

Presidents and the Status Quo

Kenneth Lowande*

Department of Political Science, University of Michigan, 505 S State St., Ann Arbor, MI 48109, USA; lowande@umich.edu

ABSTRACT

The dominant paradigm for policymaking by chief executives is that they are first-movers who change the status quo. I re-evaluate this notion by extending recent advances in measuring the conservatism of policy, and by constructing a new comprehensive measure of presidential action. Though executive unilateralism theories predict whether a given status quo will change, empirical studies rely on aggregate analyses of executive productivity and second-order predictions based on assumptions about the spatial distribution of policies. I fail to find support for unilateral action theory in presidential initiatives at the policy-level from 1992 to 2016. Most of the prediction error is due to a high false-negative rate—with the president acting despite supposed constraints enforced by the Congress. Despite widespread acceptance of unilateral action theory, the results imply either that persistent measurement challenges limit opportunities to assess its empirical implications, that the theory itself over-emphasizes the separation of powers as a constraint on action, or both.

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The Trump administration started like most contemporary presidencies: with a series of “executive actions” signed in front of cameras and designed to signal that the new president had come to change the status quo. Asked about what actions the president would take, White House Press Secretary Sean Spicer said “it’s just a question of which ones he feels like doing, and when.”¹ The president went on to sign dozens of directives, some of which addressed national monuments, public healthcare, federal funding for abortions, immigration, regulatory reform, and federal hiring. Executive-driven initiatives like these are a hallmark of modern government.

To understand these policy changes and the broader questions about presidential power they raise, scholars have developed and refined unilateral action theory (UAT). Like most presidential candidates, party activists, journalists, and the typical voter, this perspective sees chief executives as first-movers in democratic systems with ample opportunity to change the status quo. Through administrative directives, they break legislative gridlock (Howell, 2003), reverse the policies of predecessors (Thrower, 2017), and service key constituencies. The new policy prevails unless it is invalidated by overwhelming legislative majorities or the Judiciary (Moe and Howell, 1999). Though most often applied to the American presidency, versions of UAT have been leveraged to understand sub-national (e.g., Barber *et al.*, 2019; Cockerham and Crew, 2017) and comparative politics (e.g., Neto, 2006; Shair-Rosenfield and T. Stoyan, 2017).

Despite UAT’s intuitive appeal and ubiquity, the evidence that supports it depends on important assumptions about theory and measurement. Since the theory predicts the movement of individual status quo policies, predictions about executive productivity in the aggregate depend on assumptions about their distribution. To measure productivity, studies turn to counts of various directives that are missing theoretically relevant actions and include irrelevant ones. To measure legislative constraints, researchers most often turn to dichotomous indicators for divided government and other periodization variables — which are only loosely related to the theory. Finally, in the previous two decades of research on UAT, nearly every quantitative study relies on the same research design: a time-series analysis of total presidential directives issued in a given period.

I present an analysis of unilateral actions taken in 52 policy areas from the 103rd to the 114th Congress. This analysis has several appealing features. First, the narrower scope allows me to estimate the spatial position of the status quo

¹Quoted in Shear, Michael D. and Julie Hirschfeld Davis. “Trump’s Improvised Path to a Month of Executive Action,” *New York Times* Jan. 21, 2017. <https://www.nytimes.com/2017/01/21/us/politics/trump-presidency-executive-action.html>.

by policy area — leveraging Project Vote Smart’s National Political Awareness Test (NPAT) of congressional candidates (Richman, 2011). Importantly, this allows me to identify the policies that *should* be ripe for unilateral action by the president, while weakening secondary assumptions about the distribution of potential policies to move.²

Second, I construct a comprehensive list of unilateral action in each policy area. This list surveys all directives signed by the president — including executive orders, presidential memoranda, proclamations, determinations, and others. But importantly, it also includes unilateral initiatives previously omitted by past work because of arbitrary differences in execution. These omissions are not minor. State waivers from the requirements of the No Child Left Behind (NCLB) Act, IRS regulations impacting corporate taxation, and the Deferred Action for Childhood Arrivals (DACA) program were all announced and implemented by the Obama administration — but do not appear in counts of executive orders (or any other type of directive). After including these non-directive presidential actions, I estimate that past work may omit at least 15% of relevant presidential initiatives by excluding these actions. If a study only analyzes executive orders, I estimate it excludes roughly 73% of relevant unilateral actions. Finally, the structure of the data set and increased statistical power (relative to other research designs) permits modeling under numerous alternative assumptions. This is critical for an area of research with inherent limitations on causal identification. Absent standard approaches to design-based inference, the credibility of UAT depends on how well its multiple predictions organize the data.

In contrast to past research, I find no evidence in support of UAT. The effect of a given policy being within the unilateralism regions identified by this family of theories is near zero, and typically negative. This is true for different versions of the theory, or when leveraging variation within or between policy areas. It is robust to different subsets of policy areas, different versions of the dependent variable, different ways of accounting for presidential discretion, and various strategies for taking into account status quo measurement error and missingness. Put simply, according to the theory and data, presidents try to move policies they should not, and fail to address policies they should.

The findings raise key theoretical and empirical issues for the study of the balance of power between Congress and the president. First, this study suggests that persistent measurement challenges remain to developing empirical support for first-mover theories. Though I identify important limitations in past empirical analyses, attempts to address them have their own instructive shortcomings. Though many types of unilateral initiatives can be tracked,

²As I go on to note, this still requires assuming the status quo estimate by topic adequately captures within-topic variation in the conservatism of policy.

determining whether they are well-organized by the theory likely requires some consistent measure of their content — that is, how (and if) they change the status quo. More generally, it may be that the measures researchers currently possess are simply too imprecise to test the theory.

Policy-level patterns in unilateral action are also informative for future theory development. I show that the theories' prediction error is mostly due to “aggressive mistakes” — or instances in which the president should not be permitted to change the status quo. In general, this implies that theory may need to account for other, unmodeled dynamics. I discuss two in detail. First, Congress' ability to propose less-extreme alternatives when a president's acts may be less reliable than previously thought. Given the temporal scope of the analysis, this would be consistent with work describing a decline in Congress' capacity to govern (e.g., Clarke, 2018; Crosson *et al.*, 2019; Fowler, 2015; Lee, 2016). This breakdown would allow the president to substitute favorable policies that would otherwise revert to the congressional median.

Alternatively, a subset of presidents' initiatives may have little to do with enacting new policy — and thus, may be the product of a different data generating process entirely. Instead, they may be what I term “false front” actions: tools for attracting media attention, persuading constituents, or claiming credit. Examples of this presidential behavior are not hard to come by. Despite presidential directives and associated press coverage to the contrary, President Trump did not return military equipment to local police, President Obama did not fund gun violence research, and President Clinton did not provide new protections for rivers. Policymaking involves undeniably taxing political and managerial challenges, but some of its benefits may be attained through performative governance — to which, the office of the presidency is especially suited.

Ultimately, this study cannot resolve these empirical challenges or adjudicate between the alternative theoretical points they raise. But by showing support for UAT is not robust to an alternative approach, this study points to opportunities for the development of future research that might be missed if the theory's purchase on observed behavior were taken for granted.

Presidents and Policy Change: Theory to Testing

Models of unilateral action fundamentally shifted how scholars study chief executives (Howell, 2003; Moe and Howell, 1999). They are built on two important ideas. First, presidents act as first-movers with relative freedom from the collective action or agency problems faced by other institutions. Second, constraints on these moves are mostly a function of the separation of powers. Other actors — namely, Congress and the Judiciary — must

challenge the new status quo. To incorporate these features, Howell (2003) extended theories of “pivotal” politics, replacing their focus on legislation with unilateral action (Brady and Volden, 2006; Krehbiel, 1998). The studies containing theoretical refinements and empirical tests of this perspective are too numerous to review in the context of this study.³

But by borrowing from theory-driven empirical work in Congress, studies of unilateral action also inherited several limitations. Some of these are shared with scholarship trying to understand legislative productivity. The core question addressed by the theory is whether the proposer will successfully improve upon a status quo policy. The core question addressed by the standard empirical approach is “what predicts the level of productivity in a given period?” Getting from theory to testing, then, requires some assumption about the distribution of status quo policies in that period. This leads to expectations about how productive, on average, presidents and legislatures will be. But, as most previous work on legislative productivity acknowledges, there are a variety of reasons any distributional assumption will be incorrect.⁴ If policies are uniformly distributed at the start of a Congress, for example, the theory explicitly predicts this will no longer be the case at the end — so there is time-dependence between distributions. Moreover, policy agendas appear to be driven by “shocks” — sudden events, technological developments, or decay (e.g., Callander and Krehbiel, 2014) — that shift the distribution and are difficult to incorporate.

Other limitations are particular to the presidency. Congress’ rules and structure mean that legislative productivity is easily observable. Congress produces laws. Refining measures of what laws are important and constitute accomplishments is an important enterprise in and of itself (e.g., Clinton and Lapinski, 2006), but the universe of policy change is well-defined. Measuring executive productivity is far less straightforward. Few formal rules govern the president’s power of unilateral action. This means observable outputs vary dramatically. They plausibly include written and verbal directives, regulations, contracts, grants, troop deployments, and voluntary agreements with stakeholders. Moreover, unlike Congress — which labels non-binding resolutions and other bills that accomplish little — parsing what counts as an executive accomplishment is comparatively difficult.

Studies typically regress counts of presidential directives on various predictors. This is vulnerable to two sources of error. It may omit cases of unilateral action and include cases that are not. The most obvious source of omission is that there are at least 25 types of presidential directives, and most studies

³Reviews and commentary on unilateral action account for three chapters of the *The Oxford Handbook of the American Presidency* (Edwards and Howell, 2009), a recent special issue of a journal (see Rottinghaus, 2015), and at least one dedicated panel at every annual meeting of the American Political Science Association for the last 10 years.

⁴For a discussion of these, see Woon and Cook (2015).

collect a single variety (e.g., executive orders, memoranda, proclamations, signing statements, etc.) to study (Relyea, 2005). If unilateral action can occur via multiple means, this constitutes missing data and will lead to bias. If the missing cases are plausibly random, there will be attenuation bias. But if the selection of one tool over another is strategically related to factors like support in Congress, presidential popularity, or anything else researchers include in their analyses — the bias may generate either a false positive or false negative.

Another omission is that some unilateral actions have no presidential directive attached to them. In 2012, the Obama administration began implementing portions of the failed DREAM act by instructing the Department of Homeland Security to dramatically increase the number of undocumented immigrants granted a deferred action designation. As of the most recent quarterly report, there were nearly 700,000 immigrants with active status. Republicans overwhelmingly opposed the move, with dozens of state attorneys generals challenging it in court, and a Republican-led Congress symbolically defunding the program.⁵ This is a textbook case meant to be explained by UAT — featuring both important policy change and separation of powers conflict. But there is no DACA presidential directive, because the president never signed one.⁶ Though few omitted cases rise to this level of importance, there are enough anecdotes non-directive based initiatives to warrant concern.

Another source of error — including irrelevant cases — has received far more attention. Research has applied approaches designed to assess the significance of laws to presidential directives (e.g., Chiou and Rothenberg, 2014; Mayer and Price, 2002). This likely removes many house-keeping directives that most would consider either unimportant or clearly outside the scope of UAT.⁷ But measuring significance with raters has limits. Executive orders are typically the only type of directive mentioned by name by news organizations. So scholars trade off parsing the irrelevant for omitting potential relevant, non-executive order cases (but see Kaufman and Rogowski, 2019).

Moreover, some salient directives do not propose a change to the status quo. Many create commissions, working groups or task forces that may or may not propose change at some later date. The Trump administration provides some recent, instructive examples. The establishment of a now-defunct advisory commission on voter fraud led to no policy proposals.⁸ Had it not faced legal challenges, its mandate still left open the deadline for a vague report on the

⁵It is funded by fees.

⁶Likewise, President Trump's move to rescind the policy was not enacted via presidential directive.

⁷Examples include: amending orders of succession in agencies, exempting officials from mandatory retirement, and letting federal employees go home early for Thanksgiving.

⁸Executive Order 13799. "Establishment of Presidential Advisory Commission on Election Integrity," May 11, 2017.

subject. A second executive order disbanded the commission. Under the standard measurement approach, this would count twice toward the period's executive productivity. Even when this variety of directive leads to policy change, the change is often delayed. President Trump ordered a review of national monuments in April 2017.⁹ The first policy change as a result of that review came in December 2017, via a different type of directive.¹⁰ Additional re-designations of public lands could continue to occur into the next Congress.

In summary, though unilateral action presents an intuitive and powerful way of understanding presidential policymaking, the standard approach to testing theories of unilateral action may be insufficient. In fact, over a decade ago, one review summarized this widespread approach as “formulaic” and “unsustainable”(Howell, 2009). To begin to re-examine the theory, then, I extend recent efforts to measure the position of status quo policies, and present a new measure of unilateral action.

Model Predictions

To re-evaluate UAT, I rely on predictions developed by Chiou and Rothenberg (2017). Chiou and Rothenberg provide a comprehensive theoretical and empirical account of unilateral action. Most importantly, they present numerous alternative models that incorporate various assumptions about presidents' discretion and the role of parties. They cleanly synthesize arguments present in the previous two decades of research and provide several important extensions. To provide a general empirical evaluation of unilateral action, I test their three core models: unilateralism, chamber-compliance, and partisan-compliance. I review each briefly below, but refer the reader to their work for proofs and complete discussion.

The basic features of each model will be familiar. Policies and preferences are arranged on a uni-dimensional policy space. The president is a first-mover, Congress is represented as a median and other pivotal actors, and the resulting predictions describe spatial regions where the president breaks gridlock (or acts preemptively) in equilibrium. In brief, Nature determines some status quo, q , and the level of discretion given to the president. The president decides whether to act unilaterally. A proposer in Congress decides whether to overturn the policy, subject to the limitations imposed by the filibuster pivots, f . The president has the opportunity to veto, and Congress has the opportunity to override — subject to the approval of the veto-override pivot (v).¹¹

⁹Executive Order 13792. “Review of Designations Under the Antiquities Act,” April 26, 2017.

¹⁰Proclamation 9681. “Modifying the Bears Ears National Monument,” December 4, 2017.

¹¹The models also include the potential for invalidation by the Judiciary. But because this final veto point does not change the comparative statics with respect to the president and Congress, I leave it for future work.

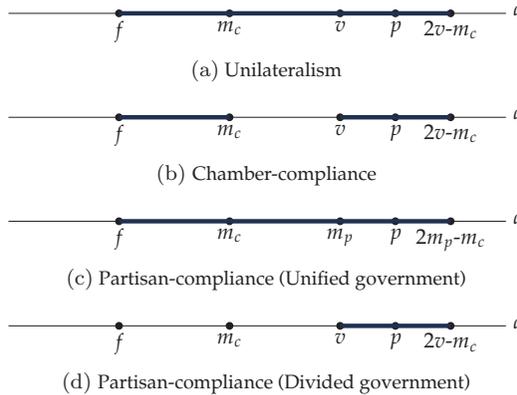


Figure 1: Models of Unilateral Action (Chiou and Rothenberg, 2017).

Note: Depicts regions of expected unilateral action (darkened lines) for all values of discretion and status quo policies (q); f , m_c , m_p , v , and p denote ideal points for the filibuster pivot, median legislator, party median, veto-override pivot, and president, respectively. Omits regions where the probability of unilateral action is not zero, but less likely. For proofs and discussion, see Chiou and Rothenberg (2017, pp. 45–62, 192–198).

The presidents' proposal rule varies by model. This is the key assumption that alters the action regions in Figure 1. In the *unilateralism* model depicted in Figure 1a, the president can move policy in any direction. For the *chamber-compliance* model in Figure 1b, the president's proposal is restricted to movement towards the congressional median (m_c). The *partisan-compliance* model replaces m_c with m_p , the majority party median. Not surprisingly, relaxing proposal restrictions results in more equilibrium opportunities for changing the status quo. *Unilateralism* allows the president to move policy within the canonical gridlock region, $[f, v]$, along with the veto-override and its inflection point, $[v, 2v - m_c]$. *Chamber-compliance* amends this region by gridlocking all policies between the median and the veto-override pivot. *Partisan-compliance* implies unilateral action depends heavily on majority party control. Under divided government (Figure 1d), the president's action region is severely constrained, whereas under unified government, the size of the action region will likely exceed that of the *unilateralism* model.

These regions lead to straightforward expectations about public policies the president should change. For a given status quo in the unilateral action regions, a strategic president should propose some alternative that will lead to change. We observe that alternative as an executive order, proclamation, or other tool leveraged by the president's administration.

Measuring Policy Positions

To measure status quo policies, I leverage legislator responses to Project Vote Smart’s NPAT survey.¹² For a given policy area, the survey asks congressional candidates whether enforcement, funding, taxes, or fees are too high, too low, or about right. Responses are recorded on either 3- or 5-point Likert scales. When paired with estimates of legislator’s preferences, this directional information can be used to approximate the current spatial position of the policy. This method was developed by Richman (2011, 2015) to test competing theories of lawmaking. Notably, in Richman’s analyses, status quo movement was well-organized by pivotal politics-based theories. Responses to the NPAT have also been used to estimate the preferences of state legislators (Coleman *et al.*, 2013; Shor and McCarty, 2011), party influence on roll-call voting (Ansolabehere *et al.*, 2001b), and candidate positions in elections (Ansolabehere *et al.*, 2001a). The basic procedure is:

1. Predict NPAT response with measure of legislator preference using an ordinal probit.
2. Estimate predicted probability of the “maintain status quo” response by legislator.
3. Assign status quo as the legislator score with the maximum predicted probability.
4. Repeat Steps 1–3 with 1,000 bootstrapped replicates to obtain standard errors.
5. Repeat Steps 1–4 for each policy area and Congress.

Using the survey for this purpose has a few limitations. First, the survey defines the set of status quo policies that can be estimated. I report the full set of policies in Figure 2. This means there will be some areas of public policy (e.g., immigration, gun control, trade liberalization, and civil rights) with incomplete time series coverage, and others that fall outside of the scope of this study entirely. It also means that status quo points are estimated for policy areas (e.g., “environment”) as opposed to more specific policies (e.g., “air pollution regulation”). Within-topic variation in status quo policies will not be captured. In addition, the survey includes several areas of policy on which presidents have never taken action. These issues are often related to excise taxes or deductions — areas in which, unilateral action is sometimes explicitly beyond the presidents’ statutory and constitutional authority.

¹²I describe how these data were accessed and their completeness in the Supplementary Information (SI).

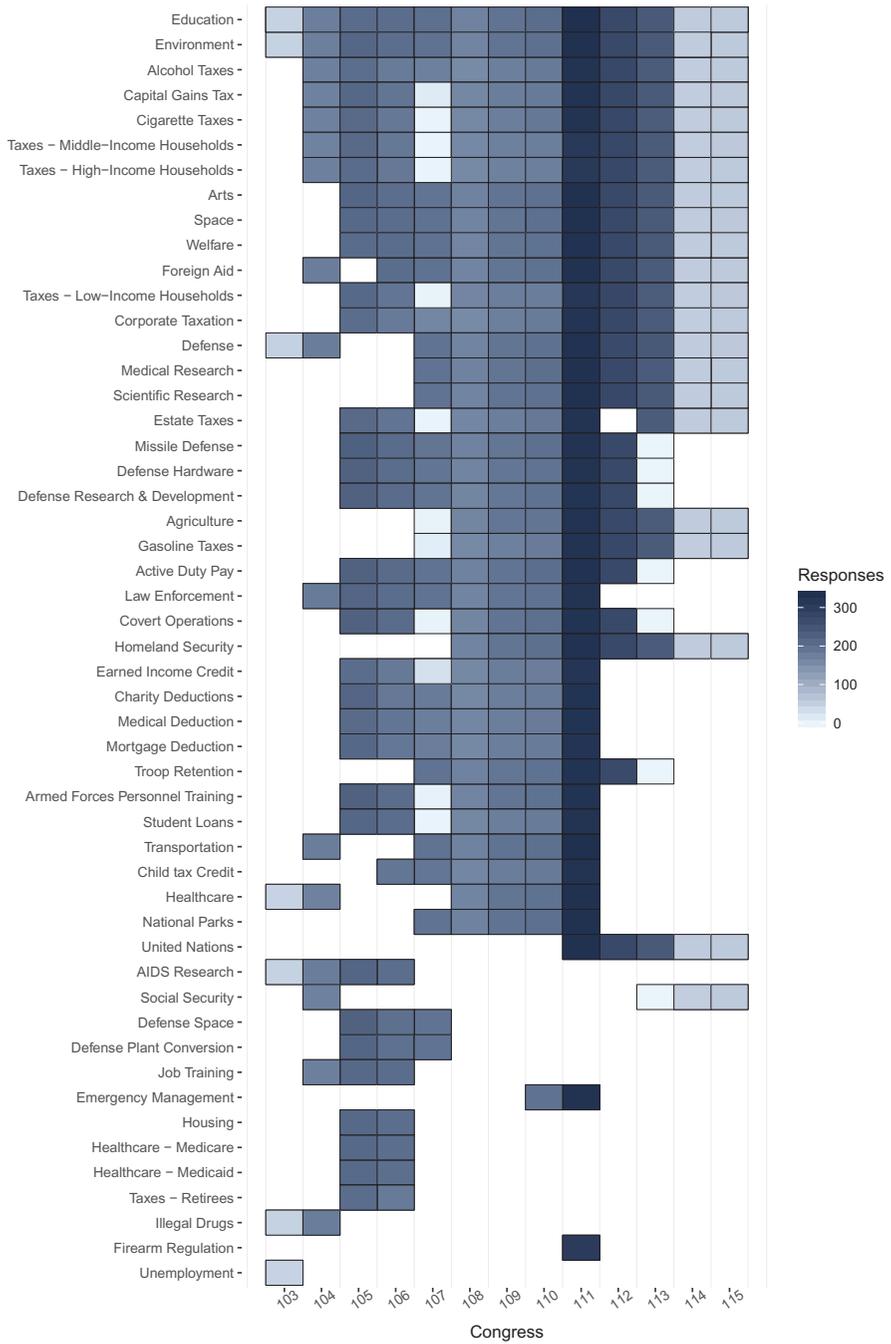


Figure 2: National Political Awareness Test (NPAT) survey responses. Plots number of respondents by question/cycle matched to Bonica (2016).

Second, survey questions within the same policy issues vary slightly over time, raising the possibility that changes in responses could be an artifact of wording. The strongest argument to counter this concern is that legislators are sophisticated survey respondents who know their responses will be publicly available. Thus, changes in their responses are plausibly influenced by actual policy, rather than the instrument. Third, response rates have declined over time, particularly among Republicans. Project Vote Smart still conducts this survey (now known as the Political Courage Test), but in the most recent Congresses, fewer than 25 sitting legislators participated. This raises a few potential concerns. Fewer responses means the status quo will be estimated with more uncertainty. Responses from more liberal legislators could lead to bias.¹³ Specifically, the imbalance of legislators may lead moderate conservative policies to be estimated as more extreme than the true status quo.

To address these concerns, I use Bonica (2016) CF Scores to measure politicians' preferences. Since these scores are based on campaign contributions, as opposed to voting records, they are available for candidates who never held elected office. Since the NPAT surveys are administered to all candidates, this nearly triples the number of usable NPAT responses, relative to Richman (2011) (Table A1). Beyond dramatically increasing the precision of the status quo estimates, this also produces a more ideologically balanced sample of respondents (Figure A1). This reduces the threat of the bias by ensuring that policy questions have respondents across the political spectrum.¹⁴ The results do not differ substantially if an alternative measure, first-dimension common space DW-NOMINATE scores (Carroll *et al.*, 2015), is used (Figure A2).

The complete NPAT record for all federal congressional cycles from 1992 to 2018 contains 1.1 million responses from 7,060 unique candidates. Once questions that do not follow the required Likert format are eliminated, this drops to 546,215 responses and 6,413 candidates.¹⁵ Of these, 1,328 candidates with 155,580 responses can be matched to Bonica (2016) using candidate names, cycle, state, and office.¹⁶ The vast majority of unmatched names are third-party candidates with few political contributions, which NPAT records oversample because the surveys are voluntary. Though I report these merge statistics for completeness, it is important to note these candidates are also excluded from past research that utilized NPAT surveys to study elected officials.

¹³Though, notably, simulations suggest non-response bias is not particularly concerning, even with ideologically driven response patterns (Richman, 2011; Lowande and Potter N.d.).

¹⁴For example, when the respondent pool only includes individuals to the ideological right of the issue, the method necessarily predicts the status quo position is to the extreme left. So a moderately liberal policy in this scenario would be predicted to be too liberal. More complete coverage of the ideological spectrum ensures that fewer policies suffer from this potential issue.

¹⁵Many questions are open-ended or dichotomous ("support" or "do not support").

¹⁶This was implemented using `fastLink` (Enamorado *et al.*, 2018).

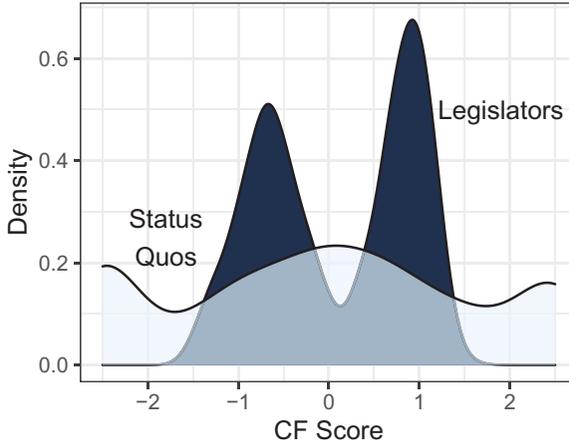


Figure 3: Status quo policies are not uniformly distributed. Plots the kernel density of ideological positions Congress and status quos, based on CF Scores and NPAT responses.

I report a sample of results of this estimation procedure in Table A3 of the SI. Importantly, CF Scores are strongly predictive of the vast majority of survey responses, suggesting that most issues are appropriately arrayed along the conventional liberal-conservative continuum. Moreover, policies exhibit clear variation in spatial position. Figure 3 provides an empirical assessment of the uniform distribution assumption adopted by some studies of unilateral action. The distribution is multi-modal, with clusters at the political extremes and around the congressional median. Though the status quo points are more precisely estimated and cover an extended time series, this largely replicates findings in Richman (2011, p. 158, Figure 5). It is also reassuring that the distribution does not appear to be normal — which might have been the result of polarized parties pooling on the same opposed, extreme responses. Most importantly, there is substantial variation whether status quo policies are located in the unilateral action regions in Figure 1.

Moreover, the estimates exhibit face validity and respond intuitively to circumstances. Education policy is estimated to be conservative at the start of the Bush presidency, but gradually becomes more liberal after the enactment of the No Child Left Behind (NCLB) act and the Obama administration’s “Race to the Top” initiative. The status quo in environmental policy moves right following a series of compromises during the Clinton administration and through the Bush administration, but then shifts dramatically left in the aftermath of the return of Democratic majorities and Barack Obama’s first term. Welfare shifts right following the introduction of work-requirements during the Clinton administration. Overall, though I note several concerns

with this measurement strategy above, the measures themselves appear to exhibit meaningful variation directly relevant to UAT.

Nonetheless, it is important to note that analyzing status quo positions at the topic-level requires assumptions that are similar to, albeit weaker than, those required when analyzing productivity within a given Congress. Though status quo positions may be well-described when aggregated at the policy topic level, it is possible there are some specific policies that deviate from it. Bias would come as a result of presidents finding status quo points within topics that deviate (for whatever reason) from the generic status quo point at the topic level — and perhaps, acting on those. Random error will lead to attenuation bias. Systematic error could lead to any pattern, but importantly, also implies that there is some additional, strategic process unmodeled by UAT. I return to these points the discussion of the results.

Measuring Presidential Action

What counts as unilateral action? The procedure for constructing a list of presidential actions differs from past work in several important respects. Rather than collecting all unilateral actions within a given period and culling irrelevant ones, I begin with a set of predefined policy areas and include actions based on a coding procedure. This avoids inclusion of routine or ineffectual orders that are sometimes the subject of media reporting, and therefore, included in most counts of presidential directives. Actions were collected for the complete time series for all policy areas, even if the policy area did not appear in some election cycle surveys. To remain inclusive and provide a more comprehensive picture of unilateral action, actions were also collected for recurring NPAT policy topics with question formats that preclude status quo estimation (e.g., community policing, abortion, immigration, and affirmative action). In addition, the population of potential of actions goes beyond directives published by the White House that contain the president's signature. This means that what counts as action is free of arbitrary distinctions between presidential documents or the administrative means of policy change. I discuss the procedure for collecting these actions in this section, but further details and diagnostics can be found in Appendix B of the SI.

I collect unilateral actions in a given policy area by first searching to the universe of presidential directives published between 1993 and 2016. The source is the GPO's *Compilation of Presidential Documents*. This is the most comprehensive source for all presidential directives (e.g., executive orders, proclamations, determinations, military orders, memoranda, and unnamed directives) and also includes documents not published in the *Federal Register (FR)*.¹⁷ This is important, because presidents may strategically select

¹⁷The *Compilation* omits several types of directives classified at the time of signing, so I add those that have since been revealed to exist. These 112 documents typically deal with

documents to publish in the *FR* (Cooper, 2002). During this period, the *Compilation* contains 5,567 directives. Each policy area is assigned a dictionary, and word frequencies are obtained from the full text of each document. The complete dictionaries and match frequencies can be found in Table B5 of the SI. These most probable matches assist hand-coding, because documents with zero or infrequent occurrences (relative to their total word count) are discarded. Most policy areas are hand-coded by two coders.¹⁸ Policy areas where inter-rater reliability was low were coded by a third rater.

For many topics, the procedure above will be sufficient to produce an accurate depiction of unilateral action on the part of the president. All expansions or contractions of national monuments, for example, are enacted via proclamation on the basis of the president’s authority under the Antiquities Act. Changes to active duty military base pay are implemented yearly via executive order. Since the early 1960s, default military pay raises have been tied to the employment compensation index (ECI). The president, however, has been given the authority to propose national security exceptions (up or down) to the default raise (37 U.S.C. 203[a]). George W. Bush proposed raises larger than ECI, whereas the Obama administration proposed lower. In accordance with UAT, I label this an action if there is a presidentially proposed change to the status quo — regardless of whether Congress overrules it.

For a few areas of policy, however, lists of presidential directives miss important cases or inaccurately depict the timing of a change. The gradual rollback of the NCLB requirements through the issuance of waivers was announced by the Obama administration in conjunction with the “Race to the Top” initiative, but there is no directive to mark this unilateral action. Presidents have also used their statutory authority to implement changes to the internal revenue code that impacted taxes on corporate earnings and

national security: Presidential Policy Directives, Presidential Review Directives, Homeland Security Presidential Directives, and National Security Presidential Directives. The full text of most of these documents have yet to be declassified, so some had to be coded on the basis of their title. This raises a broader question, which is whether the inclusion of additional, presently classified directives would alter the substantive findings of this study. As Figure 4 shows, the frequency of national security related directives, aggregated by Congress, is high (relative to other policy areas) without these directives. This suggests the hypothetical inclusion of classified directives would produce a dependent variable highly correlated with the one I present.

¹⁸In general, I used multiple coders for policy areas that were broad and ambiguous (e.g., education) over concern about relying on the judgement of any single individual. I determined that 1 coder was sufficient for one of two reasons. As Table B5 reports, some policy areas (e.g., taxes, charitable deductions, diplomacy with Cuba), had few or no matches in the *CPD*. The reason is straightforward: presidents simply rarely (if ever) make policy changes using a document that would be published in this collection. Thus, an additional coder was not necessary. Alternatively, some policy areas are sufficiently clear and patterned in the *CPD*. For example, trade-related orders are all proclamations that make adjustments to the tariff schedule or implement terms of trade agreements using very similar language.

wealthy individuals who use family limited partnerships as shelters (Hemel, 2017). These occurred through Treasury department notices, rulings and regulations — but had been previously proposed in the president’s “greenbook” of tax revisions sent annually to Congress. Regulations proposed in 2016 by the Obama administration were even highlighted in by the president in a White House press conference.¹⁹

Though the majority of unilateral actions can be traced to some directive, it is important to include initiatives like the ones above. To do so, I consulted secondary sources. *CQ Almanac* provided contemporaneous accounts for each policy area and often contain contextual information about the actions of the sitting president. For example, the 2011 entry for congressional efforts to reform NCLB includes the Obama waivers.²⁰ For retrospective accounts, I consulted law reviews. Specifically, I conducted database search of *LexisNexis* for articles relating to presidential or executive power during the study period. These articles were read for cases of unilateral actions. As Table B6 indicates, most of these non-directive moves are regulatory actions and changes in enforcement decisions attributed to presidential administrations — most common in diplomatic relations, immigration, and civil rights.

In total, the procedure above results in 1,305 distinct executive actions in the 64 policy areas that routinely appear in the NPAT surveys over this period. The number of distinct executive actions culled in the 52 policy areas for which status quos can be estimated was 527, with 448 found in the GPO, and 79 found only in the other sources described above. Put differently, this data collection suggests that restricting attention to presidentially signed documents during this period omits 15% of unilateral action. Since executive orders account for a minority of actions, studies that only analyze these directives may exclude as much as 73% of actions. A complete reporting of executive action by data source and type appears in Table B6 of the SI. Figure 4 plots unilateral action in 64 policy areas from 1993–2016.

Figure 4 replicates several findings in studies of unilateral action. First and foremost, unilateral action during this contemporary period is frequent and covers diverse areas of public policy. The baseline probability of action is 30%, and 80% of policy areas include at least one action. Second, in line with studies of aggregate counts, both Democratic presidents tended to issue more actions than George W. Bush (46.9 vs. 58.1 per year, $p = 0.07$).²¹ Third, there are more foreign affairs related actions, relative to domestic policy actions,

¹⁹For video, see “The Corporate Inversions Tax Loophole: What You Need to Know”: <https://goo.gl/QXuZM3>.

²⁰“Congress Stymied on Education Law.” In *CQ Almanac 2011*, 67th ed., edited by Jan Austin, 8-6-8-7. Washington, DC: CQ-Roll Call Group, 2012. <http://library.cqpress.com/cqalmanac/cqal-1390-77518-2462230>.

²¹For example, Fine and Warber (2012) find Democratic presidents issued more major policy executive orders, and Ouyang and Waterman (2015) find conservatism to be negatively correlated with executive order and memorandum issuance.

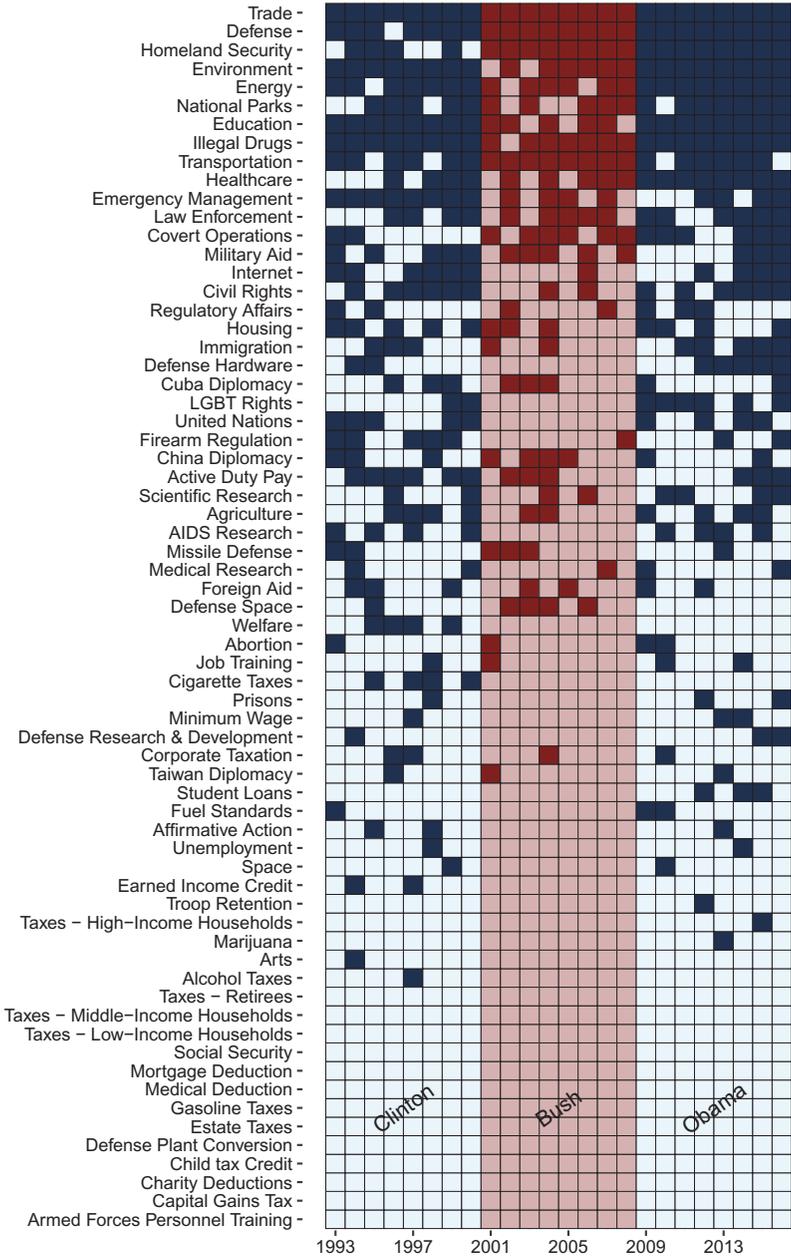


Figure 4: Unilateral action by policy area. Darkened tiles indicate the president took at least one action. To aid in interpretation, 35 actions taken days before presidential administration changes are recoded to occur in the previous year.

which is largely consistent with robust findings in favor of the Two Presidencies Thesis (e.g., Canes-Wrone *et al.*, 2008). Finally, the policy areas acted upon by each president comport with stylized accounts of their preferences. George W. Bush's actions are concentrated in defense, homeland security, and covert operations. Whereas Clinton and Obama were active in scientific and medical research, public healthcare, education, and protections for public lands. One notable difference is that there are no distinguishable differences across divided and unified government or between the first 4 and last 4 years of the president's term.²²

Finally, it is important to note that I do not estimate the relative importance or significance of these initiatives. This is partly because the data collection procedure already omits many directives that would be removed using the standard rater procedure. By starting with the policy area in question and working backwards to collect all relevant actions, the dependent variable does not require a procedure for culling the numerous mundane or irrelevant directives. Instead, the coding procedures in Appendix B of the SI specify that orders typically determined to be ceremonial or having little policy impact (e.g., specially designated "weeks" or "days" and special commissions asked to produce recommendations) are not counted as unilateral action — and thus, never included in the dependent variable.

In addition, sophisticated means of measuring directive significance suggest that arbitrarily raising the bar for what counts as an important action does not meaningfully alter the relationship between action and key independent variables. Chiou and Rothenberg (2014, 2017) apply a hierarchical item response model to rate executive order significance; key point estimates vary only at the highest and lowest levels of executive order significance. Kaufman and Rogowski (2019) measure the significance of additional directives over a wider time series using supervised text analysis. Similarly, they find that at the highest level of directive significance, the effect of divided government approaches zero. This implies that, if order importance does matter substantially, the results in the next section should bias *in favor* of support for UAT. To ensure that this measurement decision did not explain the results, I examined the significance of the executive orders in the data, as measured by Chiou and Rothenberg (2014). Though the directives included in the sample are somewhat more significant than the typical order, they fall well within the significance region for which Chiou and Rothenberg (2017) find support for UAT. As Figure B3 in the SI suggests, the executive actions in this study are neither too insignificant or too high profile — they are roughly equivalent in scope and importance, relative to those examined in past work.

²²This is most likely because aggregating by year severely reduces statistical power.

Research Design

To test each model, I use the spatial location of policies to predict unilateral action in a given policy area and Congress. According to UAT, presidents should be more likely to act if status quos reside in the regions outlined by Figure 1. The predictions are evaluated with regressions that include Congress fixed-effects (unless otherwise noted), so the point estimates should be interpreted as describing variation across policy areas within a given Congress. The dependent variable is unilateral action, measured either dichotomously or as a count. Following Chiou and Rothenberg (2014), I limit these models to the inclusion of theoretically relevant variables. Notably, many of the factors that scholars have considered, such as periods of war, legislative capacity, divided government, administration-specific effects, or time-in-office, will be accounted for by Congress intercept shifts, and do not vary by policy area.

My main independent variables are indicators of whether the status quo is ripe for action. For all measures, I calculate the relevant pivots and reflection points from Figure 1 using the distribution of ideological preferences for a given Congress, as measured by CF Scores (Table A4).²³ The indicators take a value of 1 if an estimated status quo is within the action region, and 0 otherwise. According to each theory, the relationship between these variables and unilateral action should be positive.²⁴ Presidents should be first-movers on status quos that present an opportunities for favorable movement.

Findings

Overall, I find no systematic support for models of unilateral action. The action regions depicted in Figure 1 are not associated with an increase in presidential initiatives — and under some specifications, they are negatively associated. These results are consistent across each version of UAT — no model systematically performs better than any other. Since this stands in contrast to most empirical work on the unilateral presidency, I discuss numerous potential explanations for this inconsistency, as well as the robustness of this finding to alternative estimation and measurement strategies.

²³Existing studies discuss these calculations very little. But selecting pivots involves some researcher discretion because theories collapse the House and Senate into a single, unicameral legislature. Thus, to remain consistent with the theory, for veto-override and chamber/party medians, pivotal legislator is the one closest to the president. As a result of deaths, appointments, resignations, and retirements, there is within-Congress variation. I recalculated pivots after removing members who served fewer than 6 months in a given Congress, and the key findings are robust to this alternative.

²⁴Specifically, the point estimate should suggest that the probability of action is 1.00, which should be easily detectable in these data.

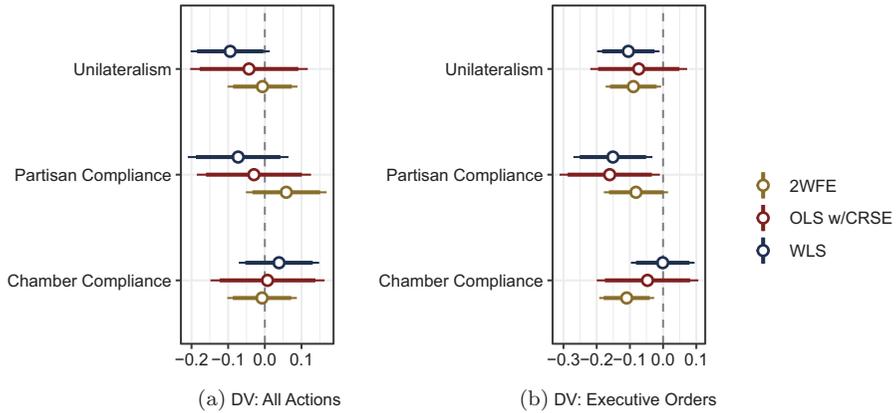


Figure 5: Unilateral action theories poorly predict executive actions at the policy-level. Plots the predicted change in the probability of action from separate least squares models. Dependent variables are dichotomous indicators for executive action, while key independent variables are dichotomous indicators for whether the status quo lies in the action regions from Figure 1. All models include Congress fixed effects. OLS w/CRSE indicates least squares estimates with standard errors clustered by policy area; WLS indicates least squares with observations weighted by the inverse bootstrapped standard error of the status quo estimate; 2WFE includes policy area fixed effects.

Figure 5(a) plots the key results for each specification and theory. For a given status quo policy, the point estimates are the marginal effect of being located in the theory’s action region on the probability of unilateral action. Most strikingly, there is no specification for which the estimate is distinguishable from zero and in the predicted direction. Moreover, few of the upper bounds of the 95% confidence intervals exceed a 15 percentage point *increase* in the probability of action, suggesting that the effect of these regions is either negligible or negative.

One possible explanation for these findings is that the dependent variable includes executive actions that are not executive orders. Other actions, such as changes in enforcement, rulemaking, or proclamations may have different theoretical dynamics because the actors that most often constrain them may be different. For example, the appropriate veto player for new rules may be the DC circuit. Figure 5(b) dispels this. When the dependent variable is limited to actions taken via executive order, the point estimates are not closer to expectations. In most specifications, being within the action region is negatively associated with executive action. Model results and diagnostics for the underlying regressions in Figure 5 are reported in Table C7 of the SI.

Another possible explanation is that the models in Figure 5 do not account for the magnitude of executive action. Most prior research uses counts of

directives as measures of period-specific productivity. It may be the case that coarsening the within policy-congress count increases measurement error sufficiently to bias toward the null. Table C8 suggests this is not the case. It reports the results of the models above with the complete counts as a dependent variable in negative binomial regressions. The point estimates are also mostly negative with the 95% confidence intervals near 0, contrary to expectations.

Another concern is that the independent variables are measured with error. Each is estimated from a first-stage regression, then coarsened, potentially leading to bias (especially if left unmodeled). To take this into account, I adopt three approaches. First, to take into account status quos that are more uncertain because of a weak relationship between CF Scores and survey responses, I use inverse error weighting in the final stage regressions. These are reported in the models labeled WLS in Figure 5 and Table C7 of the SI. Second, I apply this same strategy to the first stage regressions, more heavily weighting candidates whose CF Scores are measured more precisely. These results are reported in Table C9 of the SI. Third, I use a continuous measure of each independent variable, which is the proportion of a status quo's 95% credible interval that overlaps with the relevant action region. The intuition behind this measure is that the uncertainty of the status quo may index the president's uncertainty in strategic situations. I report these results in Table C10 of the SI. The basic findings in Figure 5 are robust to each of these strategies, either individually or in combination.

Finally, as an alternative approach to reducing potential bias in the unbalanced panel, I also estimated models that include multiply imputed values for the empty tiles in Figure 2. The imputed values account for time and policy-specific dependencies (Honaker and King, 2010), and also incorporate features known to social scientists to impact the likelihood of policy change: presidential approval ratings, party support in Congress, and the size of the gridlock interval. This was implemented with Honaker *et al.* (2011). Ultimately, this approach increases the precision of the point estimates without changing the substantive findings.

Why Does Observed Policymaking Deviate from Theory?

To this point, I have shown that at the policy-level, theories built on the president's first-mover advantage poorly fit observed cases of executive action. These policy-level findings stand in contrast to studies that analyze productivity in a given Congress, where UAT appears robust. There are two categories of explanations for this disconnect. The measures I present to test the theory could be inadequate, or the theory itself could be missing something relevant to understanding unilateral action at this level of analysis. Of course, these

possibilities are not mutually exclusive. Thus, it is worth considering each to describe what can be learned from the lack of strong support for UAT.

The critical theoretical concepts are the position of the status quo relative to relevant political actors, and unilateral action by the president. To be clear, any or all of the assumptions required for the reported measures may be driving the results. It may be that the measures researchers possess to test UAT are simply too imprecise. But it is instructive that among the numerous alternative measures in this study and its supporting information, the estimated relationships are essentially stable. This suggests that if measurement error is to blame, it is more likely due to decision to move from analyzing aggregate productivity to productivity by policy area. More specifically, the fact that status quo positions are measured at the generic topic-level (e.g., “environment” vs. “water quality”) introduces measurement error because presidents typically act on specific policies within topics. If this error is random, it should lead to attenuation bias. While still possible, there are some patterns that suggest this is not occurring. The coefficients are typically negative and estimated with relative precision. Arbitrary exclusion of particular policy areas does not noticeably improve the fit of the models, as might be expected if there was variation severity of this error across policy areas.

However, systematic measurement error at the policy level will often be theoretically informative. It suggests that the underlying models of presidentially driven policy change inadequately describe particular cases. In other words, at this level of granularity, other features of policies — such as public attention, valence, electoral considerations, distributive incentives, or any other unmodeled phenomenon — may be idiosyncratically more determinative than the separation of powers features modeled by UAT.

Importantly, in this policy-level analysis, *how* the the observed patterns differ from the theory can guide this discussion. That is, these data reveal both “missed opportunities” (or false positives), in which UAT indicates the president had the opportunity to act but did not, and “aggressive mistakes” (or false negatives), in which the president acted despite theoretical obstacles.²⁵ If missed opportunities outnumber aggressive mistakes, the president is less active than suggested by UAT. If the reverse is true, then UAT may underestimate presidential activity.

To summarize the answers, first, overall, presidents are more active than *any* version of UAT would predict. Second, most of this error is driven by aggressive mistakes, or false negatives. Third, most aggressive mistakes address policies that UAT predicts will be acted on by the congressional median in equilibrium. In contrast to the classic evasion narrative in unilateral action,

²⁵I borrow “aggressive mistakes” from Cameron and Kestelcec (2016), who evaluate move-the-median games of Supreme Court nominations — using the term to describe cases in which the president tries to move the median farther away from the Senate median.

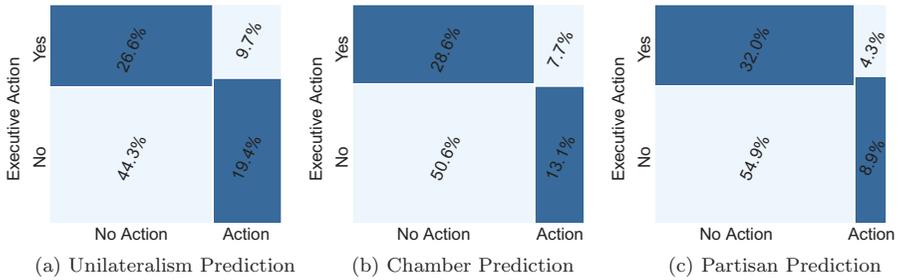


Figure 6: Presidents are more active than theories predict. The outcome variable is a dichotomous indicator for whether the president took at least on action, via any instrument. The predictor is an indicator for whether the policy in question was within the action region during that Congress.

presidents do not appear to be overcoming gridlock — they act on policies Congress *should be* able to collectively act to change.

The shaded regions of Figure 6 plot aggressive mistakes and missed opportunities for each version of UAT. Importantly, the number of true positives is relatively low, and the inflated true negative rate is just as likely due to chance because of the observed variation in executive activity. That is, no theory accounts well for observed cases of unilateral action. In a straightforward, non-parametric way, this helps illustrate the estimation results in Figure 5. The overall rate of unilateral action is higher than predicted, and relatedly, this is mostly because of a high aggression (or false negative) rate. Moreover, the proportion of aggressive mistakes increases from the unilateralism model, to the chamber compliance model, and finally to the partisan compliance model. Recall that the latter two models impose constraints on the president’s proposal power. Importantly, though these models progressively underestimate the overall rate of action, they do not provide a noticeably different fit, so these data do not suggest that these proposal assumptions are determinative — or that any of the theories should be preferred over the other. Given this information, I consider three potential opportunities for theoretical innovation.

Discretion

Some of the policy areas theoretically ripe for presidential action that end up counted as a missed opportunity fall outside the president’s constitutional and statutory discretion. Examples include the size of tax deductions, and tax rates for various income brackets. Though I have mentioned some notable examples of presidentially driven tax policy change, Figure 4 clearly indicates presidents are mostly inactive with respect to taxation, where the president possesses

little leeway to change policy. Moreover, any change would be reversed in court.

To ensure that the results were not driven by this pattern, I re-estimated the models excluding this subset of taxation policies, which the president has little to no discretion over.²⁶ In addition, I re-estimated these models with a continuous measure of presidential discretion by policy area included as an additional regressor (Lowande and Shipan, 2020). As Figure C4 and Tables C11–C12 in the SI indicate, the findings in this study are mostly robust to accounting for discretion. The lone exception is the two-way fixed effects, partisan compliance model regressed on all actions excluding taxation, which is positive and distinguishable from zero at conventional levels of significance. Thus, discretion is strongly predictive of action, but it does not improve the fit of the primary theoretical predictions of UAT.

Notably, the comparative statics of UAT are not conditioned on discretion. In fact, even if the president has no discretion, according to the theories depicted in Figure 1, the president still acts in equilibrium (Chiou and Rothenberg, 2017, p. 51). One possibility is that action regions that *were* conditional on discretion might perform better. The substantive takeaway is that the pattern of observed executive action suggests that whether the president has the authority to act is more important than previously thought. More specifically, UAT typically models discretion as an exogenous parameter that scales policy change. The “executive action despite no discretion” prediction is an artifact of the assumption that exceeding the scope of the president’s authority is only costly in terms of the prospects for policy reversal. However, if reversals were not assumed frictionless, it might be more in-keeping with these data.²⁷

Congressional Dysfunction

The spatial location of aggressive mistakes suggests that the theories could be underestimating the degree of congressional dysfunction. Most aggressive mistakes are extreme status quos — they are in the exterior liberal or conservative policy regions outside the core executive action region. More specifically, they are to the left (right) of the filibuster pivot (f) and to the right (left) of

²⁶Specifically, the results exclude income and corporate tax rates, as well as all deductions, credits, and excise taxes.

²⁷There is, of course, variation in statutory and constitutional authority within some policy areas, and presidents might be more interested in addressing status quo policies that differ substantially from the mean level of discretion on that topic. For example, presidents have broad authority over public land use and can designate national monuments, but some specific lands have logging quotas mandated by Congress that cannot be superseded by presidential action. To the extent that this introduces additional measurement error, it also implies legal discretion is more critical than previously thought, and that presidential priority or interest in specific policies will help explain variation in action. Both possibilities suggest potential directions for theoretical innovation.

the relevant reflection point ($2v - m_c$, or $2m_p - m_c$) for conservative (liberal) presidents.²⁸ According to the theory, the president cannot benefit from unilateral action because the congressional median (chamber or otherwise) will be able to propose an alternative that defeats the president.

One explanation for this inconsistency is that the theory demands more than the Congresses of this period are capable of. In terms of theory, this means a breakdown in Congress' capacity to propose alternatives after unilateral action. Legislative capacity has been considered as a moderating variable in analyses of executive productivity (e.g., Bolton and Thrower, 2016), and the vast writing on the decline of capacity in the US Congress spans scholarship (e.g., Crosson *et al.*, 2019; Fowler, 2015) and the popular press. If this decline impacts lawmaking during the contemporary period analyzed (1993–2016), then it could account for the disconnect between theory and data. However, the implications of the dysfunction thesis are stark and analytically unsatisfying. If the congressional proposal power breaks down, there are essentially no constraints left (in these theories) on presidential proposal power. Some argue alternative constraints like the public (e.g., Christenson and Kriner, 2016; Reeves and Rogowski, 2015) or bureaucrats (e.g., Lowande, 2018; Rudalevige, 2012) operate. But these would have to be sufficient to restrain a president functionally free of the congressional median.

False Fronts

The outcome of interest is unilateral action, measured as the instance of some presidential policy proposal or initiative. The implicit measurement assumption is that these cases enact new policy. This assumption runs through nearly every study of presidential unilateral action. But many actions — even those that receive attention from careful observers — lead to no policy change.

Even a cursory look at the initial wave of Trump administration executive orders bears this out. The first order to acquire the president's signature appeared make the president the first-mover in the repeal of the Affordable Care Act (ACA).²⁹ But its ambiguity is telling. It ordered applicable cabinet secretaries to provide "greater flexibility" to states in implementation without providing direct orders to remove or reduce subsidy payments. Any action under the vague directive would need to be delayed, moreover, because the relevant officials would not begin their appointments for over 3 weeks. Action to end key subsidies eventually came later in the year under a different executive

²⁸This is why the chamber and partisan compliance models do not provide a better fit — their conditional reductions in the unilateralism region only add interior status quo policies to number of false negatives.

²⁹Executive Order 13765. "Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal," Federal Register, January 20, 2017.

order, after repeated failures to repeal the ACA wholesale.³⁰ This kind of action is not limited to the Trump administration. A naive reading of President Obama's directives would lead an observer to conclude that during his tenure, the prison at Guantanamo Bay was closed and that gun violence research was being publicly funded. Neither directive led to the policy change specified in their preamble.

Yet, it is not difficult to make the case that presidents benefit from signaling action — even if the status quo remains unchanged. The frequency of order issuance was touted by the Trump administration as an accomplishment in a press release at the 100-day mark.³¹ While seeking a second term, the Obama administration's "We Can't Wait" campaign explicitly adopted the unilateral narrative, even as many of the actions appeared to be branding exercises. During the 2020 Democratic presidential primary, six candidates (including three sitting US Senators) made working around Congress on "day one" an explicit part of their platform.³² "Unilateral" promises like these go back at least as far as the 1960 presidential election.³³

Anecdotes like these suggest that action itself may have consumptive value that outweighs the minimal cost of issuing a directive. Some may be primarily designed to attract media attention and convince supporters the president has followed through on key promises.³⁴ The fact that the action leaves the status quo intact may be irrelevant, as voters have difficulty observing the details of implementation and correctly attributing policy to particular actors, and confirmation bias predisposes them toward believing the president they voted for has acted in their interest.

In short, some unilateral action may be a false front in terms of concrete policymaking — more performative than substantive. This idea points to a different family of models in which presidents attempt to persuade constituents by cultivating the appearance of governing (e.g., Judd, 2017; Kang, 2018). This is an additional possible explanation for the over-aggression of presidents in the contemporary period documented by this study. A subset of these directives may require nothing beyond a rhetorical response from the opposition in Congress.

³⁰Executive Order 13813. "Promoting Healthcare Choice and Competition Across the United States," Federal Register, October 12, 2017.

³¹See: <https://goo.gl/RrHnp9>.

³²These candidates were Elizabeth Warren, Bernard Sanders, Kamala Harris, Joseph Biden, Robert O'Rourke, and Cory Booker. Some of their unilateral promises included canceling all student debt, enacting sweeping immigration reform, and reversing Trump administration executive orders.

³³John F. Kennedy promised to issue an executive order prohibiting racial discrimination in public housing. See the second presidential debate with Richard Nixon, October 7, 1960: <https://millercenter.org/the-presidency/presidential-speeches/october-7-1960-debate-richard-nixon-washington-dc>.

³⁴For this reason, the standard media-based rater procedure for removing insignificant directives will be unable to separate ineffectual and impactful orders.

Discussion

The idea that presidents unilaterally change public policy is critical to how scholars, pundits, and the public view the presidency. In the context of studying executive power, it is difficult to overstate its importance. It motivates an ongoing research agenda, and more generally, stimulated the engagement of theory and data in presidency research.

Most of this empirical work, however, shares important limitations. The variable to be explained — a count of directives — is disconnected from the underlying theories of policy movement. Moreover, measures of executive productivity are subject to numerous sources of error. In an effort to address some of these limitations, I replicated and extended methods to measure the positions of individual status quo policies, and presented a new and comprehensive measure of unilateral action. This produced two important descriptive findings. First, the distribution of status quo policies is not uniform, though status quos appear across the full spectrum of candidate preferences. Second, the broader universe of executive action is more expansive than previously accounted for systematically. As much as 15% of unilateral actions may be omitted by analyses that exclude non-presidential directives, and any analysis that examines one type of directive in isolation omits a majority of unilateral action.

Most importantly, after these measurement improvements and analyzing policy-level variation, I find little support for UAT. Since this is at odds with numerous empirical tests of second-order predictions of UAT, this study also considered numerous explanations for these findings. Though I have attempted to exhaust explanations related to data, measurement, and estimation, important assumptions and limitations along these lines cannot be dismissed.

In moving from macro-level analysis of productive to a micro-level analysis of policies subject to presidential initiatives, I reduced the time series under consideration. This means that this critical discussion cannot speak to earlier periods, when UAT may well prove to be a reliable predictor of policy change. Moreover, this study was restricted in scope by a finite set of policy areas, and it is possible that UAT would perform better in some unanalyzed subset. Finally, though this study gets closer to cleanly testing UAT's implications, it is *not* a direct test, because I cannot measure the direction and degree of change proposed by each action.

Despite these limitations, adopting this different empirical approach subjected UAT to the additional evaluation that established theories demand. When standard theories put to new data do not perform well, there is no shortage of possible explanations. In light of this fact, I also offered substantive explanations for the disconnect, based on a comparison of the theories predictions and observed data, as well as a close read of some important cases.

One minor amendment to the theory suggested by these data is to relax the frictionless character of the consequences of exceeding presidential discretion.

But more critically, the high incidence of false-negatives, or aggressive mistakes suggests different possible directions for theoretical innovation. It is possible that the previous three decades have seen a breakdown in Congress' ability to legislate alternatives to executive action. Alternatively, the actions themselves may merit no congressional response beyond voiced disagreement because they are false fronts with no impact on the status quo. Since the substantive implications of some possibilities are stark, it is important to highlight that they are not mutually exclusive. Some subset of actions may have no impact on policy, while others seemingly overcome the backstops meant to check a sitting president that are inherent in the separation of powers.

This reveals a broader point suggested by this analysis about the study of executive power. In an institutional environment like presidential unilateral action, where rules are often in flux and informal, it may be unreasonable to expect any single theoretical model to capture the dynamics in the majority of initiatives. This suggests parallel theoretical and empirical ways forward: developing meta-theories designed to explain why presidential actions follow different strategic contexts, and investing in careful measurement strategies designed to track and distinguish between these relevant cases.

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