

Gov 1539: Section 3

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The goals for today

- **Unilateral action** - when the president acts alone.
 1. What is it? When can we expect president to act alone?
 2. Strengths, limitations, and trade-offs.
 3. Relationship with other models of presidential power that we've discussed.

Unilateral powers

- **Helpful readings:** Tuesday / Thursday slides, Howell 2003 & 2005.
- Ways in which presidents can act alone:
 - executive orders (orders over fed. govt. operations)
 - memoranda (similar to EOs, but a justification of legal authority is not required)
 - national security directives (generally directed only to National Security Council)
 - proclamations (generally non-govt. actors - private individuals, outside groups, etc.)
 - executive agreements (agreements with international leaders)
- Legal **justification** can depend on policy area - generally comes from existing statutes, treaties, or the constitution (“take care” and “executive power” clauses).
- For this course, don’t worry about technical differences.

Warmup: Mini Decision Memo

President Biden calls you during section to ask your advice on how he can use unilateral action in these policy areas.

- Answer:
 1. Should he act alone?
 2. What could this action look like?
 3. What are potential strengths & drawbacks of acting alone vs. with congress? What considerations should he keep in mind?
- Breakout rooms:
 1. Require most elementary schools to re-open by March 15th.
 2. Direct Department of Housing and Urban Development to “address the affordable housing crisis.”
 3. Require every US police officer to wear a body camera while working.

Benefits of unilateral powers

- What are the strategic benefits of acting alone?
 - **first-mover advantage**: why is this important?
 - Straightforward for presidents to act alone.
 - And once issued, some directives, like EOs remain in force until they are revoked or unlawful - no waiting for approval period.
 - Often takes a lot of collaboration (by judiciary, congress, etc.) to **reverse** decisions. Presidential win rate > 90%.
 - **speed**: act immediately instead of waiting to move through congress.
 - **informational** advantages: in some areas, presidents have more information (foreign policy, access to executive bureaucracy, etc.).
 - **flexibility**: presidents can avoid limits by offering incentives for actions instead of requiring them (e.g. Obama's Race to the Top).

Limits of unilateral powers

So why don't president always act alone? What are the weaknesses of unilateral action?

- **(non)compliance**: agency might not implement decision in the way president imagined. (why? policy ambiguity, low agency capacity, internal agency opposition, etc.).
- **longevity**: while not always fast, other branches or future presidents can undo them without passing full legislation.
- **money**: congress still controls appropriations. this budgetary control can make or break new programs.

Takeaway: presidents can act alone, but do not automatically get what they want.

Unilateral powers: legal justification to act

When, broadly, are presidents legally justified to act alone?

- *Youngstown Sheet & Tube Co. v. Sawyer* (1952) imposed existing congressional acts as an additional constraint on executive action (Jackson's concurrent opinion). If Congress:
 - explicitly forbids action → President is **weakest**.
 - explicitly allows action? → President is **strongest**.
 - vague / hasn't addressed? → President is in **zone of twilight**.
 - presidential actions are subject to judicial review.
 - empirically, judges tend to defer to executive actions in this area.
- How has this test influenced presidential power over time?
Increased executive power.

Unilateral powers

- With these pros and cons in hand, we can start to think strategically about unilateral action.
- In what situations will presidents be more / less likely to act alone (Howell)?
 - Congressional activity
 - **More:** When presidents think Congress will enact sweeping policy changes that president's oppose.
 - **Less:** when president thinks Congress will act in a way president agrees with.
 - **More:** When Congress is gridlocked on a policy area.
 - Size of majority party
 - **More:** when maj. party is small and internally divided.
 - **Less:** when maj. party is larger and more unified.
- **Takeaway:** presidents act unilaterally **most often** during periods of congressional **gridlock**. Declines when Congress is better equipped to legislate themselves.

Unilateral powers in context

How should we think about unilateral powers (acting alone) in the context of other theories of presidential power we've read so far?

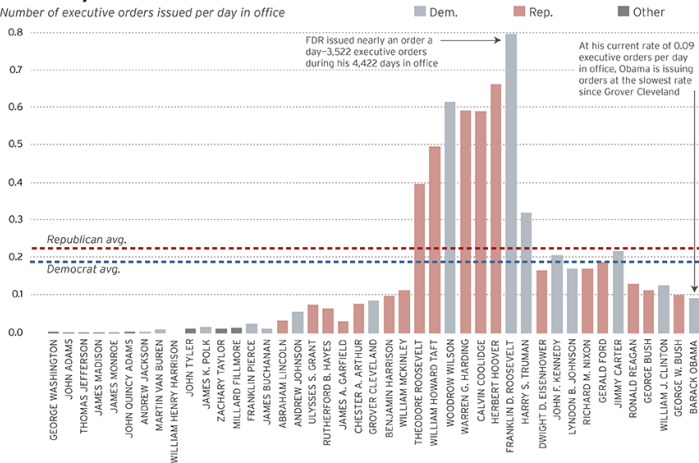
- Neustadt (1960) is a natural point of comparison here. Why?
- Remember Neustadt frames presidential power as the power to **persuade**.
- When acting unilaterally, presidents don't need to bargain.
- In reality, both bargaining and unilateral powers are part of the presidential toolkit. Presidents will differ in how they are used.

Executive Orders over time

Howell warns against using raw number of unilateral actions (like executive orders, even though unilateral action is increasing over time) taken for analyses. Why?

A History of Executive Orders

Number of executive orders issued per day in office



Executive Orders over time

Executive Order 12112

President Carter: January 1979

Establishes the Seal for the Executive Office of the President



"On a blue seal, the Arms of the United States proper above the inscription "OFFICE OF ADMINISTRATION," in gold raised letters, all within a white border edged gold"

Executive Order 12127

President Carter: March 1979

Creates the Federal Emergency Management Agency (FEMA).



Methodological issues in the study of presidency

Cameron mentions a few methodological problems in studying the presidency that will return again and again this semester. What makes studying the presidency difficult?

1. Measuring **policy content** / **significance** is difficult.
 - Common proxies: newspaper mentions, manual classification into "significance" categories.
2. **Small-N problem**: low sample size, have only been 46 presidents!
 - Common workarounds: change unit of analysis - maybe we study impact of presidential speeches rather than impact of individual's rhetorical power.
3. No institutional **variation**
 - Typical way to estimate effects (think medicine) is to compare people with treatment (i.e. took the medicine) to those who did not (i.e. control group). But all presidents have unilateral powers!