Krause and Cohen 1997; Mayer 1999, 2001). Although Mayer (1999, 2001) and Deering and Maltzman (1999) find that presidential approval is negatively related to presidential use of executive orders, others have found that presidents issue more executive orders when their approval ratings increase (Krause and Cohen 1997).

If the president's approval ratings decline, he may issue executive orders that deal with some of the public's policy demands as a way to deal with the expectations gap (see Waterman, Wright, and St. Clair 1999, 8) with the hope that such action will translate into higher support. Once presidential approval begins to slip, another danger is that some members of Congress from the president's party may begin to buck his agenda, especially in election years. As a result, presidents have an incentive to maintain public support and may use all types of executive orders more actively when their approval rates decline to generate policies that benefit the American public at large. Presidents also are likely to issue executive orders to create policies that target populations to boost their job approval ratings in which support by certain groups is lacking. More formally,

> **H_5:** Presidents will issue more symbolic, routine, and major policy executive orders as their approval rates decline.

We include a variable capturing presidential approval by using Wood's (2007) compilation of Gallup's monthly approval ratings. We updated the data through the end of 2008 using data from Gallup's web site (http://www.gallup.org).

Finally, we expect that newly inaugurated presidents might issue a flurry of executive orders at the beginning of their first term to roll back executive orders created by previous administrations. In addition, presidents might use these policy tools to begin transforming their campaign pledges into actual public policies. Therefore,

> **H_6:** Newly inaugurated presidents will issue more symbolic, routine, and major policy executive orders during the first few months of their first year in office.

We include a dummy variable capturing whether a president is near the beginning of his first term (1 = the first three months of a president's first term, 0 = any other month). We select the first three months, as it represents roughly the first 100 days when presidents should try to "hit the ground running" (Pfiffner 1996) to pursue their policy agendas.

Data Analysis and Results

As a more appropriate test of the strategic model, we run separate models for each of our three dependent variables that are based on those executive orders that presidents issued each month: (1) the total number of published orders, (2) the total number of symbolic and routine orders, and (3) the total number of major policy orders. We use monthly data over a 56-year time period resulting in 672 observations in each model.

Since each of our dependent variables is a count variable, Ordinary Least Squares (OLS) regression is not appropriate. Instead, we employ negative binomial regression since our tests suggest the presence of overdispersion in our dependent variables (Long and Freese 2006).[16] Given the time-serial nature of our data, we have run tests to determine whether autocorrelation is present. Since first-order autocorrelation is present,[17] we included a lagged dependent variable in each of our models.[18]

Table 1 reexamines the influence of divided government, using the traditional dummy variable, on the monthly number of executive orders. In Model 1a, we evaluate the effect of our independent variables on the total number of published executive orders. Consistent with previous research, we find that the relationship between divided

16. There is significant evidence of overdispersion in each of our models. Each table included in this study presents the G^2 value and its corresponding p value. For each model, the significance level is below 0.000, providing strong evidence of overdispersion. As such, the negative binomial regression model is preferred to the Poisson regression model (Long and Freese 2006).

17. We ran a series of diagnostics to check for autocorrelation. The Durbin-Watson and Breusch-Godfrey tests indicate that first-order autocorrelation is present. An Augmented Dickey-Fuller test indicates that our dependent variables are not stationary. Once the lagged dependent variables are included, the autocorrelation indicators no longer reach statistical significance.

18. We follow the work of Deering and Maltzman (1999) by not including a year time-trend variable in the model. As Deering and Maltzman note, "there is no theoretical reason to assume that the number of executive orders should decrease monotonically across time" (1999, 774). However, we do include a lagged dependent variable, as it is a statistically appropriate way to account for autocorrelation. Our results are substantively unchanged if the lagged dependent variable is omitted.

TABLE 1
Negative Binomial Regression Analysis of Executive Orders with the Divided Government Dummy Variable

	Model 1a All Published Executive Orders	*Model 1b Symbolic and Routine Executive Orders*	*Model 1c Major Policy Executive Orders*
Divided Party Control	−0.17***	−0.30***	0.004
	(.06)	(.09)	(.07)
Democratic President	0.06	−0.18**	0.31***
	(.06)	(.09)	(.07)
Presidential Approval	0.003∧	0.01***	−0.006***
	(.002)	(.002)	(.002)
Presidential Election Year	−0.12**	−0.06	−0.17**
	(.05)	(.08)	(.07)
New President	−0.11	−0.68**	0.26
	(.18)	(.31)	(.23)
Executive Orders$_{t-1}$	0.02***	0.11**	0.05***
	(.008)	(.02)	(.02)
Constant	1.32***	0.23	0.97***
	(.12)	(.18)	(.16)
Observations	672	672	672
Log Likelihood	−1548.3	−1257.9	−1255.5
$X^2(6)$	49.60	89.64	57.75
Pseudo r^2	.0158	.0344	.0225
LR test against Poisson $X^2(1)$	73.60	85.67	47.98
	$p = .000$	$p = .000$	$p = .000$

Coefficients are presented with standard errors in parentheses; Two-tailed tests
∧ $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

government and this dependent variable is negative and statistically significant. Presidents issue 15% more executive orders during unified government than during divided party control.[19] Presidents also are less likely to issue executive orders during election years, with presidents issuing nearly 12% fewer directives during those years. Our results suggest that presidents issue more executive orders as their approval ratings increase (though this relationship is significant at the $p < 0.10$ level). Neither the president's party nor the new president variable is significant in this model.

Model 1b examines the number of symbolic and routine executive orders.[20] As with Model 1a, divided government exerts a significant, negative effect—presidents issue approximately 26% more symbolic and routine orders during unified government. There may be many reasons behind this occurrence. The president and Congress might find

19. While the coefficients in a negative binomial regression can be cumbersome to interpret, we use Long and Freese's (2006) techniques to generate expected counts and shifts in the percentage of executive orders issued by presidents.

20. We have run separate models for symbolic and routine executive orders to ensure that this modeling decision did not bias our results. When running separate models, the substantive findings parallel those we report when they are combined into one model.

executive orders to be an expedient tool for quickly creating policy during unified government to shore up support with their constituents rather than relying on the often cumbersome legislative process. A president and Congress might also seek to avoid overcrowding congressional agendas during unified government, therefore using less significant executive orders so legislators can devote time to more substantive policies. In Model 1b, we also find that Republican presidents issue 16% more symbolic and/or routine executive orders than Democrats. The results also suggest that more popular presidents issue more of these orders and that new presidents issue nearly 50% fewer symbolic and routine executive orders.

Model 1c examines major policy executive orders. Unlike the previous models, the divided government dummy is not statistically significant. However, the president's party is significant, indicating that Democratic presidents issue roughly 36% more policy executive orders than Republican presidents. The presidential approval variable is significant, suggesting that presidents issue fewer policy executive orders when their approval rating is higher. This finding is consistent with Mayer (1999, 2001) and Deering and Maltzman (1999). We also find that presidents issue 16% fewer policy executive orders during presidential election years.

When comparing across the models, the results in Table 1 underscore the importance of examining different types of executive orders. By analyzing all executive orders together, the nuances in presidential unilateral action are obscured. We find that presidents behave differently with respect to each category. For example, looking at the effect of the presidents' party, it appears as if no relationship exists when we examine all executive orders in Model 1a. This nonfinding is driven by combining the negative sign for symbolic/routine executive orders with a positive coefficient for policy executive orders. These cancel when aggregating across the different types of executive orders.

To fully understand how the presidential-congressional dynamic affects executive order activity, we need to look beyond mere party control of these branches. Therefore, in our next set of models, we add our more nuanced measures that capture more fully the relationship between the president and Congress (see Table 2).

We now supplement the divided government dummy variable with measures of the ideological distance between the president and Congress, a variable not fully explored in Howell's (2003) models, and the percentage of seats held in Congress by the president's party. The results in Model 2a show that all three dimensions of presidential-congressional adversity affect the use of executive orders. Conceptually, the divided government variable now captures party control, since we control for ideology and number of seats held by the president's party.[21] However, since we also interact the divided government dummy variable with the percentage of seats held by the president's party, this variable captures the effect of party control when the president's party has zero

21. This variable now signifies any aspect of divided government aside from partisan seat composition and the ideological distance between the president and Congress. We refer to it as "party control," but there are many factors that coincide with party control of the chamber irrespective of seat and ideological composition. For example, agenda control, control over chamber leadership positions, and control of committee chair positions all depend on party control. While beyond the scope of our current study, future research might explore which of these factors (or perhaps others) drives the remaining effect of party control when controlling for seat share and ideological proximity.

TABLE 2
Negative Binomial Regression Analysis of Executive Orders Including Ideological Distance and Seat Share

	Model 2a All Published Executive Orders	*Model 2b Symbolic and Routine Executive Orders*	*Model 2c Major Policy Executive Orders*
Divided Government	−0.89∧	3.45***	−0.98
	(.47)	(.65)	(.68)
Ideological Distance	−0.46**	−1.63***	1.24***
	(.16)	(.21)	(.24)
President's Party Seat Share	−0.002	−0.03**	−0.003
	(.007)	(.01)	(.01)
Democratic President	0.14	−0.51***	0.48***
	(.07)	(.11)	(.09)
Presidential Approval	0.001	0.005∧	−0.003
	(0.002)	(.003)	(.002)
Presidential Election Year	−0.14**	−.13∧	−0.17*
	(.05)	(.08)	(.07)
New President	−0.06	−0.45	0.25
	(.18)	(.28)	(.22)
DG * Seat Share	−0.02*	−0.07***	0.01
	(.01)	(.01)	(.01)
Executive Orders$_{t-1}$	0.02**	0.06***	.03*
	(.01)	(.02)	(.02)
Constant	1.49***	2.24***	0.46
	(.43)	(.42)	(.62)
Observations	672	672	672
Log Likelihood	−1538.7	−1211.9	−1239.8
$X^2(6)$	68.78	181.66	89.26
Pseudo r^2	.0219	.0697	.0347
LR test against Poisson $X^2(1)$	64.81	42.31	38.91
	p = .000	p = .000	p = .000

Coefficients are presented with standard errors in parentheses; Two-tailed tests
∧ $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

seats in Congress. The divided government variable is significant and negative, suggesting that presidents would issue fewer executive orders when facing divided government and also controlling none of the seats in the Senate. This is an unlikely scenario given that we should assume that the president's party will always hold some seats in Congress. The other variables provide a more complete picture of the effect of presidential-congressional adversity in situations that are more realistic.

Model 2a demonstrates that the other dimensions of presidential-congressional adversity also matter. As the ideological distance between the president and Congress increases, presidents issue fewer executive orders. A one standard deviation increase in ideological distance results in roughly 37% fewer executive orders. This finding fits with the results in Model 1a, which shows that presidents issue more executive orders during unified government. The president's seat share in Congress is not statistically significant.

Since we interact this variable with party control, this variable now captures the effect of seat composition during unified government. As the results show, the number of executive orders issued does not vary based on the size of the president's majority during unified government. The significant, negative effect of the interaction term captures the combined effect of divided government and a larger percentage of seats held by the president's party. Substantively, a significant, negative coefficient demonstrates that presidents issue more executive orders during divided government when their party seat percentage decreases. A one standard deviation increase in the president's seat percentage during divided government leads to approximately 2% fewer executive orders. This finding is consistent with the strategic model as presidents should issue more orders when facing a greater seat deficit during divided government. Model 2a also demonstrates that presidents issue significantly fewer (nearly 13%) executive orders during election years.

In Models 2b and 2c, which serve as the core of our analysis, we again see important differences in behavior across different types of executive orders. Model 2b shows that party control affects executive order behavior, though again this coefficient signifies the effect of party control when the president controls no seats in the Senate. The significant, positive coefficient for the divided government variable suggests that presidents would issue more symbolic and routine orders if their party were to control no seats in the Senate. The other dimensions of presidential-congressional adversity are substantively more meaningful. Ideology does matter, as presidents issue fewer symbolic and routine executive orders when faced with an ideologically adverse Congress. A one standard deviation increase in the ideological distance between the president and Congress results in an 80% decrease in symbolic/routine executive orders. While this finding runs counter to our expectation (as we expected a null effect), this significant effect may be driven by presidents' pursuit of major policy orders (see Model 2c) instead of these symbolic/routine orders. That is, increased ideological distance may encourage presidents to pursue their policy agenda through major policy orders rather than focusing on symbolic or routine orders. As we note when discussing Model 1b, this also might be the product of presidential efforts to help clear the congressional agenda of less important policy items through executive orders when faced with an ideologically proximate Congress. We also find that presidents issue fewer symbolic and routine orders when they have more seats in Congress during unified government. The significant, negative effect of the interaction term suggests that presidents issue fewer symbolic and routine executive orders when their party controls more seats during divided government. Again, this may be the result of presidents attempting to clear the agenda of items that are of lower importance. The president's party and approval ratings both matter, with Republican presidents issuing 40% more symbolic/routine orders than Democrats, and more popular presidents issuing more of these orders. The results of Model 2b also indicate that presidents issue 12% fewer executive orders during election years.

Model 2c examines the number of major policy executive orders issued by the president. As with Table 1, the results of Table 2 show meaningful differences across the three types of executive orders. Unlike Models 2a and 2b, neither party control nor seat composition affect presidents' proclivity to issue major policy orders. However, the effect of ideological distance is substantial. While more symbolic/routine executive orders are

issued when the president and Congress are ideologically proximate, presidents issue many more policy executive orders when their preferences diverge. This supports the strategic model and echoes the conclusions by Deering and Maltzman (1999), suggesting that presidents are attempting to circumvent an ideologically hostile Congress. A one standard deviation increase in the ideological distance between the president and Congress results in a 246% increase in the number of policy executive orders issued by the president. The results also suggest that Democratic presidents issue nearly 61% more policy executive orders than Republicans. Finally, presidents issue 15% fewer policy executive orders during election years.

Our results underscore the importance of moving beyond the divided government dummy variable to more fully understand the nuances of the strategic model of executive orders. We find real differences in the types of executive orders that presidents issue in relation to the political climate in Congress. More importantly, it is clear that presidents issue more major policy orders as Congress moves away from them ideologically. This is consistent both with our main hypothesis (H_{1A}) and the strategic model.

Conclusions

We began our study by identifying an empirical puzzle that unilateral presidency scholars have grappled with in their research. Specifically, there is no consensus regarding the president's exercise of his executive order power when confronted with a politically hostile Congress. Our results shed light on this puzzle by lending further credence to the strategic model and they make several new contributions. First, our study moves beyond the important work of Deering and Maltzman's (1999) strategic model by revealing that there are real differences regarding the types of executive orders that presidents issue. 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. These findings emphasize the importance of breaking the total number of executive orders down into meaningful classifications.

Furthermore, the differences between our models suggest that party control is not the only dimension of presidential-congressional adversity that matters. Employing measures to capture both the ideological distance and the number of seats held by the president's party gives us a more complete picture of how presidents sidestep an adverse Congress to create policy through executive orders.

Certainly there is room for future studies to build on our measures to capture the level of adversity between the president and Congress and the president's executive order activity (see Dodds 2008). However, it is clear that we need to look more closely at the relationship between the president and Congress to more fully test the tenets of the strategic model. By using more nuanced measures, we are able to see more clearly that presidents are strategic in the types of executive orders that they pursue while in office. We also see that they do indeed attempt to bypass a hostile Congress to transform their major policy ideas into real public policies.

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